

## **SECTION 3.36 PLANNING REPORT**

### **Planning proposal details:**

PP\_2019\_ALBUR\_002\_00

Planning Proposal – Amendment to Albury Local Environmental Plan 2010 – Minimum subdivision lot size changes – Ettamogah Rise Estate – Springdale Heights (November 2019)

### **Planning proposal summary:**

Planning Proposal (Department Ref: PP\_2020\_ALBUR\_002\_00) to amend the Minimum Lot Size provisions from 4,000sqm to 1,500sqm under the Albury Local Environmental Plan 2010 for specific areas on land within the Ettamogah Rise Estate, Springdale Heights.

### **Date of Gateway determination:**

18 November 2019

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## **1.0 SUMMARY**

A summary of the key aspects associated with the planning proposal are outlined below:

- The Planning Proposal (refer to Attachment 1) primarily seeks an increase in development densities in specifically identified areas of Ettamogah Rise Estate, Springdale Heights by changing the minimum lot size for these specific areas from 4,000sqm to 1,500sqm. These changes are intended to reflect lots approved by past development approvals as well as to provide the opportunity to create additional lots.
- An overview of the Planning Proposal, including an explanation of development standards to be amended, rationale for proceeding with the proposal and an initial AlburyCity assessment is provided in AlburyCity Council Report (refer to Attachment 2).
- Public exhibition commenced 30 November 2019 and concluded on 20 January 2020.
- 6 submissions were received during the public exhibition process, amongst those submissions received, 5 were from the general public and 1 was from a Government Agency (NSW Rural Fire Service). Main points raised in submissions received from the general public and the NSW Rural Fire Service and key amendments made to the planning proposal as a consequence of public exhibition and agency consultation are documented in Sections 3.0 and 4.0 of this report respectively.

## **2.0 GATEWAY DETERMINATION**

Details about the Gateway Determination (refer to Attachment 3) are outlined below:

- Gateway Determination issued 18 November 2019;
- Timeframe for completion of proposal is to be 12 months following the date of the Gateway Determination;
- The Gateway Determination was not subject to a review request;
- The Gateway Determination required consultation with the NSW Rural Fire Service. This is documented in Section 4.0 'Views of Public Authorities'; and
- All conditions in the Gateway Determination relating to affected land details, public notice, public exhibition, available information and Government agency consultation have been complied with.

### **3.0 COMMUNITY CONSULTATION**

Details relating to community consultation that occurred in relation to the planning proposal are outlined below:

- Dates of exhibition from 30 November 2019 to 20 January 2020;
- 6 submissions were received during the public exhibition process, amongst those submissions received, 5 were from the general public and 1 was from a Government Agency (NSW Rural Fire Service);
- Key issues that were raised during exhibition included:
  - Reduced amenity associated with higher residential densities;
  - Visual impacts associated with excessive cut & fill;
  - Inadequate Open Space facilities provision; and
  - Traffic access and safety matters.
- Issues raised during exhibition, consideration and response are documented in AlburyCity Council Report and accompanying Table 1 – Submission Summaries and Responses (refer to Attachment 4);
- The Planning Proposal was not re-exhibited following public exhibition and reporting processes; and
- All consultation requirements included in the Gateway Determination were complied with.
- A key amendment to the Planning Proposal as a consequence of public exhibition included land immediately adjoining the existing 4,000sqm+ lots that contain houses in stages 1-3 of Ettamogah Rise Estate (as shown hatched in Attachment 5) being designated for 4,000sqm minimum lot size purposes in the interests of enhancing the transition/buffer adjoining and adjacent to existing development.

### **4.0 VIEWS OF PUBLIC AUTHORITIES**

Details relating to consultation with relevant agencies, including:

- The agency consultation occurred in accordance with the requirements of the Gateway determination, including the requirement to consult with the NSW Rural Fire Service.

- Ultimately, no objection to the Planning Proposal and outcomes sought were made by the NSW Rural Fire Service (brief summary of consultation undertaken with the NSW Rural Fire Service outlined below).
- No amendments have been made to the planning proposal in response to consultation with public authorities.

### **Main points raised in NSW Rural Fire Service submission**

Key issues that were identified in the original NSW Rural Fire Service submission (received on 7 February 2020) included a requirement for a further Bushfire Assessment Report in support of the Planning Proposal (and development outcomes sought), in particular to resolve matters relating to the management of asset protection zones (APZs) within the proposed lots commensurate with the bushfire risk and the suitability of the existing infrastructure for emergency management and evacuation.

The NSW Rural Fire Service submission was forwarded to the proponent for further consideration and response prior to AlburyCity officers continuing with the Planning Proposal assessment.

Following further dialog with the proponent the NSW Rural Fire Service has since confirmed via further submission (received on 23 April 2020) that it is comfortable that there is no significant change to bushfire risk to substantiate a new assessment and that it is appropriate to deal with these issues at the time of development via subdivision or development applications.

Issues raised during exhibition, consideration and response are documented (in detail) in AlburyCity Council Report and accompanying Table 1 – Submission Summaries and Responses (refer to Attachment 4)

## **5.0 CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS**

Appendices D, G and H of the Planning Proposal (refer to Attachment 1) provides responses to applicable regional strategic planning documents, SEPPs and Section 117 Directions and demonstrates how the planning proposal is consistent, justifiably inconsistent or inconsistent.

All consultation with public authorities has been undertaken in accordance with the conditions of the Gateway Determination. Details of consultation undertaken with relevant government agencies is outlined in Section 4.0 of this report.

## **6.0 PARLIAMENTARY COUNSEL OPINION**

A Legal Opinion was sought on the planning proposal via AlburyCity letter dated 25 May 2020 and issued by Parliamentary Counsel on 2 June 2020 (refer to Attachment 6).

## **7.0 OTHER RELEVANT MATTERS**

No additional relevant matters are listed for further consideration for the making of the plan.

## **8.0 MAPPING**

A copy of the relevant LEP maps (including Map Cover Sheet) being amended are enclosed (refer to Attachment 7).

## **9.0 RECOMMENDATION**

At the Council Meeting held Monday, 11 May 2020 (refer to Extract from Council Meeting Minutes held Monday, 11 May 2020, Attachment 8), it was resolved that Council:

- a. Receives and notes the report;
- b. Having exhibited the *'Planning Proposal: Minimum subdivision lot size changes – Ettamogah Rise Estate – Springdale Heights'* (Planning Proposal) (inclusive of proposed consequential amendments to Albury Development Control Plan 2010) and having regard to the submissions received, resolves to endorse the Planning Proposal that seeks to amend Albury Local Environmental Plan 2010 by amending the Lot Size Map from 4,000 square metres to 1,500 square metres in specific areas subject to amendments recommended in Table 1 attached to this report, listed below:
  - i. That the north bound Auxiliary Left Turn Lane (into Windsor Avenue) be extended southwards by approximately 90 metres consistent with Planning Proposal (including Traffic Impact Assessment Report - Spotto Consulting – May 2019) recommendations.
  - ii. That additional open space provision of no less than 2,000 square metres be added to the existing park to the north (Lot 128) and no less than 2,000 square metres open space be provided as a new park to the south (proposed Lot 647) consistent with Planning Proposal (including Ettamogah Outline Development Plan – as amended) recommendations.
  - iii. Land immediately adjoining the existing 4,000sqm+ lots that contain dwellings in stages 1-3 of Ettamogah Rise Estate (as generally shown hatched in attachment 6) be designated for 4,000 square metre minimum lot size purposes in the interests of enhancing the transition/buffer adjoining and adjacent to existing development.
  - iv. That the Ettamogah Outline Development Plan be amended primarily to either defer to and/or include applicable provisions from ADCP 2010 – Part 10 – Development in Residential Zones specifically

relating to building setbacks and boundary treatments (fences and walls).

- c. Furnishes a copy of this report and other relevant information to the NSW Department of Planning, Infrastructure & Environment, in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act) and advises the NSW Department of Planning, Infrastructure & Environment that Council has complied with Sections 3.34, Schedule 1 Clause 4 and 3.35 of the EP&A Act in relation to public involvement in the preparation of the Planning Proposal;
- d. Requests that the NSW Department of Planning, Infrastructure & Environment 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 Ettamogah Rise Estate, Springdale Heights; and
- e. Undertakes those actions required under the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000 to have the consequential amendments to Albury Development Control Plan 2010 commenced.

As the planning proposal is being actioned under delegated authority, please find attached the Legal Instrument signed by the Minister's delegate (being the General Manager: Albury City Council) (refer to Attachment 6) to enable notification on the NSW Legislation website.

Attachment 9 provides the 'Reporting Template for delegated LEP Amendments'.

## NOTES

All relevant documents referred to in the summary report are listed and attached as follows:

- **Attachment 1**  
Planning Proposal – Amendment to Albury Local Environmental Plan 2010 – Minimum subdivision lot size changes – Ettamogah Rise Estate – Springdale Heights (November 2019)
- **Attachment 2**  
Albury City Council Report - CM13.16 Planning Proposal - Minimum Subdivision Lot Size Changes - Ettamogah Rise Estate - Springdale Heights (October 2019)
- **Attachment 3**  
Gateway Determination – Planning Proposal – Ettamogah Rise Estate – Springdale Heights (Department Ref: PP\_2019\_ALBUR\_001\_00), dated 18 November 2019
- **Attachment 4**  
AlburyCity Council Report CM13.1 Planning Proposal - Minimum Subdivision Lot Size Changes - Ettamogah Rise Estate - Springdale Heights – Consideration of Submissions (May 2020)
- **Attachment 5**  
Recommended amendment to the distribution of 1500sqm and 4000sqm MLS designations – Ettamogah Rise Estate – Springdale Heights
- **Attachment 6**  
Parliamentary Counsel Opinion and Legal Instrument signed by the Minister's delegate (being the Chief Executive Officer: Albury City Council)
- **Attachment 7**  
Relevant LEP maps (including Map Cover Sheet)
- **Attachment 8**  
Extract from Council Meeting Minutes held Monday 11 May 2020
- **Attachment 9**  
Reporting Template for delegated LEP Amendments

**Attachment 1**

Planning Proposal – Amendment to Albury Local Environmental Plan 2010 –  
Minimum subdivision lot size changes – Ettamogah Rise Estate – Springdale  
Heights (November 2019)

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**Attachment 2**

Albury City Council Report - CM13.16 Planning Proposal - Minimum Subdivision  
Lot Size Changes - Ettamogah Rise Estate - Springdale Heights (October 2019)

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**Attachment 3**

Gateway Determination – Planning Proposal – Ettamogah Rise Estate –  
Springdale Heights (Department Ref: PP\_2019\_ALBUR\_001\_00), dated 18  
November 2019

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**Attachment 4**

AlburyCity Council Report CM13.1 Planning Proposal - Minimum Subdivision Lot Size Changes - Ettamogah Rise Estate - Springdale Heights – Consideration of Submissions (May 2020)

**Attachment 5**

Recommended amendment to the distribution of 1500sqm and 4000sqm MLS designations – Ettamogah Rise Estate – Springdale Heights

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**Attachment 6**

Parliamentary Counsel Opinion and Legal Instrument signed by the Minister's delegate (being the Chief Executive Officer: Albury City Council)

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**Attachment 7**

Relevant LEP maps (including Map Cover Sheet)

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**Attachment 8**

Extract from Council Meeting Minutes held Monday 11 May 2020

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**Attachment 9**

Reporting Template for delegated LEP Amendments

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