

# AlburyCity – Planning & Development Committee

## AGENDA

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### 6B Albury Local Environmental Plan 2010 – Planning Proposal: Inclusion of a Former Service Station as an Additional Permitted Use into Schedule 1 – 481 Urana Road, Lavington (DOC14/34983)

DATE 5 May 2014

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

ITEM FOR DECISION

Meeting Date 19 May 2014

ITEM FOR NOTING

Meeting Date

FURTHER ENQUIRIES TO Matt Johnson  
Planning & Environment

PHONE 6023 8173

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### Purpose of Report

The purpose of this report is to obtain Council's endorsement of a Planning Proposal that seeks to include a former service station site into "Schedule 1 – Additional Permitted Uses" of the *Albury Local Environmental Plan 2010* (ALEP 2010) as it relates to 481 Urana Road, Lavington.

Schedule 1 of ALEP 2010 includes specific nominated properties across various zones and areas of the City to enable and recognise historic uses to occur and continue.

### Background

At the time of preparing draft ALEP 2010, AlburyCity identified and included 91 properties within Schedule 1 – Additional Permitted Uses of this Plan. This was in response to the fact that AlburyCity had operated under a 'merits-based' planning system since the adoption of Albury LEP 1995 (gazetted April 1996). This merits based system that previously applied facilitated the establishment of a significant number of non-residential uses within residential zones across the Albury LGA, including in this instance the existing service station on the subject site.

In the absence of these properties being listed within Schedule 1, they would need to rely upon the 'existing use rights' provisions contained within Section 106 of the Environmental Planning & Assessment Act 1979 (EP&A Act).

An 'existing use' is a use that is lawfully commenced but subsequently becomes prohibited under a new local environmental plan or other environmental planning instrument. The EP&A Act and the Environmental Planning & Assessment Regulation 2000 (EP&A Regulation) make provision for a continuance of existing uses. These existing use right provisions aim to balance the potential hardship and dislocation that could result if land owners or occupiers were required to discontinue uses no longer permitted under current planning controls, against the need to transition to the new and preferred planning regime for the area.

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Notwithstanding, the NSW Department of Planning & Environment instructed AlburyCity to remove all items listed in Schedule 1 that are operating under 'existing use rights' so that continued operations will be pursuant to existing use provision(s) of Section 106 of the EP&A Act and EP&A Regulation.

As a consequence, only those properties considered to be 'critical' (17 in total) were retained within Schedule 1, with all other properties removed from this schedule and thereby reliant upon the existing use rights provisions of the EP&A Act and EP&A Regulation. Such existing uses are considered to be abandoned if they cease to be used for a continuous period of 12 months, which is the case in this instance.

As the site no longer retains existing use rights and is zoned R1 General Residential under ALEP 2010 (which prohibits service stations) there are no opportunities available to redevelop the site for service station purposes in the absence of undertaking an amendment to existing planning controls.

The Planning Proposal therefore seeks to facilitate the re-use of the site as a service station by amending ALEP 2010. This is supported by an analysis of the site and intended outcomes against the need for the proposal, consideration against relevant local, regional and State planning policies/directions, an assessment of likely impacts and documented consideration of relevant government agency issues and interests.

The proposed change is primarily to allow for the use of the site as a service station (which is currently prohibited) by including it within Schedule 1 of ALEP 2010 as 'Item Number 18'. A separate development application will be required prior to the recommencement of the site as a service station. Amongst issues to be addressed within this application include: traffic, noise, amenity and social impacts resulting from the operation of a service station within proximity to existing residential properties and any likely environmental impacts as a consequence of the development. These will be subject to a separate reporting and assessment process.

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

In addition, a copy of the Planning Proposal will be tabled at the meeting and is available for Councillors reference and information upon request (*Attachment 2*).

The Planning Proposal has been prepared in accordance with the NSW Department of Planning and Environment 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 investigations have been undertaken, documented and addressed for the purposes of supporting outcomes sought.

### Issues

The preparation of the Planning Proposal supports *Albury 2030* strategic actions under the theme of 'a growing economy' including:

- *Support and promote business and business opportunities across all sectors to continue to foster economic diversity; and*

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- *Promote Albury for industry and business.*

The proposed inclusion of the subject site within Schedule 1 of ALEP 2010 also does not derogate from the aims and objectives of *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP 55), *Managing Land Contamination – Planning Guidelines* (SEPP 55 Planning Guidelines), the *Contaminated Land Management Act 1997* & *Council's draft Contaminated Land Management Policy* as it only seeks to recommence operations as a service station.

### Discussion

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

1. an analysis of the site and intended outcomes against 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; and
4. documented consideration of any relevant government agency issues/interests.

These documented considerations and an AlburyCity response following an initial assessment are discussed below.

### 1. Need for the Planning Proposal

The overall need for the Planning Proposal has been subject to the following assessment:

- whilst no strategic study or report has been prepared for the Planning Proposal, this is proportional to the low-level impact that the Planning Proposal will have;
- a separate development application will be lodged with Council prior to the site recommencing operations as a service station;
- the inclusion of the site within Schedule 1 of ALEP 2010 is considered to be the best means of achieving the objectives or intended outcomes of the Planning Proposal as opposed to a 'spot rezoning' of the Land to a commercial zone.

The Planning Proposal has generally concluded that there is a need for the proposed inclusion of the subject site within Schedule 1 of ALEP 2010.

### AlburyCity Response

*Current conditions suggest that the proposed recommencement of the site for service station purposes is both reasonable and appropriate given its previous use as a service station and the limited opportunities that are available for the site to be used for another purpose due to the existing infrastructure on-site and the potential issues regarding land contamination.*

*The inclusion of the subject site within Schedule 1 of ALEP 2010 is also favoured over a 'spot rezoning' due to the wide range of land uses that are permitted within a commercial zoning and the potential precedent that such a spot rezoning could have on the nearby Lavington CBD through fragmentation.*

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*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.

#### **AlburyCity Response**

*An initial assessment undertaken by AlburyCity confirms that the Planning Proposal largely addresses relevant local, regional and State planning policies and 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 suitability for which land in that zone is permitted to be used.*

*The Planning Proposal outlines that the subject site is not located within an 'investigated area' and the previous use of the site is known (previously a service station), which confirms that the site, the subject of this Planning Proposal, is unaffected in relation to this matter.*

*Specific reference is also made to Ministerial Direction 3.1 (Residential Zones) that, amongst other things, seeks to provide a service to meet the day to day needs of local residents, businesses and visitors, which is consistent with the objectives of the R1 General Residential Zone. It is also noted that prior to the service station re-opening, a separate development application will be lodged that will address amongst relevant issues; possible amenity impacts associated with days and hours of operation, traffic generation and noise generation etc.*

*Specific reference is further made to Ministerial Direction 4.3 (Flood Prone Land). Whilst a reference has been provided in the Planning Proposal that outlines that current updated flood mapping does not identify the land as flood prone, it is noted that the subject site is still identified as being flood prone within Council's Flood Referral Area map as contained within the Albury Development Control Plan 2010 (ADCP 2010). Given that this flood mapping has since become superseded and will be updated in the next amendment to ADCP 2010, issues regarding flooding are considered appropriate in this instance.*

*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 disturb critical habitat or threatened species, populations or ecological communities or their habitats as the site has been previously used for urban purposes (service station) and contains limited areas of environmental significance. No existing trees or vegetation are proposed to be removed and the applicant has outlined the need to ensure compliance with Clause 5.9: Preservation of Trees or Vegetation within ALEP 2010 at the time of preparing a development application.
- Social and economic benefits of the Planning Proposal are considered to be positive insofar as it relates to the recommencement of a previously closed service station, utilises existing infrastructure and services and provides an additional local facility for surrounding and nearby residents. Notwithstanding, potential amenity issues resulting from the proposal on adjoining residential properties will be addressed as part of a development application for the re-use of the site and will address amongst other issues: possible amenity impacts associated with days and hours of operation, traffic generation and noise generation etc.
- The commercial development outcomes sought on the site will assist in providing an additional service and facility to local residents outside of the Lavington CBD.

#### AlburyCity Response

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

*It is reiterated that the proposal only seeks to include the subject site into Schedule 1 of ALEP 2010 to allow for the re-establishment of the service station on-site.*

*It is noted that the Planning Proposal has deferred further considerations in relation to adjoining residential lands, noise, traffic, and other amenity issues 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 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 are reasonably known.*

*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 to be consulted (where required) will be identified and confirmed through the issue of a Gateway Determination for this Planning Proposal.

Consistent with the NSW Department of Planning and Environment publication: '*A guide to preparing planning proposals (October 2012)*' and having regard for the circumstances of the subject site, the Planning Proposal nominates agencies including the NSW Roads and Maritime Services for consultation purposes, as the adjoining road is a Classified Road and is in the control of this authority.

#### AlburyCity Response

*AlburyCity raises no objections to the list of agencies nominated for consultation purposes.*

#### Risk

- WHS and Public Risk

The level of Work, Health and Safety and public risk associated with the recommencement of the site as a service station is considered low and it is noted that the site previously operated as such for over 15 years with no known WHS or public risk issues. The recommencement of this site as a service station will therefore not create issues with regards to these matters.

#### Community Engagement

No formal community engagement has been undertaken to date, as the proposal relates to the inclusion of a single property within Schedule 1 of ALEP 2010. Notwithstanding, the formal public exhibition process will be based on a separate Community Engagement Strategy. A copy of the Communications Plan supporting this strategy has been included with this report and is provided as *Attachment 3* for the reference and information of Councillors.

The communications plan 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

1. Endorse the Planning Proposal that seeks to include 481 Urana Road within Schedule 1 of ALEP 2010 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.

### Conclusion

Having undertaken an assessment of the Planning Proposal, it is concluded that the inclusion of the site within Schedule 1 of ALEP 2010 for the purposes of a service station has substantial planning merit and is considered appropriate for council support in this instance.

The relative small scale nature of the proposal and the fact that the site was previously used as a service station and still contains this infrastructure on-site suggests that the site can recommence operations as a service station.

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

Accordingly, Council support is now sought to endorse the tabled Planning Proposal and 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 Council:

- a. endorse the Planning Proposal to the Minister for Planning seeking an amendment to the *Albury Local Environmental Plan 2010*, insofar as amending Schedule 1 – Additional Permitted Uses by including the 481 Urana Road, Lavington for service station purposes as Item Number 18 within this Schedule and request that a Gateway Determination be made, 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. 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
- c. should no objections be received, furnish a copy of this report and 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 relates to Schedule 1 – Additional Permitted Uses.

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- **Attachments**

1. Aerial Photograph of the Site;
2. Planning Proposal: Inclusion of Existing Service Station as a Permitted Use in Schedule 1 – Albury Local Environmental Plan 2010 (to be tabled at the meeting);
3. Communications Plan.