

Planning Proposal

Liverpool Local Environmental Plan 2008

Draft Amendment No.43

**Clause 4.6A Amendment –
Subdivision Realignment of Undersized Lots**

January 2014

Table of Contents

Background	2
Site identification	3
Part 1 - Objectives.....	5
Part 2 - Explanation of provisions	5
Amendment of Written Instrument.....	5
Part 3 - Justification.....	6
A. Need for the planning proposal	6
B. Relationship to strategic planning framework	7
C. Environmental, social and economic impact.....	9
D. State and Commonwealth interests	10
Part 4 - Maps.....	10
Part 5 - Community Consultation	10
Part 6 – Project Timeline.....	10

Background

This planning proposal has been drafted in accordance with Section 55 of the Environmental Planning and Assessment Act 1979 (the Act) and the Department of Planning and Infrastructure's guide to preparing planning controls.

This planning proposal seeks to amend Liverpool Local Environmental Plan 2008 written instrument regarding Clause 4.6 Development Standards to allow flexibility for variations of the minimum lot size requirements to facilitate subdivision/boundary adjustment between two non-compliant lots.

As Clause 4.6 currently exists, there is no flexibility to accept the subdivision of lots below the minimum area specified by the development standard. In instances where the existing lots are already below the minimum subdivision lot size (sometimes as result of residue lots from old road networks or easements) this has prevented their subdivision and left them isolated and stagnate in their current form.

The Standard Instrument (Local Environmental Plans) Order 2006 (the SI Order) prescribes the form and content of a Standard Instrument. The SI Order identifies 42 mandatory clauses for inclusion in new principal Standard Instrument LEPs. These clauses are identified as either compulsory or optional. Clause 4.6 is identified as a *compulsory* clause and is to be adopted by every council in the State, without amendment or alteration.

Attachment A of the Planning Circular prescribes further instructions as to when an exception to a development standard may occur. It specifically states in definite terms:

"Clause 4.6 cannot be used to allow subdivision of land that will result in 2 or more lots less than the minimum area specified for such lots by a development standard, or the subdivision of land that will result in any lot less than 90% of the minimum area specified for such lots by a development standard in RU1, RU2, RU3, RU4, RU6, R5, E1, E2, E3 and E4 zones."

As per a Council resolution, a letter was forwarded to the NSW Department of Planning & Infrastructure on July 17 2013, proposing a re-wording of Clause 4.6. The responding letter dated 19 September 2013 was received by Council which provided a sample clause for boundary changes between non-compliant lots. As per the Council resolution made on 23 December 2013, Council now seeks to incorporate this sample clause into the written instrument as stated below.

1. Boundary changes between lots in certain rural, residential and environmental protection zones.

- (1) *The objective of this clause is to permit the boundary between 2 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 RU2 Rural Landscape,*
 - (c) *Zone RU4 Primary Production Small Lots,*

- (d) *Zone R5 Large Lot Residential,*
 - (e) *Zone E1 National Parks and Nature Reserves,*
 - (f) *Zone E2 Environmental Conservation,*
 - (g) *Zone E3 Environmental Management.*
- (3) *Despite clause 4.1(3), development consent may be granted to the subdivision of 2 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 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 and 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 agriculture 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.*

In order to incorporate this sample clause into the Liverpool Local Environmental Plan 2008 there are five proposed changes within this planning proposal:

1. Insert the sample clause as Clause 4.6A in the Liverpool LEP 2008,
2. Delete reference to Zones RU3 Forestry, Zone RU6 Transition, and Zone E4 Environmental Living from Clause 4.6(6) as these zones are not present in the Liverpool Local Government Area,
3. Delete reference to Zone RU6 Transition from Clause 4.2(2)(d) as this zone are not present in the Liverpool Local Government Area,
4. Amend subclause Clause 4.1(3) to:
 - (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land, *unless compliance to Clause 4.6A is granted by the consent authority.*
5. Insert subclause (c) to Clause 4.6(6) which refers to the new Clause 4.6A;
 - (c) *Despite Clause 4.6(6) a subdivision or boundary adjustment between existing non complying lots may be granted through Clause 4.6A.*

Site Identification

This planning proposal is applicable to any land zoned as RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots, R5 Large Lot Residential, E1

National Parks and Nature Reserves, E2 Environmental Conservation, and E3 Environmental Management within the Liverpool Local Environmental Plan 2008.

Part 1 - Objectives

The planning proposal has the objective to allow flexibility for subdivisions and boundary adjustments between non-compliant lots which fall outside of the “minor” boundary adjustments clause of the Codes SEPP and clause 4.6(6) of the Standard Instrument LEP. This will allow for lots to be altered in certain circumstances, to give landowners a greater opportunity to achieve the objectives of a zone.

Part 2 - Explanation of provisions

Amendment of Standard Written Instrument

Amendment applies to:	Explanation of provision
Addition of proposed Clause 4.6A into the Liverpool Local Environmental Plan	To allow flexibility for subdivisions and boundary adjustments between non-compliant lots which fall outside of the “minor” boundary adjustments clause of the Codes SEPP and clause 4.6(6) of the Standard Instrument LEP. This will allow for lots to be altered in certain circumstances, to give landowners a greater opportunity to achieve the objectives of the identified zones.
Deletion of references to zones which are not present within the Liverpool Local Environmental Plan 2008: • Clause 4.6(6) - Zones RU3, RU6 & E4. • Clause 4.2(2)(d) – Zone RU6	As these zones are not present within the Liverpool Local Government Area it is not necessary for the Liverpool Local Environmental Plan 2008 to make reference to them.
Amend subclause Clauses 4.1(3) and 4.6(6) to include reference to the proposed new Clause 4.6A Development Standards.	To ensure proper referencing is made to the relevant clauses that are stated within the Liverpool Local Environmental Plan 2008.

Part 3 - Justification

A. Need for the planning proposal

1. Is the planning proposal a result of any strategic study or report?

This planning proposal is not the result of any strategic study or report. The need for the proposed amendments included in this proposal have been identified by Council staff, Councillors and other stakeholders over time.

Council resolved to incorporate the sample clause provided by the Department of Planning & Infrastructure into the Liverpool LEP 2008 on the 23 December 2013. This resolution is attached to this planning proposal.

There are a number of substantially small lots existing within the Liverpool LGA which are both below the associated minimum lot size requirement as well as being too narrow or small to accommodate any type of compliant dwelling or building. Where these lots are unable to be consolidated into larger lots with their adjoining properties they remain isolated and stagnant. This planning proposal seeks to create a mechanism to facilitate the re-alignment of boundary lines or allow the re-subdivision of these lots to a more reasonable size as too allow a permissible building or dwelling to occur.

Example Case Study – 40 Church Road, Denham Court

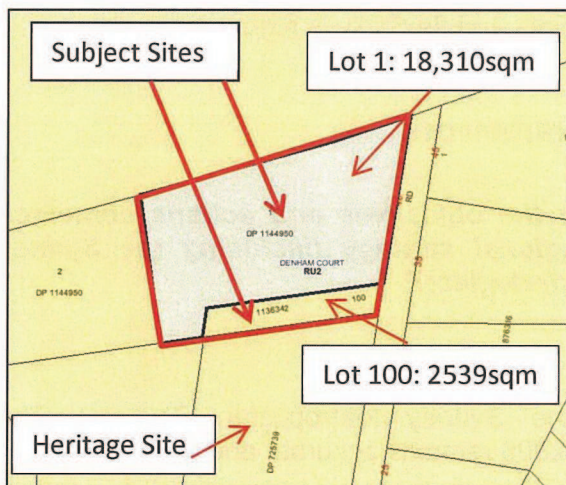


Figure 1: 40 Church Road, Denham Court

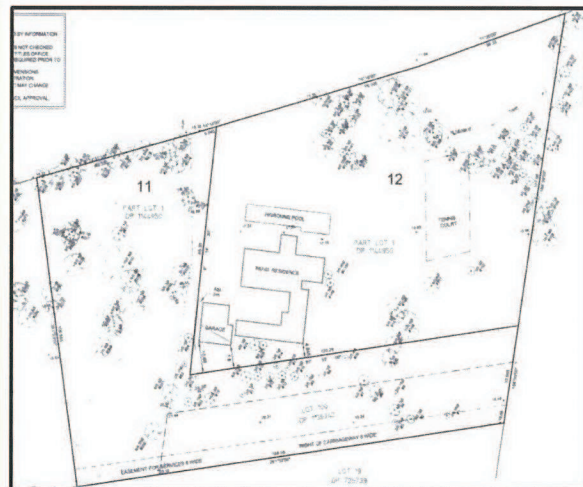


Figure 2: Proposed Re-Subdivision

Council recently considered a DA (DA-1696/2012) for the consolidation and re-subdivision of Lot 1 & Lot 100 at 40 Church Road, Denham Court, on 26 June 2013. The application was refused as the proposed subdivision would result in the creation of 2 lots which were less than the minimum area specified (2 hectares), and one of those lots would have had less than 90% of the minimum area specified (2 hectares) as stated in Clause 4.6(6).

The existing two lots combined are just over 2 hectares in size, thus even in its existing form the subject site is not compliant with Clause 4.6. The recommended solution from Strategic Planning would be for the subject site to amalgamate with the adjacent blocks thereby facilitating a permissible subdivision development application. However, in this particular circumstance, Lot 100 (the small lot) is adjacent to a heritage item and is highly unlikely to

ever be amalgamated with this lot. This leaves only Lot 2 DP 1144950 and Lot 1 DP 855676 to the west available for amalgamation, which given land ownership is not considered likely.

The progression of this planning proposal would allow a legal mechanism to approve boundary re-alignment/subdivision for isolated lots such as this one which are below the minimum lot size.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Clause 4.6(6) is a mandatory clause within the Standard Instrument which is to apply across New South Wales. As the Standard Instrument exists there is no opportunity for the flexibility of this clause. The Department of Planning note in their correspondence dated 19 September 2013, that a number of councils have sought the inclusion of a similar clause to allow flexibility. To address this, the Department has worked with the Parliamentary Counsel to draft a sample clause for boundary changes between non-compliant lots. It is this sample clause that is proposed by this planning proposal for inclusion into the Liverpool LEP 2008 as Clause 4.6A.

3. Will the net community benefit outweigh the cost of implementing and administering the planning proposal?

The proposal will ensure that the LLEP2008 instrument will remain current, accurate and effective and seek to provide certainty to landowners and the community. The impacts and cost of implementation of this planning proposal are very minor in nature, and the benefit to the community and land owners in providing certainty and flexibility is high.

B. Relationship to Strategic Planning Framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Metropolitan Plan for Sydney 2036

The planning proposal is consistent with the Sydney Metropolitan Strategy. The amendments proposed seek to ensure the LLEP 2008 remains accurate and current.

Draft Metropolitan Strategy for Sydney to 2031

The planning proposal is generally consistent with the Draft Metropolitan Strategy for Sydney 2031. The amendments proposed are administrative and seek to ensure the LLEP 2008 provides community and land owner certainty as well as remaining accurate and current.

South West Draft Subregional Strategy

The Draft South West Subregional Strategy is the strategic land use planning framework to guide the sustainable growth of South West Sydney over the next 25 years.

It translates priorities of the Sydney Metropolitan Strategy to the local level. According to the Strategy, South West Sydney will experience growth in the vicinity of some 155,000 new dwellings over the next 17 years.

The planning proposal increases flexibility for land owners and reduces barriers to provide new housing. This is consistent with the objectives and actions contained within the draft Southwest Subregional Strategy.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Growing Liverpool 2023

Growing Liverpool 2023 is a 10-year plan that has been developed to refine the future strategic directions for Liverpool and its future growth. This planning proposal is consistent with this strategy. Directions 2 a) deliver an efficient planning system which embraces sustainable urban renewal and development, and d) facilitate diverse and more affordable housing options.

6. Is the planning proposal consistent with the applicable state environmental planning policies?

The planning proposal consists of minor amendments to the LLEP 2008 written instrument and is consistent with the various State Environmental Planning Policies.

State Environmental Planning Policy (Rural Lands) 2008

Section 117 Direction 1.5 – Rural Lands requires that when a council proposes a change to lot sizes that the proposal be consistent with the Rural Subdivision Principles listed within this SEPP 2008. The planning proposal is consistent with these principles.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Various Section 117 Ministerial Directions apply to this planning proposal. These are discussed below:

S.117 Direction No. and Title	Contents of S.117 Direction	Planning Proposal	Comply
1.5 Rural Lands	To protect the agricultural production value of rural land and to facilitate the orderly and economic development of rural lands for rural and related purposes.	Section 117 Direction 1.5 – Rural Lands requires that when a council proposes a change to lot sizes that the proposal be consistent with the Rural Subdivision Principles listed within this SEPP 2008. The planning proposal is consistent with these principles.	Yes
5.1 – Implementation of Regional Strategies	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies. This direction requires that the rezoning proposal be consistent with	The Planning Proposal is in line with the relevant Regional Strategies.	Yes

S.117 Direction No. and Title	Contents of S.117 Direction	Planning Proposal	Comply
	the South West Subregional Strategy.		
7.1 Metropolitan Planning	Planning proposals shall be consistent with the NSW Government's Metropolitan Plan for Sydney 2036 published in December 2010.	The planning proposal achieves the overall intent of the Plan and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.	Yes

C. Environmental, social and economic impact

8. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

In practice, this amendment will only re-align subdivision boundaries of existing undersized lots to a more desirable size, it will not increase the number of lots permissible, not allow additional dwellings on site (that are not already permissible), or not allow the creation of additional undersized lots past what already exists. Therefore it is anticipated that this planning proposal will have no impact on critical habitats, threatened species, on populations or ecological communities or their habitats.

9. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

The planning proposal will not result in any negative environmental effects. The re-alignment or subdivision of existing undersized lots may allow new dwellings to be constructed subject to development assessment. It should be noted that such developments are already legally permissible under the existing LEP 2008, and the amendment will not increase dwelling capacities or the number of lots permissible.

Therefore, as this planning proposal is only very minor in practice and can only impact a maximum of 2 lots, which exist currently, there is no need for additional management practices to be included outside of the existing development assessment process.

10. *How has the planning proposal adequately addressed any social and economic effects?*

The planning proposal will result in minimal social and economic impacts on the Liverpool community. Property owners of undersized lots will be able to re-align the subdivision boundaries for development flexibility subject to the development assessment process. This planning proposal will impact and benefit these land owners and create no negative impacts.

D. State and Commonwealth interests

11. Is there adequate public infrastructure for the planning proposal?

The planning proposal does not result in extensive additional development. As such the planning proposal will not place additional demands on public infrastructure.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Discussions were undertaken between Council and the NSW Department of Planning & Infrastructural previously, to which in consultation with the Parliamentary Counsel developed this sample clause. The Department have advised that if Council wished to incorporate the sample clause into the Liverpool LEP 2008, that a planning proposal be prepared for gateway determination. This is the resultant planning proposal forwarded for assessment.

There is no state agency impediment to proceeding with Amendment 43.

Part 4 - Maps

There are no maps applying to this proposal it affects only the written instrument.

Part 5 - Community Consultation

The Gateway Determination will specify the community consultation that must be undertaken on the planning proposal.

Part 6 – Project Timeline

Timeframe	Action
1 April 2014	Receive Gateway Determination
14 April 2014	Completion of reports/studies
16 April – 16 May 2014	Public authority consultation
16 April – 16 May 2014	Public exhibition
17 May – 20 May 2014	Review of submissions
May/June 2014	Report to Council
June/July 2014	Review of Planning Proposal by PC, legal drafting and finalisation of LEP