

AlburyCity – Planning & Development Committee

AGENDA

PDC 6 – REPORTS FOR DISCUSSION

6A Albury Local Environmental Plan 2010 – Planning Proposal: Reclassification of Council Owned Land and Associated Boundary Adjustment – Riverdeck Café, Noreuil Park, South Albury and Donnolley Court Drainage Reserve, Lavington (DOC13/17649)

DATE 25 February 2013

CONFIDENTIAL YES ☐ NO ☒ If yes please tick one of the following reasons
Personnel Matters ☐ Commercial ☐ Legal ☐ Security ☐ Personal Hardship ☐

MEETING DATE Monday 11 March 2013

FURTHER ENQUIRIES TO Matt Johnson PHONE 6023 8285
Planning & Environment

Introduction

The purpose of this report is to seek Council resolution to endorse a Planning Proposal that seeks to amend the *Albury Local Environmental Plan 2010* (ALEP 2010) so as to reclassify Lot 1, PP DP 1182825, being the Riverdeck Café in Noreuil Park, South Albury and Lot 2, DP 231315, Donnolley Court Drainage Reserve, Wagga Road, Lavington (subject sites) from 'community land' to 'operational land' and undertake those actions necessary to publicly exhibit the Planning Proposal.

It is noted that the revised title of the Riverdeck Café has not yet been approved by the Land Titles Office and therefore has been assigned a Pre-allocated Plan Number (PP) pending its certification. Upon certification, the subject site will be known as Lot 1, DP 1182825.

This report also seeks Council resolution to affix the Council Seal on the draft title for Lot 1, PP DP 1182825, being the Riverdeck Café following a recent boundary adjustment, as the landowner of the subject site, pursuant to Regulation 400 of the *Local Government (General) Regulation 2005* and the AlburyCity document *Use of Council Seal Policy*.

A copy of the Planning Proposal is provided as *Attachment 1* to this report and a copy of the draft Title Plan for Lot 1, PP DP 1182825 is provided as *Attachment 2* to this report for sealing.

Property Under Consideration

The subject sites are described as follows:

Lot 1, PP DP 1182825 is commonly known as the Riverdeck Café or Riverdeck Kiosk situated in Noreuil Park, South Albury and is located approximately 50m from the high bank of the Murray River.

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Lot 2, DP 231315 is a small (505.85m²) irregular shaped council-owned drainage reserve located off Wagga Road, Lavington and adjoins No. 480 Wagga Road (five residential strata units) to the North and West, No. 484 Wagga Road (Southern Cross Apartment Lavington Retirement Village) to the East and No's 1 and 3 Donnelly Court (two dual occupancy residential units) to the South of the subject site.

A locality plan has been provided as *Attachment 3* to this report to show the location of these sites.

Background

Noreuil Park foreshore is one of the most popular locations in Albury for locals and tourists to visit. The foreshore is accessed by around 600,000 visitors each year, using the foreshore as the base for swimming, walking, cycling, picnicking, canoeing and other recreational activities, whilst a number of events also use the Noreuil Park foreshore during their activities. The Oddies Creek Park Children's Adventure Playground is also in the nearby area and this has attracted many visitors since it opened in 2011. Likewise, AlburyCity is currently constructing the Wagirra Trail along the Murray River that is planned to eventually link Wonga Wetlands to Lake Hume.

The subject site has been leased on five occasions for the purposes of a cafe/kiosk since it was built in the early 2000s; however lessees have found that the restrictions of the current site and building have hampered business development. Currently this parcel is classified as 'Community' land and the area has a Parks Plan of Management over it and this Plan of Management is due for review in 2013-2014.

The aim of the proposal is to reclassify this parcel from 'Community' to 'Operational' land to facilitate the development of the Cafe. Currently the cafe only operates seasonally for six months of the year from November to April, and operations are further restricted in that timeframe due to inclement weather. Council has received feedback from the lessees, customers and the general public that a cafe beside the river at Noreuil Park that is operational throughout the entire year and during inclement weather would be beneficial. Investment in the site would be required to provide year round service and a more enhanced experience for residents and visitors via the construction of an undercover area or awning over the site or the like.

The *Local Government Act 1993* requires a public exhibition and submission process to lease a property every time a new lease is required on community land. There are further process obligations if the lease is more than five years. While Council would still undertake an Expression of Interest (EOI) process for new leases on operational land to ensure best value for the community, the public exhibition obligations would not be required. Hence, the process would be more efficient and less time consuming. Once the parcel is classified operational, the leasing process would provide prospective lessees more certainty for their business if they invested in the site.

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It is noted that AlburyCity recently undertook a boundary adjustment between Lots 1 and 3, DP 1077613 (being the subject and adjoining site) to enable its expansion (by 61m²) and encourage the redevelopment of this business. Prior to the newly adjusted lot boundaries being finalised and the proposed reclassification of community-classified land, council consent by way of affixing the Council seal is required, pursuant to Regulation 400 of the *Local Government (General) Regulation 2005*. As previously mentioned, a copy of the draft title is provided as *Attachment 2* to this report for sealing.

Similarly, AlburyCity has recently been in discussions with the owners of both 480 and 484 Wagga Road, Lavington regarding the potential purchase of the Donnolley Court Drainage Reserve so that it may be incorporated and used for ancillary residential purposes associated with the adjoining residential units and retirement village. It is noted that units 3, 4 and 5 at 480 Wagga Road have already inadvertently built over this drainage easement, only so far as extending their rear boundary fences so as to enclose this area. No physical structures have been built over this easement with the exception of a dividing fence and it is the intention of the landowner of 480 Wagga Road to formalise the development over this land via the purchasing of the subject site.

Following discussions with the adjoining landowners it was agreed that AlburyCity would reclassify the subject site and extinguish the drainage reserve over this site allowing it to be sold to the adjoining landowners for a 'peppercorn agreement' (nominal fee). In return it was agreed that the adjoining landowners would replace the existing open channelled drainage reserve with an underground stormwater piped system (at their own cost) and that this would be protected by the creation of an easement for its ongoing protection and maintenance.

The benefits of undertaking these works include:

- the drainage reserve will be landscaped open space adjacent to residential dwellings;
- there is a reduced risk of personal injury through the removal of an open drainage channel;
- Council would have a new service line replacing an old service constructed at no cost; and
- the ongoing cost of maintaining this infrastructure would be significantly reduced.

The subject sites are currently zoned RE1 Public Recreation and R1 General Residential respectively under ALEP 2010 and are used for minor commercial and ancillary residential purposes. Accordingly, the main purpose of the reclassifications are to help facilitate the development of the Riverdeck Café resulting in a more efficient leasing process of council owned buildings and land and in regards to the Donnolley Court Drainage Reserve, this relates to previous agreements between AlburyCity and the adjoining landowners regarding the purchasing of a drainage reserve.

Process of Reclassifying Community Land

The *Local Government Act 1993* (LG Act) requires that all public land under the control of Council should be classified as either 'Community' or 'Operational'. In simple terms, 'Community' land is that used to identify land managed by Council for a public use, such as a library or park, while 'Operational' land is used to identify land owned by Council that can be held as a temporary asset or used to generate a commercial return (including its sale).

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Under the LG Act a Council has no power to sell, exchange or otherwise dispose of 'Community' land. However, in circumstances determined by that Act, Council may pass a resolution to reclassify land from 'Community' to 'Operational' allowing it to be disposed of, if appropriate. It is noted that Council tacitly agreed to sell Lot 2, DP 231315, Donnelly Court Drainage Reserve, Lavington for a 'peppercorn agreement' (nominal fee) to the adjoining landowners subject to a number of conditions. However, Council has no intention or plan to sell Lot 1, PP DP 1182825, Riverdeck Café, South Albury and will be subject to the conditions of a leasing agreement over the subject site. Section 377 of the LG Act requires a specific resolution of Council to dispose of land.

The process of reclassifying land from 'Community' to 'Operational' is as follows:

Local Government Act 1993

The LG Act is the principle legislation concerned with the classification and management of public land. The mechanism for reclassifying Council owned public land is the Local Environmental Plan (LEP) and hence the LG Act defers to the *Environmental Planning and Assessment Act 1979* (EP&A Act) for this process (see below). The LG Act does have some direct influence on the LEP process such as the mandatory requirement for a public hearing.

Accordingly, Section 29 of the LG Act requires that a public hearing be conducted to discuss the reclassification proposal as it relates to the reclassification of 'Community' land. This public hearing is required to be conducted within 28 days following the conclusion of the public exhibition period.

Environmental Planning & Assessment Act 1979

The EP&A Act is the principal legislation concerned with the processes of reclassification and rezoning proposals, as well as, considering development matters.

The EP&A Act, in concert with the *Environmental Planning and Assessment Regulation 2000*, specifies the process by which amendments to LEP's should be prepared, notified, exhibited and reported.

In July 2009, the NSW Government changed the way that LEPs are developed and approved due to an amendment to Part 3 of the EP&A Act. This system is known as the 'Gateway' plan-making process and requires the preparation of a 'Planning Proposal' for any requested amendments to LEPs.

NSW Department of Planning LEP Practice Note

In June 2009, the NSW Department of Planning (DoP) released *LEP Practice Note PN 09-003* regarding the classification and reclassification of public land through a LEP (LEP Practice Note). This guideline superseded previous Department of Urban Affairs and Planning guidelines and is now the sole reference document used to help Council's preparing amendments to LEP's that deal with their own land. The purpose of the LEP Practice Note is to ensure transparency in the process where Council is both the owner of the land and the authority for changing the zoning, classification or some other provision of the local planning instrument (i.e. the LEP).

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Whilst not a statutory requirement, the LEP Practice Note sets out a process (in addition to the EP&A Act requirements) that Council's should follow when preparing LEP's. When an amendment to an LEP is exhibited, the LEP Practice Note requires a list of information to be placed on exhibition.

All documentation and procedures are to be prepared and undertaken respectively in relation to this Planning Proposal and will comply with relevant legislative and LEP Practice Note requirements.

Conclusion

The proposal seeks to reclassify the subject sites from 'Community' land to 'Operational' land to help facilitate the development of the Riverdeck Café resulting in a more efficient leasing process of council-owned land and also responds to previous agreements between AlburyCity and the adjoining landowners regarding the purchasing of the Donnelly Court drainage reserve.

Whilst AlburyCity does intend to sell Lot 2, DP 231315, upon reclassification, to the adjoining landowners, the practical benefits of this proposal will be significant as this will allow for the use of this area for ancillary residential purposes (via the enclosure of this infrastructure) and formalises the inadvertent development over a council-owned drainage reserve. Conversely, it is also noted that AlburyCity does not propose to sell Lot 1, PP DP 1182825 upon reclassification as it will continue to be used for minor commercial purposes (café/kiosk) as part of the current and future operations of Noreuil Park.

For these reasons Council endorsement of the Planning Proposal, proposed boundary adjustment and draft title is sought to progress this matter, as well as to undertake the appropriate actions in order to secure the reclassification of the subject sites, which will allow for the more flexible use of these sites.

Recommendation

That the Committee recommends that Council that Council:

- a. authorises its Seal to be affixed to the title of Lot 1, PP DP 1182825 in the presence of two signatories authorised to affix the Seal, pursuant to Regulation 400 of the Local Government (General) Regulation 2005 and the AlburyCity Use of Council Seal Policy and forward it to the NSW Land Titles Office for finalisation;
- b. forward a Planning Proposal to the Minister for Planning & Infrastructure seeking an Amendment to the Albury Local Environmental Plan 2010 to reclassify Lot 1, PP DP 1182825, being the Riverdeck Café, South Albury and Lot 2, DP 231315, Donnelly Court Drainage Reserve, Lavington from 'Community' land to 'Operational' land and request that a Gateway Determination be made, enabling the exhibition of the Planning Proposal pursuant to Section 29 of the Local Government Act 1993 and the Environmental Planning and Assessment Act 1979, as amended;

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- c. upon receipt of a Gateway Determination under Section 56 of the Environmental Planning & Assessment Act 1979, Council place the Planning Proposal on public exhibition pursuant to any requirements of the Gateway Determination, Section 57 of the Environmental Planning & Assessment Act 1979, in accordance with 'LEP Practice Note: Classification and reclassification of public land through a local environmental plan' dated 12 June 2009 and the Local Government Act 1993;
 - d. conduct a Public Hearing no less than 28 days after the Public Exhibition period in accordance with Section 29 of the LG Act;
 - e. should no objections be received, furnish a copy of this report and other relevant information to the NSW Department of Planning and Infrastructure, in accordance with the EP&A Act, and request the Minister for Planning & Infrastructure undertake appropriate actions to secure the making of the Amendment to the Albury Local Environmental Plan 2010 to the extent that it seeks to reclassify Lot 1, PP DP 1182825, Riverdeck Cafe, South Albury and Lot 2, DP 231315, Donnelley Court Drainage Reserve, Lavington from 'community land' to 'operational land';
 - f. following reclassification, authorises the General Manager to dispose of and sell Lot 2, DP 231315 for a 'peppercorn agreement' to the adjoining landowners, subject to the conditions of a Contract of Sale related to the new landowner replacing the existing open channelled drainage reserve with an underground stormwater piped system at their cost and protected by the creation of an easement over the subject site; and
 - g. authorises its Seal to be affixed to the Contract of Sale for Lot 2, DP 231315 in the presence of two signatories authorised to affix the Seal pursuant to Regulation 400 of the Local Government (General) Regulation 2005 and the AlburyCity Use of Council Seal Policy.
- **Attachments**
 - 1. Planning Proposal – Reclassification of land from Community to Operational, Riverdeck Café – Noreuil Park, South Albury and Donnelley Court Drainage Reserve – Wagga Road, Lavington.
 - 2. Title Plan, Lot 1, PP DP 1182825.
 - 3. Locality Plan – Riverdeck Café – Noreuil Park, South Albury and Donnelley Court Drainage Reserve – Wagga Road, Lavington.