

**#. SUBJECT: DENILIQVIN LOCAL ENVIRONMENTAL PLAN 2013 –
PLANNING PROPOSAL 7 (KYALITE STABLES)**

**FROM: 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 relating to a relevant planning application.

That Council:

- 1 Forward the report in accordance with section 59 of the Environmental Planning and Assessment Act for the rezoning of Lots 2 and 3 DP562598 and Lot 1 DP 1121183 being 21701 – 21703 Riverina Highway, Deniliquin to the Department of Planning and Environment and request that the amendment to the Deniliquin Local Environmental Plan 2013 be drafted and made.
- 2 Prepare an amendment to the Deniliquin Development Control Plan 2016 to include planning controls for Lots 2 and 3 DP562598 and Lot 1 DP 1121183 being 21701 – 21703 Riverina Highway, Deniliquin in accordance with section 74C of the Environmental Planning and Assessment Act.
- 3 Publicly exhibit the amendment to the Deniliquin Development Control Plan 2016 for Lots 2 and 3 DP562598 and Lot 1 DP 1121183 being 21701 – 21703 Riverina Highway, Deniliquin in accordance with Part 3 Division 2 of the Environmental Planning and Assessment Regulation 2000.
- 4 Receive a further report on the amendment to the Deniliquin Development Control Plan for Lots 2 and 3 DP562598 and Lot 1 DP 1121183 being 21701 – 21703 Riverina Highway, Deniliquin upon completion of the public exhibition.

Background:

At its meeting on 15 September 2016, Council resolved to:

- a Prepare an amended planning proposal for Lots 2 and 3 DP562598 and Lot 1 DP 1121183 being 21701 – 21703 Riverina Highway, Deniliquin to amend the Deniliquin Local Environmental Plan 2013 in accordance with section 55(1) of the Environmental Planning and Assessment Act 1979 to rezone it from RU1 Primary Production to R5 Large Lot Residential and to insert additional planning controls to apply to the subject site.*
- 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.*

An amended gateway determination was issued on 18 November 2016. Attachment 1 is the amended gateway determination.

All conditions of the amended gateway determination have now been complied with and the planning proposal can be forwarded to the Department of Planning and Environment (the Department) for the amendment to the Deniliquin Local Environmental Plan 2013 (LEP 2013) to be made.

Section 59 Report

Council is required to prepare a Section 59 Report under the Environmental Planning and Assessment Act (the Act). Council does not have delegation to finalise the planning proposal meaning that once the Section 59 Report is forwarded to the Department, the Department will obtain an opinion from Parliamentary Counsel regarding the legal drafting of the instrument. Once this opinion is received the instrument will be made.

The Section 59 Report addresses the following matters:

- Conditions of the amended gateway determination – as stated above, all conditions of the gateway determination have been complied with except the drafting of LEP clauses. Council has discussed draft clauses with the Department but they will request the Parliamentary Counsel to draft the clauses.
- Community consultation – the planning proposal was exhibited for a minimum of 28 days from 6 February to 7 March 2017 and no submissions were received.
- View of public authorities – all submissions from the public authorities have been addressed.
- Consistency with section 117 directions and other strategic planning documents – the Rural Fire Service have stated that the planning proposal is inconsistent with the Section 117 Direction 4.4 Planning for Bushfire Protection in relation to access. The issue of access and bushfire risk will be considered as part of the development application.
- Parliamentary Counsel opinion – as previously stated Council does not have delegated the planning making process so the Parliamentary Counsel will be requested to draft an opinion by the Department.
- Mapping – mapping has been completed.

Attachment 2 is the Section 59 Report.

Deniliquin Development Control Plan 2016

One of the conditions of the gateway determination is that controls for the proposed development are to be placed into the Deniliquin Development Control Plan 2016 (DCP 2016).

A new chapter (Chapter 15) has been drafted and includes controls for the following:

- Character of the development;
- Building and access envelopes;
- Development on river front areas;
- Flood planning; and
- Preservation of trees and vegetation.

It is recommended to Council that it resolve to amend DCP 2016 and that this amendment be placed on exhibition.

Strategic Implications:

An amendment to LEP 2013 and DCP 2016 is required to achieve the objectives of the planning proposal.

Budgetary Implications:

The proponent is meeting the cost of the preparation of the planning proposal including the cost of the specialist studies.

Policy Implications:

Nil.

Legislative Implications:

As Council does not have delegation for planning making, Council must prepare a report in accordance with section 59 of the Act. Section 59 of the Act provides that an LEP may be drafted to give effect to the final proposal of the relevant planning authority. The Minister upon completion of the community consultation may make the LEP or decide not to proceed with the LEP.

In terms of amending DCP 2016, a DCP must be made (or amended) in accordance with Part 3 Division 6 of the Act.

The draft DCP must be publicly exhibited for a minimum period of 28 days in accordance with clause 18 of the Environmental Planning and Assessment Regulation (the Regulation). During this time any person may make a written submission about the draft DCP.

Upon completion of the public exhibition Council will be required to consider approving the draft DCP with or without amendment or Council may decide not to proceed. Council must give public notice of its decision in a local newspaper within 28 days. If Council approves a DCP then it comes into effect on the date that public notice of its decision is given in a local newspaper or on a later date specified in the notice.

Risk Assessment:

What can happen?

Amend the LEP 2013 and DCP 2016 to achieve the objectives of the planning proposal.

How can it happen?

By preparing a planning proposal and amendment to DCP 2016.

What are the consequences of the event happening?

Likely rezoning and planning controls for the site.

What is the likelihood of the event happening?

High. The planning proposal has been exhibited and is now being forwarded to the Department to be made.

Adequacy of existing controls?

Existing controls need to be amended to meet the objectives of the planning proposal.

Treatment options to mitigate the risk?

Finalise the planning proposal and amend DCP 2016.

Conclusion:

Council should forward the section 59 report to the Department and commence the amendment to DCP 2016.

Attachments:

1. Attachment 1 – Amended Gateway Determination – 6 pages
 2. Attachment 2 - Section 59 Report – 31 pages
 3. Attachment 3 – Draft amendment to DCP 2016 – 5 pages
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