

LIVERPOOL CITY COUNCIL

PLANNING AND GROWTH

ORDINARY MEETING

18/12/2013

ITEM NO:	GMPG 02	FILE NO:	DA-1696/2012
SUBJECT:	PROPOSED BOUNDARY REALIGNMENT AT 40 CHURCH ROAD DENHAM COURT AND RELATED PLANNING CONTROLS		
COMMUNITY STRATEGIC PLAN REFERENCE:	VIBRANT PROSPEROUS CITY		

EXECUTIVE SUMMARY:

This report relates to land at 40 Church Road Denham Court and Council's resolution of 26 June 2013 to refuse subdivision of the two existing lots into two proposed lots, both of which are non-compliant with the minimum lot size in their current and their proposed configuration.

Council's resolution was supported by legal advice which reinforced that consent could not be granted under the current provisions. The advice also provided an alternate clause which if incorporated into the Liverpool Local Environmental Plan 2008 (LLEP 2008) could provide for this form of development into the future. This was forwarded to the Department of Planning and Infrastructure (DP&I) for consideration.

Council has received advice from the DP&I including a sample clause which is evaluated in this report. It is recommended that the best way forward is for a site specific planning proposal to be prepared and lodged by the landowner.

DETAILED REPORT:

Background

Council considered a development application for the consolidation and re-subdivision of Lot 1 & Lot 100 at 40 Church Road, Denham Court at its meeting on 26 June 2013. The subject site has been identified below for reference.

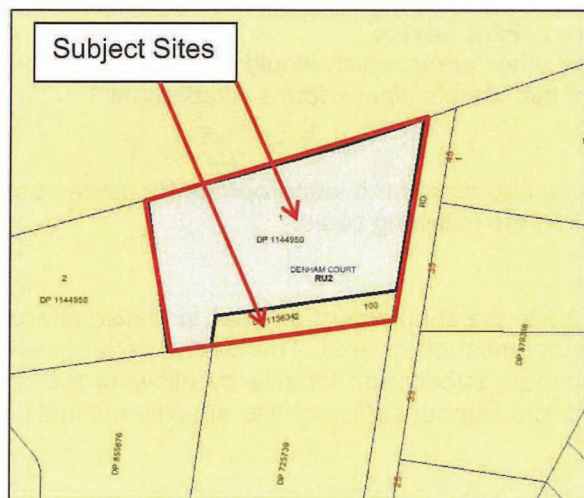


Figure 1: Subject site for subdivision

Council resolved to refuse this Development Application, DA-1696/2012, due to its non-compliance with Clause 4.6 of the Liverpool Local Environmental Plan 2008 which states:

“(6) Consent must not be granted under this Clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

The subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

The subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard”.

DA-1696/2012 proposed a subdivision that would have resulted in the creation of two lots which were less than the minimum area specified (two hectares), and one of those lots would have had less than 90% of the minimum area.

Council's determination of this matter was in accordance with legal advice which confirmed that consent could not be granted under the current LLEP 2008 provisions. The legal opinion also provided an alternate clause which if incorporated into the LLEP 2008 could provide for this form of development into the future.

Council in its consideration of the matter also resolved for Council's Chief Executive Officer to write to the Department of Planning & Infrastructure (DP&I) to investigate whether it would support an amendment to clause 4.6 of LLEP 2008, to the effect of that proposed by legal counsel. In accordance with Council's resolution guidance has since been sought from the DP&I.

Department of Planning and Infrastructure (DP&I) advice

The DP&I provided a sample clause used in other areas which would allow more flexible minimum lot sizes for subdivisions. A copy of the sample clause forms Attachment 1.

Evaluation of the Sample Clause

Council officers have reviewed the draft clause and consider it inappropriate for use across the Liverpool Local Government Area (LGA) on the following basis:

Minimum Lot Size

Minimum lot size is a key control which relates to the character of an area, and also affects agricultural viability and future development potential of an area. The clause as proposed by DP&I has the potential to erode the minimum subdivision lot size by allowing the re-subdivision and development on undersized lots without sufficient site specific evaluation and consideration.

Problematic planning precedent

The possible inclusion of the draft clause as proposed would make Council obligated to accept similar proposals which, in Liverpool's context, could result in multiple applications for subdivision and development of undersized lots without detailed site evaluation.

Across the rural lands of the Liverpool LGA there are numerous small lots that have resulted from unformed roads, subdivision of easements, historic subdivision patterns, site anomalies, etc. Compliance with the minimum lot sizes are an important mechanism to maintain appropriate local characteristics, control the provision of services and infrastructure, protect future development potential by maintaining appropriate lot sizes and protecting the amenity of residents and visitors.

An example of a cluster of under sized lots is seen in Wallacia which is characterised by large lot agricultural farming; however there exists a cluster of subdivided land no wider than 12-15 metres as detailed below.



Figure 2: Undersized lots found in Wallacia

Council continues to seek amalgamate these narrow lots into bigger consolidated lots under Amendment 27 which has been supported by both State and Local Government. This matter is currently awaiting gazettal. The sample clause would be inconsistent with Amendment 27.

Therefore, the concern with the sample clause is not specifically related to DA-1696/2012 but instead, the application of this mechanism across the whole local government area.

Options for Progression

To avoid the issues described above it is recommended that a site and situation specific approach be taken, which will allow the unique circumstances of sites where this form of subdivision is proposed to be evaluated and justified.

In this scenario a planning proposal would be lodged seeking a site specific amendment/exception to Clause 4.6. The planning proposal would need to provide information that describes and justifies the unique circumstances of the subject site which make it suitable for exemption from the minimum lot size development standard. This would include providing sufficient evidence that the subject site is isolated in its current form and is likely to never amalgamate with the adjacent lots. The proposal must also demonstrate compliance with the objectives and directions of the relevant State, Regional and Local Policies.

If such an amendment to the LLEP 2008 was to be made for 40 Church Road Denham Court this would facilitate the lawful subdivision re-alignment of the boundaries on the subject site as was proposed through DA-1696/2012.

Council officers have suggested this option to the applicant of DA-1696/2012 outlining that a site-specific or circumstance-specific clause could be proposed through an application for an amendment to the LLEP 2008. It is noted that if such an application was received it would need to be supported by appropriate documentation and would follow the normal LEP amendment process with consideration by Council, State Government (gateway), Agencies, Public Exhibition and final confirmation by Council prior to gazettal.

Conclusion

Further to Council's resolution of 26 June 2013, Council has received advice from the DP&I relating to subdivision of land less than the minimum lot size. The sample clause proposed by DP&I has been evaluated and if applied across the Liverpool area could lead to a large uptake of development on undersized lots.

In order to facilitate the development proposed for 40 Church Road Denham Court it is recommended that the best way forward is for a site specific planning proposal to be prepared by the landowner. This planning proposal application approach could be repeated for other sites if the site specific justification was considered appropriate.

FINANCIAL IMPLICATIONS:

This report has been prepared within the current budget allocations. Council's adopted Fees and Charges include an application fee for planning proposals. These fees would contribute toward the assessment and processing of the planning proposals outlined above.

RECOMMENDATION:

That Council:

1. Receives and notes the report.
2. Notes that a site-specific or circumstance-specific clause could be proposed through an application for an amendment to the LLEP 2008 to facilitate the development sought through DA-1696/2012.

SIGNED BY:

Carole Todd
Acting Group Manager
Planning and Growth

Attachments: 1. Sample clause provided by the Department of Planning and Infrastructure.

Attachment 1

Sample clause provided by the Department of Planning and Infrastructure.

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.