

AlburyCity – Planning & Development Committee

AGENDA

6C Albury Local Environmental Plan 2010 – Planning Proposal: Rezoning for Industrial Development – 221 Fallon Street, North Albury (DOC14/93147)

DATE 17 November 2014

CONFIDENTIAL
Personnel Matters

YES
Commercial

NO ☒
Legal

If yes please tick one of the following reasons
Security Personal Hardship

ITEM FOR DECISION ☒

Meeting Date Monday 8 December 2014

ITEM FOR NOTING

Meeting Date

FURTHER ENQUIRIES TO Matt Johnson
Planning and Environment

PHONE 02 6023 8173

Purpose of Report

The purpose of this report is to seek Council resolution to endorse a Planning Proposal to amend the *Albury Local Environmental Plan 2010* (ALEP 2010) so as to rezone 221 Fallon Street, North Albury, being Lot 31, DP 1156505 (subject site) from SP2 Transport Infrastructure to IN1 General Industrial and undertake those actions necessary to publicly exhibit the Planning Proposal.

An aerial photograph of the site is provided as *Attachment 1* for Councillors information.

In addition, a copy of the Planning Proposal is available for Councillors reference and information as *Attachment 2*.

Background

The subject site is owned by the NSW Roads and Maritime Service (NSW RMS) and was previously acquired for the purposes of constructing the planned railway and freeway overpass proposed for Fallon Street as part of the Federal Government's Hume Highway Project.

Following the completion and opening of the Hume Highway on 6 March 2007, two areas of land in Fallon Street were identified as being surplus to NSW RMS requirements. This Public Authority in consultation with AlburyCity subdivided the property into two parcels of freehold land, being Lots 30 and 31, DP 1156505 and a section of local road, being Lot 32, DP 1156505.

During the consultation stages of preparing ALEP 2010, the NSW RMS made a submission to Council requesting the rezoning of certain land that was surplus to Hume Highway purposes. Notwithstanding, at the time of making its submission, the NSW RMS was unable to accurately define all of its surplus land (including the subject site) as survey resources were committed elsewhere. AlburyCity was not in a position to delay the progress of the Plan in the absence of this information and accordingly, much of the RMS land remained zoned SP2 Transport Infrastructure.

Under the current zoning the NSW RMS are unable to dispose of the land by private treaty. The only option to dispose of the land under its current zoning is to dedicate the land as a 'road' thereby placing it in Council's ownership to maintain as a road reserve.

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The NSW RMS wrote to Council on 6 December 2013 to advise that it was seeking AlburyCity's agreement to rezone the land from SP2 Transport Infrastructure to IN1 General Industrial or IN2 Light Industrial as per the adjoining land.

AlburyCity confirmed via letter dated 14 April 2014 that it did not object in-principle to the proposed rezoning of the subject site, however, advised that a separate Planning Proposal would need to be prepared by the NSW RMS or by someone on their behalf to justify the proposed change in zoning, including further more detailed investigations being undertaken; regarding traffic, site access and safety concerns associated with Fallon Street, adjoining the site.

In response, a Planning Proposal has been prepared for the subject site by the NSW RMS accompanied by a preliminary traffic impact assessment, which confirms that the subject site is appropriate for industrial development and will not create any traffic safety issues.

The Planning Proposal has been prepared in accordance with the NSW Department of Planning publication: '*A guide to preparing planning proposals (October 2012)*' and is generally consistent with the ongoing assessment and advice of AlburyCity Planning staff to ensure that all necessary research has been undertaken, documented and addressed for the purposes of supporting outcomes sought.

Given the fact that the subject site is surplus to NSW RMS requirements and is zoned SP2 Transport Infrastructure; there are significant restrictions on the future potential use of the subject site. In the absence of a rezoning the property cannot be sold, leased or developed for anything other than road infrastructure works, thereby preventing the NSW RMS from disposing of the site, despite it being surplus to their requirements.

Issues

The preparation of the Planning Proposal supports *Albury 2030* strategic actions under the themes of 'A Growing Economy' including:

- *Maintain a diversity of options amongst all sectors and continue to meet demand for opportunities for land development; and*
- *Promote Albury for industry and business; and*
- *Promote Albury as a major regional economy and the regional city of choice for lifestyle, career and investment opportunities.*

The proposed rezoning of the subject site to IN1 General Industrial would increase the supply of developable land and employment opportunities in Albury within an existing industrial area accessible to the surrounding major road network.

The proposed rezoning of the subject site also does not derogate from the aims and objectives of the *Environmental Planning & Assessment Act 1979*, and the NSW Department of Planning's; *Guide to Preparing Local Environmental Plans* and *Guide to Preparing Planning Proposals*.

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Discussion

The Planning Proposal provides justification for the outcomes sought, based on the following:

1. An analysis of the need for the Planning Proposal;
2. Consideration against relevant local, regional and State planning policies/directions;
3. Assessment of likely environmental, social and economic impacts and necessary mitigation measures; and
4. Documented consideration of any relevant government agency issues/interests.

These documented considerations, responses and an AlburyCity position following an initial assessment are discussed below.

1. Need for the Planning Proposal

The need for the Planning Proposal and the intended site outcomes that have been sought have been subject to an assessment and documented response, which has concluded that there will be a generally positive benefit from the proposed rezoning.

This response is outlined as follows:

- The site is surplus to the RMS's operational requirements following the completion of the Hume Highway, however, the current zoning of the subject land as SP2 Transport Infrastructure means that only road purposes are permissible on the site.
- Rezoning the site to IN1 General Industrial would allow the RMS to dispose of the public asset, avoiding ongoing unnecessary maintenance costs and maximising financial returns.
- Rezoning the subject site to IN1 General Industrial will increase the supply of developable industrial land in Albury in a location characterised by industrial uses, which is best suited to the IN1 General Industrial zone objectives and that could accommodate a range of the uses permissible in this zone.
- Any future development application would allow Council the opportunity to undertake a merit assessment of any proposed building work and use of the site.
- The location and associated amenity impacts of the subject site means that the application of other more sensitive land use zones such as the 'Living Area' Zone that previously applied to the site under Albury Local Environmental Plan 2000 would be inappropriate.
- The Planning Proposal is consistent with previous consultation and advice with AlburyCity, which included Council's request for the submission of a Planning Proposal and investigation into the site's access constraints. The RMS has satisfied this requirement by preparing a Planning Proposal and commissioning a Traffic Impact Assessment which is available as an appendix to this Proposal.
- The findings of the preliminary traffic assessment support rezoning of the site to IN1 General Industrial subject to further consideration of site specific uses as part of any future development application.
- The site is not serviced by a B-double road, which is a similar situation to other sites zoned IN1 General Industrial located to the south of the subject land.

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- The current infrastructure zoning only permits provision of infrastructure, including road works and related uses, whilst prohibiting all other uses. Consequently, a zone change is necessary.

AlburyCity Response

Current conditions suggest that the proposed future development of the site for industrial purposes is both reasonable and appropriate.

These conditions include industrial zoning/development to the immediate south and west, proximity to the Hume Highway/Fallon Street overpass, proximity to major road network and other supporting infrastructure, absence of any environmental values on-site and adequate separation/buffer from other noise sensitive/residential land uses etc.

It is noted that the site adjoins industrial zoned land to the immediate south and west, as well as adjoining the Hume Highway to the east and the Fallon Street overpass immediately to the north. It is recognised that a change in zoning (as proposed) to facilitate industrial outcomes will not create any land use conflicts considering the adjoining uses.

The site already enjoys a substantial distance separation from the nearest residential properties located 200m to the north, which are already separated by the existing Fallon Street overpass and existing light industrial development. This existing distance separation/buffer provides a notable indication that external amenity impacts associated with any subsequent industrial development of the site will be limited. Notwithstanding this advantageous location/context, it is anticipated that the development application, assessment and determination process will ensure that appropriate land use, design, interface and/or other outcomes are achieved on-site to further limit any potential impacts on surrounding land, particularly with regards to traffic safety.

An initial assessment has concluded that matters relating to surrounding residential amenity, environmental and traffic, transport and access are not significant enough to suggest that such issues cannot be investigated and addressed through an appropriate design response at the time of development.

Accordingly, the Planning Proposal and its intended outcomes are supported.

2. Consideration against relevant local, regional, State planning policies/directions

The site outcomes sought have been subject to a detailed audit of relevant local, regional and State planning policies and directions.

This detailed audit has generally concluded that desired site outcomes sought are consistent with the relevant planning policy framework, and where inconsistencies have been identified, information has been provided that justifies any such inconsistency.

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AlburyCity Response

An initial assessment undertaken by AlburyCity confirms that the Planning Proposal addresses relevant local, regional and State planning policies and directions, in particular the Draft Murray Regional Strategy 2009, Albury 2030 (as outlined above) and relevant State Environmental Planning Policies (SEPPs) and Section 117(2) Ministerial Directions.

Specific reference is made to State Environmental Planning Policy No. 55 (Remediation of Land) that requires a site assessment (to be considered in a zoning or rezoning proposal) of potential land contamination having regard to the suitability for which land in that zone is permitted to be used.

The Planning Proposal outlines that given the previous zoning of the site under the Albury Local Environmental Plan 2000 as 'Living Area', the likelihood of land contamination is considered low. A check of council records concluded that there was no visual or anecdotal evidence to suggest that any part of the subject site was contaminated.

Specific reference is also made to Ministerial Direction 1.1 (Business and Industrial Zones) that, amongst other things, seeks to encourage employment growth in suitable locations and ensure that proposed new employment areas are in accordance with an approved strategy.

In response, the Planning Proposal states that outcomes sought in relation to the site will facilitate additional industrial land in Albury, without impacting on the viability of other industrial land releases through an over-supply of industrially-zoned land. This Planning Proposal is of minor significance having regard to the relatively small area of land involved.

Specific reference is also made to Ministerial Direction 4.3 (Flood Prone Land) that, amongst other things, seeks to protect life, property and the environment from flooding hazards by mandating consideration of relevant NSW Flood Prone Land Policies including the Floodplain Development Manual 2005 (including the Guidelines on Development Controls on Low Flood Risk Areas).

In response, the Planning Proposal confirms that further consideration and consultation will be undertaken with AlburyCity to ensure compliance with relevant requirements at the time of development. It is also noted that whilst the subject site is identified as being located within Council's Flood Referral Area, more recent flooding investigations have only identified a very small portion of the subject site (less than 5%) as being subject to overland flow and/or stormwater.

Accordingly, the Planning Proposal and its intended outcomes are supported.

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3. Assessment of likely environmental, social and economic impacts and necessary mitigation

Following a further analysis in relation to constraints, context, character and likely benefits associated with the Planning Proposal and intended outcomes; a response is outlined as follows:

- The Planning Proposal will not result in any disturbance of the habitat areas and/or natural features as the site is devoid of significant vegetation and/or natural features.
The subject site is also surrounded by a state and regional road network, as well as industrial uses. Accordingly, no threatened species, populations or ecological communities or their habitats will be adversely affected by the proposal.
- The social and economic benefits of the Planning Proposal are considered to be positive insofar as it relates to well-located and serviceable urban land (supported by a traffic assessment) and facilitation of more employment generating development. The development is also already well separated from existing residential developments to the north via the existing Fallon Street overpass and light industrial development located in Calimo Street.
- The industrial development outcomes sought on the site will assist in providing a greater variety and choice in industrial opportunities that should assist in attracting new industrial activities outside of the predominant estate environs, being the Airport Industrial Estate (East Albury), Airside North (Thurgoona/East Albury) and Nexus (Ettamogah).

AlburyCity Response

The Planning Proposal and intended outcomes have substantial planning merit when assessed against relevant environmental, social and economic considerations.

It is reiterated that the site is devoid of significant habitat and/or natural features with only several low quality trees located on-site with the site also being well separated from nearby residential properties.

It is noted that the Planning Proposal has deferred further considerations in relation to building design and setbacks, as well as traffic, transport and access matters to the development application, assessment and determination process to ensure that only appropriate development outcomes are achieved on-site.

It is agreed that it would be pre-emptive to expect a detailed consideration and response to these issues up-front, and accordingly, it is considered appropriate that such issues be deferred to the time of development where specific impacts and issues are reasonably known.

It is acknowledged that outcomes sought will provide some diversification in available industrial land that will assist in providing some resilience in attracting new industrial activities through differing industrial land opportunities.

Accordingly, the Planning Proposal and its intended outcomes are supported.

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4. Documented consideration of any relevant government agency issues/interests

It is acknowledged that any relevant public authorities (outside of the NSW RMS) to be consulted (where required) will be identified and confirmed through the issuing of a Gateway Determination for this Planning Proposal.

Notwithstanding, consistent with the NSW Department of Planning publication: '*A guide to preparing planning proposals (October 2012)*' and having regard for the circumstances of the subject site, the Planning Proposal does outline the likely public exhibition processes and methods for consultation purposes.

AlburyCity Response

AlburyCity raises no objections to the proposed public exhibition processes and methods as it is consistent with previous AlburyCity advice.

Risk

- **WHS and Public Risk**
The level of WHS and Public risk associated with the rezoning of the subject site from SP2 Transport Infrastructure to IN1 General Industrial is considered low following the completion of a preliminary traffic impact assessment, which has identified that there are safe sight distances at the existing and possible future driveway.

Community Engagement

The proposed changes are considered to be of public interest and accordingly an appropriate level of community engagement is warranted. The formal public exhibition process will be based on a separate Community Engagement Plan inclusive of a table detailing engagement techniques and timeframes and a copy of this Table has been included with this report and marked as *Attachment 3* for the reference and information of Councillors.

The communications table includes provision for the following activities:

- Notification letters dispatched to landowners and other key stakeholders as identified as being directly affected by the Planning Proposal prior to exhibition commencement;
- Public notice published in the Border Mail;
- Static displays containing all exhibition material for viewing purposes in the foyer of the Council Administration Building, LibraryMuseum and Lavington Library;
- All exhibition material being made available on the AlburyCity website including the ability to make an electronic submission also being made available on the AlburyCity website;
- Consultation and discussion with relevant Government Agency representatives; and
- Strategic Planning staff available (on demand or by appointment) to assist with any inquiries relating to the Planning Proposal.

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Options

Council has the following options in relation to this report:

1. Endorse the Planning Proposal that seeks to rezone 221 Fallon Street, North Albury, being Lot 31, DP 1156505 from SP2 Transport Infrastructure to IN1 General Industrial and forward this document to the NSW Department of Planning & Environment seeking Gateway Determination; or
2. Take no further action with regards to the Planning Proposal and the proposed amendment.

In this instance, it is recommended that Council proceed with Option 1 as outlined above.

Conclusion

Having undertaken an assessment of the Planning Proposal it is concluded that development of the site for industrial purposes has substantial planning merit and is not considered unreasonable.

The relative small scale change in zoning sought, proximity to surrounding industrial zoned lands, supporting roads and utilities infrastructure, adequate distance separation from existing residential zoned lands/ land uses and an absence of environmental values on-site all suggest that the site has industrial development capabilities.

Whilst further detailed land use considerations (building design and setbacks etc.) have been deferred to the development application, assessment and determination process, these issues are not considered that significant to suggest that further detailed investigation is required up-front.

Finally, the Planning Proposal represents a logical extension of industrial zoned land consistent with adjoining land to the immediate south, which is now surplus to RMS requirements following the completion of the Hume Highway. It is therefore considered both reasonable and appropriate that this Planning Proposal be progressed to seek NSW Department of Planning and Environment authority to progress the proposal as an amendment to ALEP 2010, pursuant to Part 3 of the *Environmental Planning & Assessment Act 1979* as a 'delegated Planning Proposal'.

Recommendation

That the Committee recommends to Council that Council:

- a. Endorse the Planning Proposal and forward it to the Minister for Planning seeking an amendment to the *Albury Local Environmental Plan 2010* so as to rezone 221 Fallon Street, North Albury, being Lot 31, DP 1156505 from SP2 Transport Infrastructure to IN1 General Industrial and request that a Gateway Determination be issued, including the delegation of Plan making powers, so as to enable the public exhibition of the Planning Proposal pursuant to the *Environmental Planning & Assessment Act 1979*;
- b. 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 and Section 57 of the *Environmental Planning & Assessment Act 1979*; and

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- c. Should no objections be received, furnish a copy of this report and any other relevant information to the NSW Department of Planning and Environment and/or NSW Parliamentary Counsels Office, in accordance with the *Environmental Planning & Assessment Act 1979*, and request the Minister for Planning (or a delegate on their behalf) undertake the appropriate actions to secure the making of the amendment to the *Albury Local Environmental Plan 2010* to the extent that it seeks to rezone 221 Fallon Street, North Albury being Lot 31, DP 1156505 from SP2 Transport Infrastructure to IN1 General Industrial.

Attachments

- 1. Aerial Photograph of the Site.
- 2. Planning Proposal: Amendment to Albury Local Environmental Plan 2010 – Rezoning of 221 Fallon Street, North Albury from SP2 Transport Infrastructure to IN1 General Industrial (November 2014).
- 3. Community Engagement Plan.

