**#. Subject Deniliquin Local Environmental Plan 2013 (Amendment No 5)**

**From: Director Technical Services**

**Mark Dalzell**

**Recommendation/s:**

**Division**

In accordance with the requirements of the Local Government Act, it is necessary for Council to call a division when voting of any resolution that involves making a planning decision.

That Council:

1. In accordance with section 59(2) of the Environmental Planning and Assessment Act make the proposed Deniliquin Local Environmental Plan 2013 (Amendment 5); and
2. Upon signing of the proposed Deniliquin Local Environmental Plan 2013 (Amendment 5) by Council’s delegate, that the Department of Planning and Environment be notified of Council’s decision.

**Background:**

At its meeting on 28 October 2015, Council resolved to:

a Prepare a planning proposal to amend the Deniliquin Local Environmental Plan 2013 in accordance with section 55(1) of the Environmental Planning and Assessment Act 1979 to permit boundary adjustments between lots that are below the minimum lot size in the RU1 Primary Production, E3 Environmental Management and R5 Large Lot Residential zones.

b Forward the planning proposal to the Minister for Planning and Infrastructure in accordance with section 56(1) of the Environmental Planning and Assessment Act 1979.

c Request that the local planning making functions in relation to this planning proposal be delegated to Council.

Council has now complied with the conditions of the gateway determination and the instrument can be made. Attachment 1 is a copy of the amending instrument and the Parliamentary Counsel’s opinion stating that the instrument can be made.

**Comment**

Following Council’s decision on 28 October 2015, the planning proposal was forwarded to the Department of Planning and Environment (the Department). A gateway determination and a written authorisation to exercise delegation were issued by the Department on 4 December 2015. A condition of the gateway determination was that the planning proposal be amended which was completed and approved by the Department on 11 December 2015. Attachment 2 is the original planning proposal and the amended planning proposal and Attachment 3 is the gateway determination.

The planning proposal was exhibited in accordance with section 57 of the Environmental Planning and Assessment Act (the Act) for a period of 14 days and no submissions were received.

As Council has been given delegation to make the instrument, Council is required to resolve in accordance with section 59(2) or (3) of the Act on whether it wishes to make the instrument. Section 59(2) and (3) states:

*(2) The Minister may, following completion of community consultation:*

1. *make a local environmental plan (with or without variation of the proposals submitted by the relevant planning authority) in the terms the Minister considers appropriate, or*
2. *decide not to make the proposed local environmental plan.*

*(3) The Minister may defer the inclusion of a matter in a proposed local environmental plan.*

It is recommended that the instrument be made. Should Council resolve to make the instrument, it will be signed by Council under delegation and then forwarded to the Department requesting that the instrument be notified on the NSW legislation website. The instrument will commence on the day it is notified.

**Strategic Implications:**

An amendment to LEP 2013 is required to achieve the objectives of the planning proposal.

**Budgetary Implications:**

Nil.

**Policy Implications:**

Nil.

**Legislative Implications:**

Amendments to the LEP 2013 must be in accordance with the Act.

**Risk Assessment:**

***What can happen?***

Amend the LEP to boundary adjustments below the minimum lot size in certain zones.

***How can it happen?***

By preparing a planning proposal.

***What are the consequences of the event happening?***

Boundary adjustment below the minimum lot size in certain zones will be permissible.

***What is the likelihood of the event happening?***

High. This LEP amendment is considered to be minor.

***Adequacy of existing controls?***

Boundary adjustments below the minimum lot size in certain zones are prohibited.

***Treatment options to mitigate the risk?***

Amend the LEP 2013.

**Conclusion:**

Council should submit the planning proposal to the Department and request that it be made.

**Attachments:**

1. Attachment 1 – Draft amending instrument and Parliamentary Counsel’s opinion - 4 pages
2. Attachment 2 – Planning proposal (original) and planning proposal (amended) - 21 pages
3. Attachment 3 – Gateway determination and Department letter dated 11 December 2015 – 6 pages