



Planning & Infrastructure

Mr Farooq Portelli
Chief Executive Officer
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13/12673

Received By
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Records

Dear Mr Portelli

I refer to your recent letter to Sam Haddad, Director General of the Department of Planning & Infrastructure, seeking to amend the existing LEP provisions to allow flexibility for subdivision/boundary adjustment between two non-compliant lots. The Director General has asked me to reply on his behalf.

I understand Council refused a subdivision proposal between two non compliant lots because of the lack of a flexible LEP clause to allow Council to approve the application.

I am aware a number of councils have seen the need for a similar flexible clause to permit subdivision/boundary adjustment which does not fall within the "minor" boundary adjustments clause of the Codes SEPP and clause 4.6(6) of the Standard Instrument LEP. To address this, the Department has been working with Parliamentary Counsel on drafting a "sample" clause for boundary changes between non compliant lots. I have attached a copy of the draft clause for your consideration.

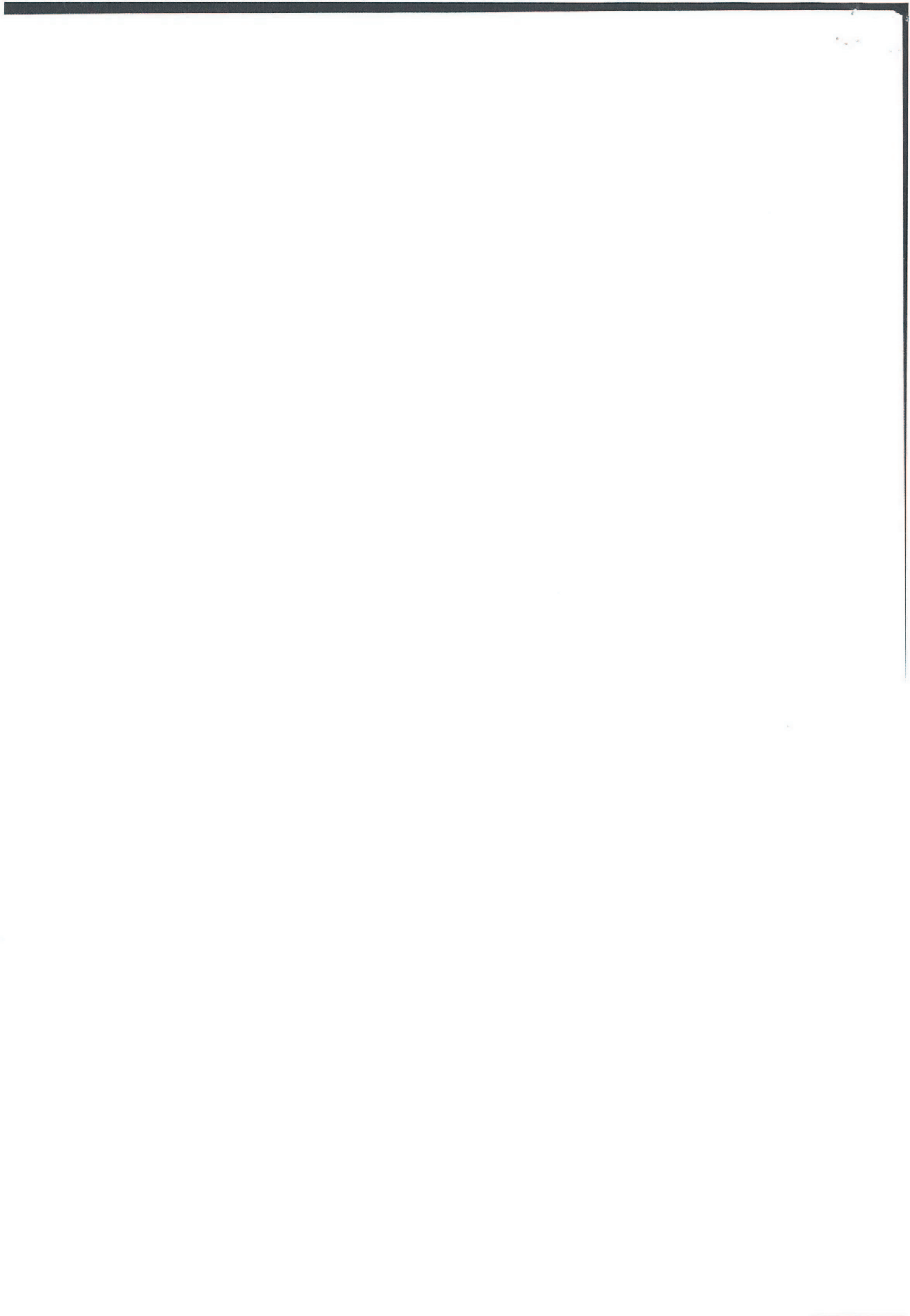
Council may wish to consider if this is suitable for local circumstances, and prepare a planning proposal for the Department's consideration. If Council has particular aspects it wishes to include or amend in the clause, then those aspects can be discussed further with the Department.

I hope this information assists you and should you require any further assistance in relation to this matter, please contact Cho Cho Myint on (02) 9860 1167.

Yours sincerely

Neil McGaffin 19.9.13
A/Deputy Director General
Planning Operations & Regional Delivery

Enc. Draft Clause



1 Boundary changes between lots in certain rural, residential and environment protection zones (d01.06)

- (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.

Drafting direction for subclause (1).

A Council may choose to restrict the application of this clause to just 2 adjoining lots by omitting "or more" from subclauses (1) and (3).

- (2) This clause applies to land in any of the following zones:

- (a) Zone RU1 Primary Production,
- (b) Zone RU2 Rural Landscape,
- (c) Zone RU3 Forestry,
- (d) Zone RU4 Primary Production Small Lots,
- (e) Zone RU6 Transition,
- (f) Zone R5 Large Lot Residential,
- (g) Zone E1 National Parks and Nature Reserves,
- (h) Zone E2 Environmental Conservation,
- (i) Zone E3 Environmental Management,
- (j) Zone E4 Environmental Living.

Drafting direction for subclause (2).

If any of the above rural, residential or environment protection zones are not used in the Plan they should be omitted from subclause (2).

- (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.

Drafting direction for subclause (3).

If the intention is to permit secondary dwellings or dual occupancies as well as dwelling houses, then the specific types of dwellings for which the clause is to apply should be included in the appropriate places.

- (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.