

AlburyCity – Planning & Development Committee AGENDA

6B Albury Local Environmental Plan 2010 – Planning Proposal: Rezoning to Industrial – Willowbank Road, South Albury (DOC12/112712)

DATE 3 November 2012

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

MEETING DATE Monday 10 December 2012

FURTHER ENQUIRIES TO Chris Graham PHONE 6023 8148
Planning and Environment

Introduction

This report seeks Council's endorsement of 'Draft Planning Proposal: Willowbank, South Albury (October 2012)' (the Planning Proposal) that proposes to amend the *Albury Local Environmental Plan 2010* (ALEP 2010) as it relates to Willowbank Road, South Albury, being Part Lot 156 DP 753326, Part Lot 2 DP 999814 and Part Lot 37 DP 1007315 (the site).

An aerial photograph of the site is provided (*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.

The site is currently zoned 'RU2 Rural Landscape' under the ALEP 2010.

The Planning Proposal seeks to facilitate industrial development outcomes on the site, this is supported by an analysis of the site in relation to constraints, context, character and likely benefits, consideration against relevant local, regional and State planning policies/directions and an assessment of likely impacts. The proposed changes are primarily to rezone the site to 'IN1 General Industrial', it will also be necessary to implement consequential changes to the ALEP 2010 Lot Size Map to ensure that such provisions as they relate to the site are consistent with that applying elsewhere throughout the Albury Local Government Area in the 'IN1 General Industrial Zone'.

The Planning Proposal has been prepared in accordance with the NSW Department of Planning publication: '*A guide to preparing planning proposals (July 2009)*'.

However, it is noted that the Planning Proposal is not consistent with the ongoing assessment and repeated advice of the AlburyCity planning staff in relation to matters including reticulated water and sewer provision, groundwater and traffic/transport issues, that seek acknowledgment within Planning Proposal documentation that further investigations, reporting and supporting documentation is necessary for the purposes of demonstrating land capability prior to public consultation.

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Notwithstanding above omissions, the Planning Proposal does have merit, and accordingly, its further progression is supported by way of a report to Council to enable further consideration. However, in the absence of critical information being provided, an Addendum (*Attachment 2*) has been prepared by AlburyCity staff that identifies and commits the proponent to further investigations and the provision of documented evidence (via Technical Report) to address such matters as a demonstration of land capability.

Background

During the public exhibition of ALEP 2010 AlburyCity received a submission on behalf of the landowner regarding the site. The submission primarily sought an amendment to the proposed zoning for the site from 'RU2 Rural Landscape' to 'IN1 General Industrial Zone'. Rationale provided in support of the requested change in proposed zoning for the site was outlined, as follows:

- the subject land was previously an Industrial Zone prior to gazettal of Albury LEP 1995 which assigned an Environment Protection Zone,
- continued retention of the RU2 Rural Landscape Zone and RE1 Public Recreation Zone south of the flood levee bank that traverses the subject land would maintain an adequate buffer to the Murray River, and
- close proximity to existing urban zones to the immediate north, north west and west that accommodate industrial and transport corridor land use activities are no more or less affected by land constraints and opportunities compared to the flood protected part of the subject land.

Following further consideration of submissions and supporting rationale, at the Ordinary Council Meeting of Tuesday 27 April 2010, Council resolved to adopt ALEP 2010 subject to further conditions/amendment. The Council resolution, as relevant to the subject site, is outlined as follows:

'Submission No. 90

- C79. *Proposed zoning and minimum lot size in the draft LEP for the subject land remain unchanged; and*
- C80. *Further discussions be initiated with the land owner to facilitate the preparation of necessary investigations and supporting documentation that will allow AlburyCity to reconsider zoning for the subject land which would be subject to a separate consideration and reporting process.'*

Council staff have had further discussions with the landowner and their planning consultant consistent with this resolution. Consequently, this Planning Proposal is now tabled with this report for the further consideration of Council as an outcome of the above process of consideration, recommendation and resolution.

The following report content briefly outlines the scope, content and subject matter contained in the submitted Planning Proposal for information purposes to assist the further consideration of Council.

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Discussion

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

1. an analysis of site constraints, context, character and likely benefits;
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.

The Planning Proposal content and subject matter are discussed below.

Site analysis investigations in relation to constraints, context, character and likely benefits

The Planning Proposal has provided a site analysis and associated investigations that have generally concluded that the site is mostly unconstrained and capable of being further developed for industrial purposes. This analysis is outlined as follows:

- investigations suggest that existing public infrastructure (such as roads, utilities for example) are capable of servicing anticipated development outcomes on the site (subject to detailed engineering consideration during future development works);
- it is acknowledged that in some circumstances, such as sewer, there will be a need for some upgrades or augmentation to ensure ongoing efficient operation;
- it is acknowledged that historical use for horticultural purposes has involved the ongoing use of chemicals and other agricultural operations and machinery, by comparison, the use of the site for industrial purposes will, if anything, have a lesser or similar impact on the Murray River environs as drainage and/or trade waste will be directed to a reticulated infrastructure network;
- the site has been largely modified for horticulture, and consequently, does not possess any significant habitat attributes other than its close proximity to the Murray River environs;
- the area where a change in zoning is proposed is setback a substantial distance (approximately 80-100 metres) from the Murray River behind the existing levee bank that traverses the subject property, and accordingly, an appropriate level of protection of the Murray River environs has and will be afforded;
- adverse impact on amenity in the location and wider community is not anticipated on the basis that land to the immediate north is zoned industrial and has already largely been developed for commercial/industrial purposes. The Planning Proposal will result in an extension of this existing industrial zone that will enable land uses consistent with that already allowed to the immediate north. Whilst a residential estate does exist to the north-east of the site, this residential area enjoys a buffer due to an open space zoning to the immediate east and north-east of the site. It is noted that the residential estate to the north-east of the site already adjoins existing industrial zoned land, and consequently, the proposed change in zoning for the site is not expected to have any additional impact on existing residential amenities;
- public interests are served by a proposed change in zoning that would make land available for additional employment generating activities and boost investment in the area;
- a change in zoning on the site would recognise the highest and best use on the land;

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- the proximity of the site to the Bridge Street/Hume Highway interchange (within approximately 1 kilometre) will minimise the need to use the local roads for the efficient transport of goods outside the region;
- a supporting traffic and transport report attached to the Planning Proposal concludes that the proposed industrial development of the site would not have a detrimental impact on the existing road network; and
- the site is protected from flooding by a licensed flood levee that renders the site similar in physical characteristics to the surrounding industrial zoned land, and accordingly, a change in zoning would provide consistency in land use planning for this area, as was recognised by earlier planning instruments where an industrial zoning applied.

Comment

It is noted that current conditions including surrounding urban development (including industrial, residential and Hume Highway corridor), proximity to major road network and supporting infrastructure, absence of any environmental attributes on-site, substantial setbacks to the Murray River, flood protection provided by a licensed flood levee etc. all suggest that the future development of the site for industrial purposes is appropriate. Especially when considering that ongoing use of the subject land for intensive agricultural pursuits is not likely to be sustainable long term in recognition of a limited ability to expand and potential future land use conflicts posed by encroaching urban development.

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

Notwithstanding the substantial planning merit of the Planning Proposal and the investigations undertaken to date that generally suggest that the site has capacity to accommodate industrial land use activities, an ongoing assessment by AlburyCity staff has confirmed that further investigations are required in relation to reticulated water and sewer provision, groundwater and traffic/transport matters to substantiate claims that the site is capable of being developed in the manner sought.

It is noted that the Planning Proposal has provided a preliminary assessment on the matters described above suggest that such matters can largely be accommodated, however, has deferred detailed investigations to the time of development. AlburyCity staff are of the firm view that as such issues speak to land capability, these issues need to be resolved up-front prior to any change in zoning for the site. Accordingly, whilst it is not suggested that these investigations be undertaken at this early stage of proceedings, it is however suggested that, at the very least, these issues need to be resolved prior to the commencement of any agency and community consultation.

As the Relevant Planning Authority, AlburyCity is ultimately responsible for the content of the Planning Proposal and the quality of information provided in support. Accordingly, an Addendum to the Planning Proposal (Attachment 2) is attached to this report that identifies and commits the proponent to further investigations and the provision of documented evidence (via Technical Report) to address reticulated water and sewer provision, groundwater and traffic/transport matters as a demonstration of land capability prior to undertaking any formal exhibition of the Planning Proposal.

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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 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.

Comment

Further 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 Ministerial Direction 1.5 (Rural Lands) that, amongst other things, seeks to protect the agricultural production value of rural land and to facilitate the orderly and economic development of rural lands for rural and related purposes. It is noted that where a Planning Proposal affects an existing rural zone (as in this instance where a change in the zoning of the site from RU2 Rural Landscape to IN1 General Industrial has been sought), the Planning Proposal must be consistent with the rural planning principles listed in State Environmental Planning Policy (Rural Lands) 2008 (SEPP Rural Lands).

An audit/response against SEPP Rural Lands rural planning principles has been undertaken and documented within Planning Proposal content and subject matter. This audit has generally concluded that despite current rural zoning, the site proximity to adjacent urban land and adjoining Murray River environs will most likely severely constrain future agricultural operations and the ability to compete with other larger scale activities in unconstrained rural locations. Consequently, the significance of the site as an agricultural resource is considered marginal at best. It is agreed that the change in zoning proposed by this Planning Proposal represents a logical transition in land use activities that will facilitate urban development outcomes that are compatible with development on surrounding lands. It is further noted that this transitioning in land use activities can be achieved whilst maintaining an appropriate regard and/or response to the Murray River environs (through distance attenuation, buffers etc.). Accordingly, the Planning Proposal and its intended outcomes are supported.

Notwithstanding, it is noted that some minor omissions exist in response to relevant local, regional and State planning policies and directions, discussed as follows:

- there is an absence of a reference to source data to support Planning Proposal statements relating to industrial land supply, existing and forecast demand as a justification for additional industrial land supply as sought by this Planning Proposal;*
- nil response and/or discussion has been provided despite State Environmental Planning Policy 62 (Sustainable Aquaculture) being identified as applicable to the Planning Proposal;*

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- *consultation with NSW Roads and Maritime Service (RMS) has been deferred to the time of development on the basis that particular details of future development on the site are not yet known. Whilst it is agreed that details relating to future land use activities are not known, given that the site will be capable of accommodating 20+ industrial lots, recognition of the proximity of the site to and likely usage of the Bridge Street/Hume Highway Interchange, it is considered appropriate that consultation with RMS be undertaken as part of the agency and community consultation processes associated with this Planning Proposal; and*
- *there is an absence of a detailed audit to support Planning Proposal statements that the site and intended development outcomes are consistent with the objectives and principles of the Guidelines and Policy identified by Direction 3.4 Integrating Land Use and Transport.*

It is reiterated that, as the Relevant Planning Authority, AlburyCity is ultimately responsible for the content of the Planning Proposal and the quality of information provided in support. It is considered important that where statements have been made in the Planning Proposal that attest to compliance with relevant policy documents and/or where statements made purport to particular conditions relating to industrial land supply and demand that such statements be substantiated. Accordingly, an Addendum to the Planning Proposal (Attachment 2) is attached to this report that identifies and commits the proponent to the provision of further documented evidence to address the identified issues in response to relevant local, regional and State planning policies and directions.

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

Following detailed site analysis investigations in relation to constraints, context, character and likely benefits associated with the Planning Proposal and intended development outcomes, it has been concluded, as follows:

- the Planning Proposal will not result in any significant disturbance of the habitat areas and/or natural features on the basis that the site has been significantly altered over time to support existing horticulture pursuits (orchard);
- the site is protected from flooding by an existing licensed levee and future development will be subject to minimum floor heights, and accordingly, future development of the site is unlikely to have any impact on existing flood conditions;
- intended industrial development outcomes are not considered to be sensitive to any potential land contamination issues arising from the historical use of the site for horticulture;
- the site is capable of being serviced in a similar manner to adjacent industrial development;
- whilst excavations associated with any future development works may intersect with existing groundwater levels, the Planning Proposal contends that impacts on groundwater quality can be mitigated through a dewatering methodology and site construction environmental management plan at time of development. In addition, a further Preliminary Groundwater Level Assessment has further concluded that no long term negative impacts to groundwater levels are anticipated;
- social and economic benefits of the Planning Proposal are considered to be positive in that, intended outcomes seek to provide appropriately located and serviced industrial land that will facilitate employment generating development.

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Comment

It is agreed that the Planning Proposal and intended outcomes has substantial planning merit when assessed against relevant environmental, social and economic considerations.

Notwithstanding the substantial planning merit of the Planning Proposal and the investigations undertaken to date that generally suggest that the site has capacity to accommodate industrial land use activities, it is reiterated that an ongoing assessment by AlburyCity staff has confirmed that further investigations are required in relation to reticulated water and sewer provision, groundwater and traffic/transport matters to substantiate claims that the site is capable of being developed in the manner sought.

Accordingly, an Addendum to the Planning Proposal (Attachment 2) is attached to this report that identifies and commits the proponent to further investigations and the provision of documented evidence (via Technical Report) to address reticulated water and sewer provision, groundwater and traffic/transport matters as a demonstration of land capability prior to any public exhibition of the Planning Proposal.

Documented consideration of any relevant government agency issues/interests

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.

Accordingly, it is anticipated that this section of the Planning Proposal will be completed following issue of the Gateway Determination and prior to the commencement of any formal public exhibition.

Comment

Whilst it is agreed that confirmation of relevant government agencies to be consulted will be confirmed upon the issue of a Gateway Determination and any associated conditions. It should be noted, as addressed earlier in this report and via the Addendum (Attachment 2) attached to this report, that intended industrial development outcomes and proximity to the Bridge Street/Hume Highway Interchange warrants that consultation with RMS be undertaken as part of the agency and community consultation processes as part of the Planning Proposal and not at time of development.

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.

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The Planning Proposal provides an appropriate preliminary level of investigation that demonstrates the capacity of the site to accommodate industrial development outcomes at this early stage, however it is considered appropriate that further detailed investigations be undertaken in relation to reticulated water and sewer provision, groundwater and traffic/transport matters to substantiate claims that the site is capable of being developed in the manner sought prior to formal public exhibition of the Planning Proposal.

Information relating to the type of detailed investigations and when such detailed investigations are required to be undertaken are outlined within the Addendum (*Attachment 2*) attached to this report.

It is further acknowledged that whilst this Planning Proposal primarily seeks a rezoning of the site to facilitate industrial development outcomes, it is also acknowledged that such rezoning will also necessitate consequential amendments to the Lot Size Map to ensure that such provisions, as they relate to the site, are consistent with that applying elsewhere to the 'IN1 General Industrial Zone' within ALEP 2010.

Council endorsement of this Planning Proposal is now sought to progress this matter to public exhibition.

Recommendation

That the Committee recommends to Council that Council:

- a. endorse the 'Planning Proposal: Rezoning to Industrial 1 Zone – Willowbank, South Albury (October 2012)' and the attached 'Addendum' to the Minister for Planning and Infrastructure that proposes an Amendment to the Albury Local Environmental Plan 2010 that seeks to:
 1. amend the Land Zoning Map for the site from 'RU2 Rural Landscape Zone' to 'IN1 General Industrial Zone';
 2. amend the Lot Size Map to remove the '100ha' minimum lot size designation from the site;

and request that a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979 be issued to enable public exhibition of the Planning Proposal;

- b. formally request that the proponent address the issues outlined in the attached 'Addendum' prior to the formal public exhibition of the Planning Proposal;
- c. upon receipt of a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979, Council place the Planning Proposal and the information outlined in the attached 'Addendum' on public exhibition pursuant to any requirements of the Gateway Determination and Section 57 of the Environmental Planning and Assessment Act 1979; and

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- d. should no objections be received, furnish a copy of this report and other relevant information to the NSW Department of Planning and Infrastructure, in accordance with the Environmental Planning & Assessment Act 1979, and request the Minister for Planning & Infrastructure undertake appropriate actions to secure the making of the Amendment to the Albury Local Environmental Plan 2010.

- **Attachments**

1. Aerial Photograph of the Site.
2. Addendum to Planning Proposal.
3. Planning Proposal: Rezoning to Industrial 1 Zone, Willowbank, South Albury (October 2012) *(to be tabled at the meeting)*.