

AlburyCity – Planning & Development Committee

AGENDA

6C Albury Local Environmental Plan 2010 – Planning Proposal: Exceptions to Minimum Subdivision Lot Sizes for Certain Residential Development (Dual Occupancy Development) (DOC15/94614)

DATE 13 October 2015

CONFIDENTIAL
Personnel Matters

YES
Commercial

NO ☒
Legal

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

ITEM FOR DECISION ☒
Meeting Date 19 October 2015

ITEM FOR NOTING
Meeting Date

FURTHER ENQUIRIES TO Matt Johnson
Planning & Environment

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Purpose of Report

The purpose of this report is to seek Council's support for a revision to a recently endorsed Planning Proposal that seeks to amend the *Albury Local Environmental Plan 2010* (ALEP 2010) to facilitate the subdivision of land for dual occupancy developments. The revision is the result of further advice and direction from the department of Planning and Environment.

The proposal seeks to amend Clause 4.1A *Exceptions to minimum subdivision lot sizes for certain residential development* as currently contained within ALEP 2010. A copy of the amended clause is provided as *Attachment 1* for Councillors information.

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

As a result of the Planning Proposal, several consequential changes will also need to be made to the *Albury Development Control Plan 2010* (ADCP 2010) and these are also detailed within this report.

Background

It is noted that Council previously endorsed the adoption of a new clause within ALEP 2010, being Clause 4.1C *Exceptions to minimum subdivision lot sizes for dual occupancies*. An outline of the proposed amendment and rationale for the adoption of this clause was the subject of a previously report to the Planning & Development Committee meeting held on Monday 14 September 2015 (*Attachment 1*).

However, since receiving Council endorsement, further advice and direction has been received from the NSW Department of Planning & Environment (NSW DPE) to amend the proposal so that it will be consistent with NSW DPE, Council is now seeking to amend an existing clause within ALEP 2010 rather than adopting a new clause.

The proposal still seeks to achieve the same development outcomes as those previously sought, being the subdivision of land below that shown on the minimum lot size maps in ALEP 2010 for dual occupancy purposes. However, rather than adopt a new clause as provided in the earlier Planning Proposal, the proposed amendment seeks to amend an existing clause in ALEP 2010 instead.

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As the provisions of the Planning Proposal have changed, separate Council endorsement is required, and is now sought.

Issues

The preparation of the revised Planning Proposal is consistent with the strategic actions of *Albury 2030* and does not derogate from the aims and objectives of the *Environmental Planning & Assessment Act 1979*, the NSW Department of Planning's; *Guide to Preparing Local Environmental Plans* and *Guide to Preparing Planning Proposals*, as well as both the *Albury and Lavington CBD Masterplans* (2009) as previously reported to the Planning & Development Committee Meeting on Monday 14 September 2015.

Discussion

As outlined above, AlburyCity previously endorsed a Planning Proposal that sought to include Clause 4.1C *Exceptions to minimum subdivision lot sizes for dual occupancies* in ALEP 2010. This clause sought to allow for the subdivision of land below the minimum lot size (for Torrens Title purposes) as part of a dual occupancy development, where it was accompanied by a dwelling design for each of the proposed lots.

Following endorsement of this Clause by Council, AlburyCity forwarded the Planning Proposal to the NSW DPE and requested that a Gateway Determination be issued in accordance with the NSW *Environmental Planning & Assessment Act 1979*.

However, prior to issuing a Gateway Determination, AlburyCity were advised by NSW DPE that the proposed clause was unlikely to be supported following recent legal advice and the fact that it was modelled on a now repealed clause, being Clause 4.1A *Exceptions to minimum subdivision lot sizes for certain residential development* as contained within the *Lake Macquarie Local Environmental Plan 2014*.

It is acknowledged that the previous clause was prepared following a review of LEPs for a number of other rural, regional and metropolitan councils, as well as discussions and advice received from NSW DPE regional staff. The clause was subsequently modelled on Clause 4.1A of the *Lake Macquarie Local Environmental Plan 2014*. Notwithstanding, since the preparation of the Planning Proposal, Clause 4.1A as contained within the Lake Macquarie Plan has been repealed and replaced with a new clause. The new Clause has been endorsed and adopted by NSW DPE.

Accordingly, AlburyCity have been requested to amend its clause consistent with this revised version. A review of revised clause 4.1A of the *Lake Macquarie Local Environmental Plan 2014*, indicated that it is very similar to Clause 4.1A as currently contained within ALEP 2010, with the exception that it applies to both dual occupancy developments (being 2 dwellings on the one lot) and multi dwelling housing developments (being 3 or more dwellings on the one lot).

On this basis that AlburyCity is proposing that Council amend Clause 4.1A of ALEP 2010 consistent with the revised example, rather than adopting a new clause. It is noted that both clauses achieve the

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same objective and development outcome, being the subdivision of land below the minimum lot size, as part of a dual occupancy development.

AlburyCity is now seeking to revise the previously endorsed Planning Proposal so as to amend Clause 4.1A of ALEP 2010 rather than adopt draft Clause 4.1C as previously sought. By amending Clause 4.1A this will ensure consistency with other recently endorsed council examples, namely Lake Macquarie, NSW DPE advice and direction

It is reiterated that these types of residential development are already permitted within Albury's residential and mixed use zones and have been approved as part of either a Community Title or Strata Title subdivision development. Consequently, the impacts of the proposal are considered minimal and still require compliance with the relevant controls of the *Albury Development Control Plan 2010*.

Consequential changes to Albury Development Control Plan 2010

As a result of this Planning Proposal, a number of consequential changes will also need to be made to Sections 10.3.1 and 10.9 of ADCP 2010 (see *Attachment 4*), to reflect the proposed amendment and ensure consistency between the two documents. These changes are considered minor and will be the subject of a separate public exhibition process and will be exhibited concurrently with the Planning Proposal.

Risk

- **Business Risk**
The level of Business risk associated with the revised Planning Proposal is considered low. By amending ALEP 2010, this will respond to a number of recent enquiries and feedback received from Albury's development industry for the creation of lots less than the minimum lot size for dual occupancy purposes, as part of a Torrens Title subdivision. This also reflects a number of recent approvals issued by Council that sought a variation of a development standard.
- **Public Risk**
The level of Public risk associated with the revised Planning Proposal is considered low. Nonetheless, the proposal seeks to allow for the subdivision of land (Torrens Title) within Albury's residential and mixed use zones less than the minimum lot size for dual occupancy development purposes, which in turn could lead to the over-development of land and associated amenity impacts on neighbouring properties (i.e. overlooking, overshadowing, car parking etc).

Notwithstanding, given the fact that these types of residential development are already permitted within Albury's residential and mixed use zones and have been approved as part of either a Community Title or Strata Title subdivision development, the impacts of the proposal are considered minimal. It is also noted that any applications lodged under this Clause will still be subject to a separate Development Application assessment process and will need to satisfy the provisions of ADCP 2010, with respect to the development controls of this Plan (i.e. car parking, open space, setbacks, building heights etc).

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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 revised Community Engagement Plan inclusive of a table detailing engagement techniques and timeframes. A copy of this Table has been included with this report and marked as *Attachment 5* for the reference and information of Councillors.

The communications table includes provision for the following activities:

- Notification letters dispatched to key stakeholders and interested parties 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.

Options

The Committee has the following options in relation to this report:

1. Endorse the Planning Proposal that seeks to amend Clause 4.1A of ALEP 2010 as it relates to exceptions to minimum subdivision lot sizes for certain residential development (including the subdivision of land less than the minimum lot size for dual occupancy purposes) and forward this to the NSW Department of Planning & Environment seeking Gateway Determination, as well as making a number of consequential changes to ADCP 2010 as detailed within this report;

OR

2. Take no further action with regards to the Planning Proposal and the proposed amendments to ADCP 2010.

In this instance, it is recommended that the Committee proceed with Option 1 for the reasons outlined in this report.

Conclusion

Following recent advice and direction from the NSW Department of Planning & Environment, AlburyCity is seeking to amend Clause 4.1A *Exceptions to minimum subdivision lot sizes for certain residential development* of ALEP 2010, which will allow for the more flexible use of land within Albury's residential and mixed use zones (subject to Council consent).

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It is noted that Council had previously sought to include a new provision within ALEP 2010 via the inclusion of Clause 4.1C *Exceptions to minimum subdivision lot sizes for dual occupancies*. However, following most recent legal and NSW Department of Planning & Environment advice, AlburyCity has decided to amend an existing clause within ALEP 2010 instead of adopting a new clause. The proposed amendment will achieve the same outcomes as previously sought.

Accordingly, Council support is now sought to endorse the revised Planning Proposal and to seek NSW Department of Planning & 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'.

It is also requested that Council support be given to the making of consequential changes to ADCP 2010 as a result of this Planning Proposal so as to ensure consistency between the two documents.

Recommendation

That Council:

- a. Endorse the revised Planning Proposal and forward it to the Minister for Planning seeking an amendment to the *Albury Local Environmental Plan 2010* so as to amend Clause 4.1A of this Plan as it relates to exceptions to minimum subdivision lot sizes for certain residential development (including the subdivision of land less than the minimum lot size for dual occupancy purposes) 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*; and
- b. Endorse a draft amendment that seeks to amend Sections 10.3.1 and 10.9 of the *Albury Development Control Plan 2010* as they relate to residential subdivision controls and dual occupancies; and
- c. Upon receipt of Council endorsement and a Gateway Determination under Section 56 of the *Environmental Planning & Assessment Act 1979*, Council place the Planning Proposal, draft Amendment to ADCP 2010 and any supporting material on public exhibition pursuant to any requirements of the Gateway Determination, Section 57 of the *Environmental Planning & Assessment Act 1979* and the *Environmental Planning & Assessment Regulation 2000*; and
- d. Should no objections be received during public exhibition, 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* that seeks to amend Clause 4.1A of this Plan as it relates to exceptions to minimum subdivision lot sizes for certain residential developments (including the subdivision of land less than the minimum lot size for dual occupancy purposes).

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- **Attachments**

1. Draft Amended Clause 4.1A Exceptions to minimum subdivision lot sizes for certain residential development;
2. Planning Proposal: Amendment to Albury Local Environmental Plan 2010 – Part 4 Principal Development Standards – Amendment to Clause 4.1A Exceptions to minimum subdivision lot sizes for certain residential development (October 2015);
3. Planning & Development Committee Report – 6A Albury Local Environmental Plan 2010 – Planning Proposal: Inclusion of Dual Occupancy Clause dated Monday 14 September 2015;
4. Draft Amendment to Albury Development Control Plan 2010 – Dual Occupancy Clause;
5. Community Engagement Plan.