

AlburyCity – Planning & Development Committee

AGENDA

PDC 6 – REPORTS FOR DISCUSSION

6A Albury Local Environmental Plan 2010 – Planning Proposal: Clause 7.5 Development on or Near the Murray River (River Front Area) (FIL11/03586)

DATE 29 November 2011

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

MEETING DATE Monday 12 December 2011

FURTHER ENQUIRIES TO Matt Johnson PHONE 6023 8173
Planning & Environment

Introduction

The purpose of this report is to obtain Council's endorsement of a Planning Proposal that seeks to replace Clause 7.5 – Development on or Near the Murray River as contained within *Albury Local Environmental Plan 2010* (ALEP 2010) consistent with the model local provisions contained within the *Draft Murray Regional Strategy 2009* (DMRS) and other recently gazetted or publicly exhibited LEPs in the Murray Region.

A copy of the Planning Proposal is provided as *Attachment 1* to this report.

Background

During the preparation of ALEP 2010, AlburyCity proposed a clause related to development along the Murray River based on previous requirements contained within ALEP 2000.

At the time of making ALEP 2010, the content and subject matter remained largely unchanged as a result of the NSW Department of Planning and Infrastructure (DoPI) legal vetting and check processes required prior to gazettal. However, there were several revisions made to ALEP 2010 content and subject matter (different from those changes requested by AlburyCity and previously endorsed by Council).

Following review of these changes, most were considered minor in nature; however upon making ALEP 2010, the Minister for Planning and Infrastructure did advise that amongst other things the clause associated with development in the river front area of the Murray River was modified to ensure that it was consistent with the Standard Instrument LEP or certain model clauses.

Upon further investigations, it appears that Clause 7.5 has been based on the model provisions contained within the DMRS, but is different in terms of its numerical setback requirements (400m versus 100m) and the zones that it is applicable to (was expanded to include the RE1 Public Recreation and RE2 Private Recreation Zones).

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It is noted that there are ten local councils in the Murray Region – Albury, Greater Hume, Corowa, Berrigan, Murray, Conargo, Deniliquin, Wakool, Balranald and Wentworth. Of these ten councils, five of them, being Greater Hume Shire, Balranald, Wentworth, Corowa and Murray Shire have either a gazetted LEP or publicly exhibited LEP, with a clause consistent with the DMRS in terms of setbacks from the Murray River (100m) and its application of zones (excluding the RE1 Public Recreation Zone and RE2 Private Recreation Zone).

Following an investigation of all ten local councils, AlburyCity has the only gazetted Standard Instrument LEP that is inconsistent with the model provision of the DMRS. Accordingly, the purpose of this proposal is to make ALEP 2010 consistent with the model provisions of this Strategy and other recently gazetted or public exhibited LEPs in the Murray Region.

Despite several requests to rectify the issue, it still remains outstanding and as a consequence AlburyCity have prepared the subject Planning Proposal.

Discussion

Previous AlburyCity planning requirements for development along the Murray River were ‘merits-based’ and were subject to a number of heads of consideration in assessing any proposed development in proximity to the Murray River. However as previously mentioned, this clause was replaced prior to the gazettal of ALEP 2010 by the NSW Minister for Planning and Infrastructure.

In its place, the NSW DoPI inserted a model clause requiring that only certain developments are permitted within the ‘river front area’, being that land within 400m of the high bank of the Murray River within Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone RE1 Public Recreation or Zone RE2 Private Recreation.

The consequence of such a clause is extensive, as it is at odds with the model provisions contained within the DMRS, the requirements of other local councils within the wider Murray Region and also unnecessarily sterilises land from development located within 400m of the high bank of the Murray River.

This change compromises AlburyCity intentions and departs from the DMRS prepared by the NSW DoPI, regarding the regulation of river-based development that states:

The following model local provisions relate to development on river front areas and river based development. They are to be adopted by councils when preparing the local environmental plan for their area, in accordance with the standard instrument for local environment plans and this Regional Strategy.

It is noted that the abovementioned change to Clause 7.5 was made without any consultation with AlburyCity and without any detailed explanation following the completion of public exhibition. This change has the potential to significantly affect development (that is appropriate) along the Murray River, which is at odds with previous DoPI advice and guidelines.

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These post-public exhibition changes may also be at odds with recent Land and Environment Court (LEC) decisions – *Friends of Turramurra Inc V Minister for Planning [2011] NSWLEC 128* where major legal concerns were identified where major changes were made to an LEP following public exhibition without re-exhibiting the amended draft prior to making by the Minister for Planning and Infrastructure.

It is acknowledged that inappropriate development located within close proximity to the Murray River could contribute to the environmental and visual qualities of this important waterbody being compromised. However, following an analysis of land located within the river front area, the overall impact of the Planning Proposal will be minor as most of the land adjoining the Murray River is zoned RE1 Public Recreation (proposed to be removed from the application of this clause) or RU2 Rural Landscape Zones (*Attachment 2*) and will therefore only likely be developed for recreational, tourist or agricultural purposes.

Previous and current city-wide strategic planning documents such as the *Albury Land Use Strategy 2007* (ALUS) and ALEP 2010 identified land contained within the 'river front area' as having a potential environmental impact on the Murray River and its environs due to its proximity to the Murray River. The subject land over time has historically been used for agricultural and recreational pursuits and is not subject to significant development pressures. The proposed amendment does not seek to change the zoning or minimum lot size of the land contained within the river front area and still requires appropriate setbacks from the Murray River, which will therefore eliminate any likely adverse environmental impacts.

It is reiterated that the proposal only seeks to amend a clause contained within ALEP 2010 consistent with relevant state government directions. This is seen as less restrictive or onerous and allows for the appropriate development of land that adjoins the Murray River for recreational, tourist and minor commercial uses (as they relate to tourism developments in the RE1 Public Recreation and RE2 Private Recreation Zones), which is consistent with the zone objectives of the W2 Recreational Waterways zone.

By amending Clause 7.5 of ALEP 2010, Council seeks to achieve consistency with the model provisions of the DMRS, and ensure a consistent approach to planning in the Murray Region following the recent gazettal or public exhibition of other LEPs in this region.

Conclusion

At the time of making ALEP 2010, the content and subject matter remained largely unchanged as a result of the NSW DoPI legal vetting and check processes required prior to gazettal. It is noted however that the NSW Minister for Planning and Infrastructure did make several revisions to ALEP 2010 content and subject matter (different from those changes requested by AlburyCity and previously endorsed by Council).

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Following review of these changes, most were considered minor in nature; however upon making ALEP 2010, the Minister for Planning and Infrastructure did advise that amongst other things the clause associated with development in the river front area of the Murray River was modified to ensure that it was consistent with the Standard Instrument LEP or certain model clauses. Upon further investigations it was discovered that this clause differs from state government directions and other recently gazetted or publicly exhibited LEPs in the Murray Region. Despite several requests to rectify the issue, it still remains outstanding and as a consequence AlburyCity have prepared the subject Planning Proposal.

It is reiterated that the abovementioned change compromises AlburyCity intentions and departs from state-based directions and recent local planning requirements adopted in the Murray Region.

Accordingly, Council endorsement of the Planning Proposal and support to prepare other relevant documentation is sought to progress this matter.

Recommendation

That the Committee recommends to Council that:

- a. Council endorse the Planning Proposal to the Minister for Planning & Infrastructure seeking an Amendment to the Albury Local Environmental Plan 2010 insofar as amending Clause 7.5 – Development on or Near the Murray River and request that a Gateway Determination be made, pursuant to the Environmental Planning and Assessment Act 1979 (EP&A Act); and
 - b. should no objections be received, Council 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 relates to Clause 7.5 – Development on or Near the Murray River.
- **Attachments**
 1. Planning Proposal: Amendment to Albury Local Environmental Plan 2010, Clause 7.5 Development on or Near the Murray River ('River Front Area') *(to tabled at the meeting)*.
 2. Albury Local Environmental Plan 2010 – Land Zoning Map.