

#. SUBJECT: DENILQUIN LOCAL ENVIRONMENTAL PLAN 2013 – PLANNING PROPOSAL No 5

**FROM: DIRECTOR TECHNICAL SERVICES
MARK DALZELL**

RECOMMENDATION:

DIVISION

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

That Council:

- a Prepare a planning proposal to amend the Denilquin 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.

BACKGROUND

Council recently received an enquiry about a boundary adjustment in the RU1 Primary Production zone under the Denilquin Local Environmental Plan 2013 (LEP 2013) where both lots were significantly less than the minimum lot size. The boundary adjustment is not considered to be 'minor' under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and it does not satisfy the provisions of *clause 4.6 Exceptions to development standards* in the LEP 2013. This means that the boundary adjustment which has planning merit cannot proceed without this amendment to the LEP 2013. The proposed amendment to the LEP 2013 will potentially benefit other land owners who may be considering a boundary adjustment in similar circumstances.

Attachment 1 is the planning proposal

PROPOSED CHANGES TO THE LEP 2013

It is proposed to insert the following clause into Part 4 of the LEP 2013:

Boundary changes between lots in certain rural, residential and environment protection zones

- (1) *The objective of this clause is to permit the boundary between 2 or more lots to be altered in certain circumstances, to give landowners a greater opportunity to achieve the objectives of a zone.*
- (2) *This clause applies to land in any of the following zones:*
 - (a) *Zone RU1 Primary Production,*
 - (b) *Zone R5 Large Lot Residential,*
 - (c) *Zone E3 Environmental Management.*

- (3) *Despite clause 4.1(3), development consent may be granted to the subdivision of 2 or more adjoining lots, being land to which this clause applies, if the subdivision will not result in any of the following:*
- (a) *an increase in the number of lots,*
 - (b) *an increase in the number of dwellings on, or dwellings that may be erected on, any of the lots.*
- (4) *Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following:*
- (a) *the existing uses and approved uses of other land in the vicinity of the subdivision,*
 - (b) *whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,*
 - (c) *whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),*
 - (d) *whether or not the subdivision is likely to be incompatible with a use on land in any adjoining zone,*
 - (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),*
 - (f) *whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land,*
 - (g) *whether or not the subdivision is likely to have an adverse impact on the environmental values or agricultural viability of the land.*
- (5) *This clause does not apply:*
- (a) *in relation to the subdivision of individual lots in a strata plan or a community title scheme, or*
 - (b) *if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.*

This clause will permit boundary adjustments that are below the minimum lot size subject to certain considerations, there must be no dwelling entitlements created as a result of the boundary adjustment and it does not apply to lots in a strata plan or a community title scheme and the clause does not apply to land that is above the minimum lot size in area.

To ensure that any dwelling entitlements that exist prior to the boundary adjustment occurring are not lost, it is proposed to amend *clause 4.2B Erection of dwelling houses on land in certain rural and environment protection zones* by inserting the following subclause:

- (f) *is a lot created by a boundary adjustment in accordance with clause <number to be determined> and upon which a dwelling house would have been permissible prior to the adjustment of the boundary.*

PLANNING PROPOSAL

The planning proposal has been prepared in accordance with 'A Guide to Preparing Planning Proposal' (NSW Planning Infrastructure, 2012) and is attached.

PUBLIC PARTICIPATION AND GOVERNMENT AGENCY CONSULTATION

In accordance with section 57 of the Environmental Planning and Assessment Act, it is proposed to exhibit the planning proposal for 14 days in the local media and on Council's website. As the proposed amendment is a general amendment to the LEP, individual property owners will not be 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:

To amend the LEP 2013 a planning proposal must be prepared in accordance with section 55 of the Environmental Planning and Assessment Act (the Act). This planning proposal is then forwarded to the Department of Planning in accordance with section 56(1) of the Act and a gateway determination is then issued in accordance with section 56(2).

Council will request that the plan making delegations functions be delegated to Council due to the minor nature of the planning proposal. A copy of the request for the delegation of plan making functions to Council is attached.

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?

Prepare a planning proposal.

CONCLUSION:

Council should submit the planning proposal to the Department for a gateway determination.

ATTACHMENTS:

1. Planning Proposal – 11 pages
 2. Evaluation Criteria for the Delegation of Plan Making Functions – 4 pages
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Division				
Name	For	Against	Abstain	Absent
Cr P Connell	Y			
Cr P Fogarty	Y			
Cr A Howley	Y			
Cr L Renwick	Y			
Cr J Shand	Y			
Cr S Taylor	Y			
Cr A Hall	Y			

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Moved Councillor Connell

That Council:

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Seconded Councillor Howley

Division				
Name	For	Against	Abstain	Absent
Cr P Connell	Y			
Cr P Fogarty	Y			
Cr A Howley	Y			
Cr L Renwick	Y			
Cr J Shand	Y			
Cr S Taylor	Y			
Cr A Hall	Y			