**#. SUBJECT Deniliquin Local Environmental Plan 2013 (Amendment No 6)**

**From: ACTING Director ECONOMIC AND BUSINESS DEVELOPMENT**

**John Harvie**

**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 6); and
2. Upon signing of the proposed Deniliquin Local Environmental Plan 2013 (Amendment 6) by Council’s delegate, that the Department of Planning and Environment be notified of Council’s decision.

**Background:**

At its meeting on 15 September 2016, 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 identify in Schedule 5 Environmental Heritage a State Heritage Item being the 75mm Field Gun located at Lot 11 DP544836 being 72-96 End Street, Deniliquin.

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.

In a report to Council on 14 October 2016 a correction was made to the planning proposal (as resolved by Council at its meeting on 15 September 2016) as the incorrect gun had been identified in the planning proposal. The correct gun is the 12 Pounder Rifled Breech-Loading Gun (Armstrong) which is located at the Deniliquin RSL Club. The Department of Planning and Environment (the Department) was notified of this correction to the planning proposal on 28 October 2016. The Department amended the gateway determination on 17 November 2016.

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 map and the Parliamentary Counsel’s opinion stating that the instrument can be made.

**Comment**

Following Council’s decision on 15 September 2016, 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 5 October 2016. As stated above an amended gateway determination was issued on 17 November 2016 correcting the description of the gun. Attachment 2 is the amended planning proposal (correcting the gun description) and Attachment 3 is the original gateway determination and the amended 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 ensure a state listed heritage item is identified in LEP 2013. ***How can it happen?***

By preparing a planning proposal.

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

This ensures that Council is aware of the listing when dealing with matters associated with the Deniliquin RSL.

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

High. This LEP amendment is of a minor nature.

***Adequacy of existing controls?***

The item is not identified in the LEP 2013.

***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, map and Parliamentary Counsel’s opinion - 5 pages
2. Attachment 2 – Planning proposal (amended) - 5 pages
3. Attachment 3 – Gateway determination (original) and gateway determination (amended) – 7 pages