



PCU038942

## AUBURN CITY COUNCIL

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In reply quote: PP-1/2012

Contact Name: M.Noble  
(02) 9735 1303

TRIM No: T079336/2012

Attention: Mr. Tai Ta

**SUBJECT: PLANNING PROPOSAL TO AMEND CLAUSES 6.6 AND 4.2(4) OF THE  
AUBURN LEP 2010 RELATING TO STRATA AND COMMUNITY TITLE  
SUBDIVISION**

Dear Peter,

Further to your letter dated 27 July 2012 (your ref: qA211821), please find enclosed a planning proposal to amend clause 6.6 and 4.1(4) of the *Auburn LEP 2010* relating to strata and community title subdivision. The planning proposal has been prepared by Auburn City Council in accordance with section 55 of the *Environmental Planning and Assessment Act 1979* and the Department of Planning and Infrastructure's guidelines.

The planning proposal seeks to amend the *Auburn LEP 2010* to:

- allow for the strata title and community title subdivision of dual occupancies to be permitted with consent where there is no registered strata or community title plan in place, and
- allow strata title and community title subdivision to be exempt from clause 4.1 minimum subdivision lot size.

The proposed amendment will reinstate policy positions within the Auburn LEP 2000 and Auburn DCP 2000 that were not translated into the *Auburn LEP 2010* as intended. The planning proposal will also encourage a greater range of housing choice and foster economic growth, consistent with the draft West Central Subregional Strategy and the Metropolitan Plan for Sydney 2036.

Council requests a three month timeframe for the completion of the planning proposal, to ensure that the matter can be rectified as soon as possible.

Council looks forward to working with the department to progress this progress this matter. Should you require any further information, please contact Mitchell Noble, A/Team Leader, Strategy Unit on (02) 9735 1303.

Yours faithfully,

**MARK BRISBY**  
**DIRECTOR, PLANNING AND ENVIRONMENT**



18/10/12

This letter contains important information. If you do not understand it, please come to Council's Administration Building and discuss the letter with Council staff who will arrange Interpreter services, or contact the Telephone Interpreter Service 131 450 and ask them to ring Council on 9735 1222

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這封信包含重要的資料。如果你不明白信的內容，請到市議會的行政大樓詢問市議會職員，他們會安排傳譯服務；你亦可致電 131 450 聯絡電話傳譯服務，要求他們撥電市議會，電話 9735 1222。

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**Planning Proposal to amend  
*Auburn LEP 2010***

**Clause 6.6 and Clause 4.1(4)  
relating to Strata and Community  
Title Subdivision**

PP-1/2012

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### **Attachments**

- A. Council Report: Planning Proposal – Subdivision of Dual Occupancies
- B. Council Resolution – 21 March 2012
- C. Letter to DP&I from Council seeking advice regarding clause 4.1(4) and 6.6(2)
- D. Letter from DP&I to Council regarding clause 4.1(4) and Clause 6.6(2)

## Introduction

This planning proposal explains and justifies an intended change to the *Auburn Local Environmental Plan 2010 (ALEP 2010)*. It has been prepared in accordance with section 55 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* and the relevant Department of Planning and Infrastructure guidelines including *A Guide to Preparing Planning Proposals*.

The planning proposal seeks to amend ALEP 2010 to:

1. allow for the strata title and community title subdivision of dual occupancies to be permitted with consent where there is no registered strata or community title plan in place, and
2. allow strata title and community title subdivision to be exempt from clause 4.1 minimum subdivision lot size within the ALEP 2010.

The planning proposal was created in response to legal advice obtained by Council, which is discussed in further detail in the 'Background' section of this report.

At the Ordinary Meeting held 21 March 2012 a report was tabled seeking a resolution of Council to prepare a planning proposal to amend ALEP 2010 in regards to strata and community title subdivision. The minutes of the meetings are provided at Attachment B.

At the ordinary meeting of Council held on 21 March 2012, Council resolved to:

*“Prepare and submit to the Department of Planning and Infrastructure (DP&I) a planning proposal to amend Auburn Local Environmental Plan 2010 in order to:*

- (a) allow for the strata title and community title subdivision of dual occupancies; and*
- (b) allow for strata title and community title subdivision to be exempt from clause 4.1 ‘minimum subdivision lot size’.*

## Background

Auburn City Council converted the *Auburn Local Environmental Plan 2000* (ALEP 2000) into the standard instrument format in 2010. The *Auburn LEP 2010* was intended to be a “translation LEP” with no significant departures from Council’s policy positions or land zonings.

Under ALEP 2000, the strata and community title subdivision of land (including dual occupancies) was a permitted development type. The minimum lot sizes were stipulated within the Auburn Development Control Plan 2000. However, the clause permitting this development type was not brought over into ALEP 2010 as part of the rollover methodology. This inadvertent omission was brought to Council’s attention by local developers in the time since ALEP 2010 was made.

To begin to address the issue, Council obtained legal advice (which cannot be provided due to legal privilege) on the meaning of clause 6.6 of ALEP 2010, shown in its current form as follows:

**6.6 Particular dual occupancy subdivision must not be approved**

- (1) *Development consent must not be granted for a subdivision that would create separate titles for each of the two dwellings resulting from a dual occupancy development.*
- (2) *This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.*

The legal opinion presented to Council was that, at present, clause 6.6(2) does not allow Council to grant consent to the subdivision of dual occupancies by strata title or community title *where no registered strata plan was in place*. The main contention lies in the construction of the sentence in subclause (2). Because the registration of a strata plan forms part of the act of ‘subdivision’ as defined by the EP&A Act 1979, it was reasoned that clause 6.6(2) does not provide an exemption to new strata plans which have not yet been registered, only to further subdivision “in existing” strata plans or community title schemes.

It was concluded that Council therefore has no power to grant consent to the strata or community title subdivision of dual occupancies where there is no existing strata plan or community title scheme in place, and the general prohibition for subdivision provided for in clause 6.6(1) would still have effect. Council has been applying the clause in this way for development applications, and when providing guidance on the interpretation of ALEP 2010 to the community, since receiving that advice.

However, the original intent of this clause was to allow Council to permit the strata and community title (but not Torrens title) subdivision of dual occupancy developments. Council is now seeking to change the wording of clause 6.6 to reflect its original intention.

Similarly, the issue arises in clause 4.1 (3A) and 4.1(4) of the ALEP 2010, as set out in the excerpt below:

**4.1 Minimum Subdivision Lot Size**

- (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.*
- (3A) *Despite sub-clause (3), the minimum lot size for dwelling houses is 450 square meters.*
- (4) *This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title schemes.*

Clause 4.1(4) shares the same wording as clause 6.6(2), but relates to minimum subdivision lot size. When the rationale regarding clause 6.6(4) is applied to clause 4.1(4), it requires all proposed strata title and community title subdivisions for individual lots to comply with the minimum lot size map controls.

As Council's industrial and some business zones have large minimum lot sizes, this will effectively prevent all new strata subdivision in those zones. This is not the intent of Council.

The purpose of this planning proposal is to amend ALEP 2010 to reinstate the permissibility of strata and community title subdivision of dual occupancies, and allow strata title and community title subdivision to be exempt from having a minimum subdivision lot size. These policy positions were intended to be "rolled over" from the ALEP 2000 to the ALEP 2010, which is a 'translation LEP' intended to substantially translate the provisions of the ALEP 2000 into a Standard Instrument LEP format.

A full justification of the planning proposal is provided in Part 3 of this report, followed by an assessment against the relevant SEPPs (Appendix 4), REPs (Appendix 5) and s117 directions (Appendix 6).

## **Land to which the planning proposal applies**

The planning proposal will apply to all land that the ALEP 2010 applies to. This area covers the entire LGA, excluding land covered by *Sydney Regional Environmental Plan 24 – Homebush Bay Area*.

## Part 1: Objectives or Intended Outcomes

The objectives of the planning proposal are:

- (1) *To enable the strata title subdivision and community title subdivision of dual occupancies to be permitted with consent where no registered strata plan is currently in place, and*
- (2) *To allow for strata title and community title subdivision to be exempt from clause 4.1 Minimum subdivision lot size.*

**Note:** The existing prohibition on Torrens title subdivision for dual occupancies is to be maintained.

## Part 2: Explanation of Provisions

This section of the planning proposal will not attempt to draft the proposed amendment to the ALEP 2010, as agreed with the Department of Planning and Infrastructure (refer to the letters regarding this matter at Attachments 3 and 4). It will instead provide a plain English outline of the desired outcome, including development scenarios, which will be used by the department to draft the appropriate provisions for the LEP amendment, if approved.

The planning proposal seeks to achieve the following:

### Clause 6.6 Particular dual occupancy subdivisions must not be approved

Amend the clause so that Council may grant consent to the subdivision of dual occupancies (both attached and detached) by strata title or community title where there is no registered strata plan currently in place.

Council wishes to maintain the function of the existing clause that allows it to grant consent to the further subdivision of dual occupancies by strata title or community title where a registered strata plan is already in place. Council also wishes to maintain the existing prohibition of Torrens title subdivision for dual occupancies.

Development scenarios have been outlined in Table 1 below at the request of the department, to explain the desired outcomes.

| Development example                                                                                                | Scenario                                                                                                                                                                                         | Desired outcome                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Existing attached dual occupancy development on a single Torrens title lot (not in an existing strata title plan). | Owners wish to strata subdivide the property so that the dwellings and land can be sold separately.                                                                                              | Council to be able to grant consent for the strata title subdivision application (subject to positive merit assessment). Minimum lot size requirements under clause 4.1 will not apply.    |
| Proposed dual occupancy development on a single Torrens title lot (not in an existing strata title plan).          | Developer wishes to subdivide the property under a community title scheme so that the dwellings can be sold separately and formal arrangements can be made to manage common land and facilities. | Council to be able to grant consent for the community title subdivision application (subject to positive merit assessment). Minimum lot size requirements under clause 4.1 will not apply. |

**Table 1: Development scenarios relating to clause 6.6 of the ALEP 2010**

**Clause 4.1(4) Minimum subdivision lot size**

Amend the clause so that existing or proposed strata title and community title subdivisions are exempt from clause 4.1 'minimum subdivision lot size'. As indicated in the development scenario in Table 2 below, it is intended that strata or community title subdivisions should not require a minimum lot size for resultant lots.

| Development example                                                                                                                                                                  | Scenario                                                                                                                                                                                                                                                                                       | Desired outcome                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Application for strata title subdivision of proposed industrial units. The land is within the Regents Park Industrial Precinct, which has a minimum lot size of 1500m <sup>2</sup> . | Applicant wishes to strata subdivide a lot as part of a development application for industrial units. The lot is not already subject to a strata plan or community title scheme. Under the current controls, the resultant lots created by a subdivision would need to be 1500m <sup>2</sup> . | For Council to be able to grant consent for the strata title subdivision application (subject to merit assessment). Minimum lot size requirements under clause 4.1 will not apply. |

**Table 2: Development scenarios relating to clause 4.1(4) of the ALEP 2010**

## Part 3: Justification

### Section A - Need for the planning proposal

#### **A1 Is the planning proposal a result of any strategic study or report?**

The planning proposal is not the result of any strategic study or report. It is however the result of legal advice that has been prepared for Council. A copy of the advice cannot be provided in this document to due legal privilege.

#### **A2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Council considers a planning proposal is the only way to achieve the intended outcomes. This approach has been agreed with the Department of Planning and Infrastructure (refer to the letter from Council at Attachment 3, and the department's response at Attachment 4).

#### **A3 Is there a net community benefit?**

The net community benefit of undertaking the planning proposal arises from the need to ensure the accuracy and reliability of ALEP 2010 and reinstate Council's previous policy position.

It is intended that the planning proposal would deliver the following community benefits:

- Enable residents to undertake strata and community title subdivision of dual occupancies;
- Encourage the provision of a range of affordable dwelling types;
- Provide for a greater range of housing styles and choice;
- Allow strata subdivision to occur in industrial and business zones, thereby encouraging economic development in the LGA; and
- Reinstate Council's previous policy position under the ALEP 2000 in relation to strata subdivision.

A Net Community Benefit Test has been prepared, and is provided in Appendix 1 to this report.

## **Section B - Relationship to strategic planning framework**

### **B1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Metropolitan Plan for Sydney 2036 and exhibited draft strategies)?**

#### *West Central Sub-region Draft Sub-regional Strategy (WCDSS)*

The Draft West Central Subregional Strategy (WCDSS) sets key directions and actions for the implementation of the Metropolitan Plan for Sydney 2031 at a more local level.

The draft Subregional Strategy establishes targets for 17,000 new dwellings including Sydney Olympic Park Authority Area (SOPA); which will provide 6,000 dwellings leaving Auburn to cater for 11,000 dwellings by 2031. The WCDSS also sets target for 12,000 new jobs to be provided in Auburn City Council LGA by 2031.

The planning proposal will assist in achieving the new dwelling targets within the Auburn LGA as it will promote more dual occupancy developments.

The key directions of the WCDSS strategy that are relevant to this planning proposal have been highlighted in Appendix 2.

#### *Metropolitan Plan for Sydney 2036*

The Metropolitan Plan for Sydney 2036 (The Metropolitan Plan) is the latest blueprint for Metropolitan Sydney and replaces the Metropolitan Strategy City of Cities - A Plan for Sydney's Future. The planning proposal will assist in achieving the new dwelling targets and housing affordability within the Auburn LGA as it will promote more dual occupancy developments.

The Metropolitan Plan addresses the challenges facing Sydney through an integrated, long-term planning framework based on strategic directions and key policy settings. The directions of the plan that are relevant to the planning proposal are addressed in Appendix 3.

### **B2 Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?**

The planning proposal is consistent with the themes and outcomes of the Auburn City Community Strategic Plan 2011 – 2021, specifically '2.a. High quality urban development'.

The planning proposal is also consistent with directions provided under Council's other corporate plans such as Council's Annual Operational Plan 2011/12 and Delivery Program 2011/12 - 2014/15 (particularly 2a.2 Prepare strategic land use plans and policies that improve the urban environment).

**B3 Is the planning proposal consistent with applicable State Environmental Planning Policies?**

Yes. Refer to Appendix 4 for a checklist that demonstrates how the planning proposal is consistent with the State Environmental Planning Policies (SEPPs). The checklist at Appendix 5 illustrates the consistency of the planning proposal with the State Regional Environmental Plans (now deemed SEPPs). The planning proposal is not inconsistent with any of the SEPPs.

**B4 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?**

The checklist at Appendix 6 demonstrates the consistency between the planning proposal and the Ministerial Directions for LEPs under section 117 of the *Environmental Planning and Assessment Act 1979*. The planning proposal is not inconsistent with any of the s117 directions.

## **Section C - Environmental, Social and Economic impact**

**C1 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?**

The planning proposal does not pose any adverse impact on the critical habitat or threatened species, populations or ecological communities, or their habitats.

**C2 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 does not impose any adverse environmental impacts.

**C3 How has the planning proposal adequately addressed any social and economic effects?**

The planning proposal proposes a minor amendment to section 6.6 and section 4.1(4) of the ALEP 2010. It is anticipated that the planning proposal will have positive social and economic implications as it will enable housing affordability and individual dwelling ownership in case of dual occupancies. No significant social and economic assessment to the effect of the planning proposal has been undertaken, due to its minor nature.

A Net Community Benefit Test has been undertaken as part of this planning proposal (refer to Appendix 1). The assessment has identified that the planning proposal will provide a positive net community benefit.

## **Section D - State and Commonwealth interests**

### **D1 Is there adequate public infrastructure for the planning proposal?**

The planning proposal affects the majority of the LGA. Existing public infrastructure is expected to adequately provide for any additional dwellings arising out of the changes to the LEP.

Further investigation into the adequacy of existing infrastructure is not deemed necessary as this already occurred as part of the process of making the ALEP 2010. At that stage, Council had assumed the policy position in relation to strata and community title subdivision had been effectively rolled over from the ALEP 2000 into the ALEP 2010. Consequently the impact of this planning proposal on public infrastructure has already been taken into account by Council.

### **D2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

The planning proposal does not require consultation with any State and Commonwealth public authorities with the exception of the Department of Planning and Infrastructure.

However, if the department requires any further engagements, Council will undertake the consultation as per the Gateway Determination.

## Part 4 - Community Consultation

Community Consultation for the planning proposal will be undertaken according to the outcome of the Gateway Determination. Through community consultation, Council will demonstrate good governance, transparency and raise public awareness of the provisions of section 6.6 and section 4.1(4) of the ALEP 2010.

The community consultation will not be commenced prior to obtaining approval from the Director General of the Department of Planning and Infrastructure. Council proposes the following consultation:

- Exhibition of the planning proposal for 28 days.
- Giving notice of the public exhibition in the main local newspaper (the Auburn Pictorial Review) and newspapers of major community languages (Arabic, Chinese, Turkish, Korean and Vietnamese) and Council's website.
- Exhibiting the planning proposal and all supporting documentation at Council's administration centre and all libraries and including Council's website.

## Appendix 1: Net Community Benefit Test

The table below provides an assessment against the evaluation criteria for conducting a net community benefit test from the Draft Centres Policy (2009) as required by the Department's guidelines.

**Table 1 - Consistency with Net Community Benefit Evaluation Criteria**

| Evaluation Criteria                                                                                                                                                                                                                  | Comment                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Will the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800m of a transit node)?                                       | The planning proposal: <ul style="list-style-type: none"> <li>• Allows strata subdivision to occur in industrial and business zones, thereby encouraging economic development in the LGA;</li> <li>• Encourages the provision of a range of affordable dwelling types; and</li> <li>• Provides for a greater range of housing styles and choice.</li> </ul>                                                          |
| Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub regional strategy?                                                                       | The planning proposal will apply to land within the Parramatta Road Enterprise Corridor by clarifying that strata subdivision of industrial and employment land is permitted. However, no negative impacts on the corridor are expected.                                                                                                                                                                             |
| Is the LEP likely to create a precedent or create or change the expectations of the landowners or other landholders?                                                                                                                 | Amending the LEP will change the expectations of landholders by providing greater certainty with regards to this form of development. There is currently confusion regarding the permissibility of strata subdivision, particularly for dual occupancies in the Auburn LGA.                                                                                                                                          |
| Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?                                                                                          | The planning proposal does not involve any rezoning. The cumulative effects of any other rezoning will have no impact on the proposal.                                                                                                                                                                                                                                                                               |
| Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?                                                                                                                          | The planning proposal does not facilitate a permanent employment generating activity. It may have a positive impact on employment lands by enabling strata subdivision of industrial and commercial buildings in these areas.                                                                                                                                                                                        |
| Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?                                                                                                                              | This planning proposal aims to clarify that new strata and community title subdivisions for dual occupancies are permitted, and that new strata and community title subdivisions are exempt from minimum subdivision lot size provisions. It may therefore encourage dual occupancy development and increase certainty for developers. This is expected to increase the supply of affordable housing within the LGA. |
| Is the existing public infrastructure (roads, rail, and utilities) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity? | This planning proposal aims to reinstate Council's previous policy position regarding strata and community title subdivision, which was unintentionally discontinued in the ALEP 2010. The development potential was therefore taken into account in the                                                                                                                                                             |

| Evaluation Criteria                                                                                                                                                                                                                     | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| to support future public transport?                                                                                                                                                                                                     | preparation of the ALEP 2010 in terms of its impact on the existing public infrastructure. Notwithstanding this, the impact of each proposed subdivision will be considered in detail at the development assessment stage.                                                                                                                                                                                                                                                                                                                                               |
| Will the proposal result in changes to the car distances travelled by customers, employees and suppliers?<br><br>If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?              | The planning proposal will have no implications on the car distance travelled by customers, employees and suppliers within the Auburn LGA. It will concentrate development within the established urban area. Therefore, there will be no impact in terms of greenhouse gas emissions, operating costs and road safety.                                                                                                                                                                                                                                                  |
| Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?                                                            | The planning proposal will encourage strata and community title subdivisions, which are likely to increase residential and employment densities. This may result in minor increases to patronage on state government roads and stations at Auburn, Lidcombe, Berala, Olympic Park and Regents Park. The impact of this increase has already been considered in the creation of the ALEP 2010.                                                                                                                                                                            |
| Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding? | The planning proposal affects the majority of land in the LGA, some parts of which are constrained by environmental factors such as flooding. Council has adequate development controls in place to deal with flooding issues on a site by site basis. There is no land with high biodiversity values or other environmental constraints that will be affected by the proposal.                                                                                                                                                                                          |
| Will the LEP be compatible /complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?                                                                | Permitting subdivision of dual occupancies in existing residential and business/industrial areas will be compatible with surrounding land uses.                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?                                                                                                     | The planning proposal may increase choice and competition by allowing the strata subdivision of buildings in business and industrial zones. These effects are expected to be minimal however.                                                                                                                                                                                                                                                                                                                                                                            |
| If a stand-alone proposal and not a centre, do the proposal have the potential to develop into a centre in the future?                                                                                                                  | It is not a site specific stand-alone planning proposal. The proposed LEP amendment has no potential to develop into a centre.                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| What are the public interest reasons for preparing the draft plan? What are the Implications of not proceeding at that time?                                                                                                            | The planning proposal is in the public interest because the existing prohibition on strata and community title subdivision is a significant disincentive for people to undertake this form of development as the dwellings or units cannot be sold under separate titles. Enabling these forms of subdivision will encourage dual occupancy development and help to provide additional affordable housing options across the LGA. Not proceeding at this time will have negative impacts upon housing choice and affordability, as well as local business in Auburn LGA. |

## Appendix 2: Consistency with WCDSSRS

Key directions of the WCDSSRS strategy are addressed in the table below:

| West Central Draft Sub-regional Strategy key directions                                                                                                                                                                                                                                                                                                               | Consistency with WCDSS                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Part A: Economy and employment<br>Action: A2.2<br><ul style="list-style-type: none"> <li>Strengthen Industry Clusters</li> </ul> Action: A3.3<br><ul style="list-style-type: none"> <li>Encourage Emerging Businesses</li> </ul>                                                                                                                                      | Enabling strata subdivision in industrial and business zones will allow for strata subdivision developments. This may result in increased business activity, thus providing additional employment opportunities.                                                                                                                                                        |
| Part B: Centres and corridors                                                                                                                                                                                                                                                                                                                                         | N/A                                                                                                                                                                                                                                                                                                                                                                     |
| Part C: Housing<br><ul style="list-style-type: none"> <li>Ensure adequate supply of land and sites for residential developments</li> </ul> Action: C4.1<br><ul style="list-style-type: none"> <li>Improve Housing Affordability</li> </ul> Action: C5.1<br><ul style="list-style-type: none"> <li>Improve the quality of New Development and Urban Renewal</li> </ul> | The planning proposal may enable more dual occupancies to be developed therefore increasing the supply of residential dwellings across the LGA.<br>Development of dual occupancies under strata subdivision mechanisms will provide opportunities for individual lots to be owned separately therefore aiding housing affordability and the quality of new development. |
| Part D: Transport                                                                                                                                                                                                                                                                                                                                                     | N/A                                                                                                                                                                                                                                                                                                                                                                     |
| Part E: Environment, Heritage and Resources                                                                                                                                                                                                                                                                                                                           | N/A                                                                                                                                                                                                                                                                                                                                                                     |
| Part F: Parks, Public places and culture                                                                                                                                                                                                                                                                                                                              | N/A                                                                                                                                                                                                                                                                                                                                                                     |

## Appendix 3: Consistency with Metro Plan

Key directions of the Metropolitan Plan for Sydney 2036 are addressed in the table below:

| Sydney Metro Strategy 2036                                                                                                                                                                                               | Consistency with Metro Strategy                                                                                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Strengthening a city of cities</b> <ul style="list-style-type: none"> <li>Action A8.1<br/>Update Metropolitan Plan housing and employment growth targets in relevant agency growth infrastructure plans.</li> </ul>   | The planning proposal is consistent with the actions and objectives of the 'strengthening a city of cities' theme. In particular, the proposal will assist to contain the urban footprint of the city and support the trend towards greater infill development.                                |
| Growing and renewing centre's                                                                                                                                                                                            | N/A                                                                                                                                                                                                                                                                                            |
| Transport for a connected city                                                                                                                                                                                           | N/A                                                                                                                                                                                                                                                                                            |
| <b>Housing Sydney's population</b> <ul style="list-style-type: none"> <li>Action D1.1<br/>Locate at least 70% of new housing within existing urban areas and up to 30% of new housing in new release areas.</li> </ul>   | The planning proposal will potentially increase the supply of residential dwellings across the LGA, and will help to achieve a higher occupation of existing dwellings through redevelopment. Additionally, it will also aid housing affordability and improve the quality of new development. |
| <b>Growing Sydney's Economy</b> <ul style="list-style-type: none"> <li>Action E2.7<br/>Prepare and implement measures to assist development of low cost space for creative industries and business start-ups.</li> </ul> | This planning proposal will assist businesses by ensuring that new strata subdivision can occur.                                                                                                                                                                                               |
| Balancing land uses on the city fringe                                                                                                                                                                                   | N/A                                                                                                                                                                                                                                                                                            |
| Tacking Climate change and protecting Sydney's natural environment                                                                                                                                                       | N/A                                                                                                                                                                                                                                                                                            |

## Appendix 4: Consistency with SEPPs

The checklist below demonstrates the consistency of the planning proposal with the relevant State Environmental Planning Policies (SEPPs). Deemed SEPP (REPs) are considered in a separate checklist at Appendix 5.

| No. | Title                                                                          | Consistency with Planning Proposal                                                                                                      |
|-----|--------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| 1   | Development Standards                                                          | This SEPP does not apply to Auburn LGA.                                                                                                 |
| 4   | Development Without Consent and Miscellaneous Exempt and Complying Development | The planning proposal is not inconsistent with this SEPP. However, Clause 6 and Parts 3 and 4 repealed by <i>Auburn LEP 2010</i> .      |
| 6   | Number of Storeys in a Building                                                | The planning proposal is consistent with this SEPP as the Principle development standards within ALEP 2010 are subsequent to this SEPP. |
| 14  | Coastal Wetlands                                                               | This SEPP does not apply to Auburn LGA.                                                                                                 |
| 15  | Rural Land sharing Communities                                                 | This SEPP does not apply to Auburn LGA.                                                                                                 |
| 19  | Bushland in Urban Areas                                                        | The planning proposal is consistent with this SEPP. However, it does not contain an objective to hinder the application of this SEPP    |
| 21  | Caravan Parks                                                                  | This SEPP does not apply to Auburn LGA.                                                                                                 |
| 22  | Shops and Commercial Premises                                                  | The planning proposal is not inconsistent with this SEPP.                                                                               |
| 26  | Littoral Rainforests                                                           | This SEPP does not apply to Auburn LGA.                                                                                                 |
| 29  | Western Sydney Recreation Area                                                 | This SEPP does not apply to Auburn LGA.                                                                                                 |
| 30  | Intensive Aquaculture                                                          | The planning proposal is not inconsistent with this SEPP.                                                                               |
| 32  | Urban Consolidation (Redevelopment of Urban Land)                              | The planning proposal is not inconsistent with this SEPP.                                                                               |
| 36  | Manufactured Home Estates                                                      | This SEPP does not apply to Auburn LGA.                                                                                                 |
| 39  | Spit Island Bird Habitat                                                       | This SEPP does not apply to Auburn LGA.                                                                                                 |
| 41  | Casino Entertainment Complex                                                   | This SEPP does not apply to Auburn LGA.                                                                                                 |
| 44  | Koala Habitat Protection                                                       | This SEPP does not apply to Auburn LGA.                                                                                                 |
| 47  | Moore Park Showground                                                          | Not applicable                                                                                                                          |
| 50  | Canal Estate Development                                                       | The planning proposal is not inconsistent with this SEPP.                                                                               |
| 52  | Farm Dams and Other Works in Land and Water Management Plan Areas              | This SEPP does not apply to Auburn LGA.                                                                                                 |

| No. | Title                                                         | Consistency with Planning Proposal                        |
|-----|---------------------------------------------------------------|-----------------------------------------------------------|
| 53  | Transitional Provisions 2011                                  | This SEPP does not apply to Auburn LGA.                   |
| 55  | Remediation of Land                                           | The planning proposal is not inconsistent with this SEPP. |
| 59  | Central Western Sydney Regional Open Space and Residential    | This SEPP does not apply to Auburn LGA.                   |
| 60  | Exempt and Complying Development                              | The planning proposal is not inconsistent with this SEPP. |
| 62  | Sustainable Aquaculture                                       | The planning proposal is not inconsistent with this SEPP. |
| 64  | Advertising and Signage                                       | The planning proposal is not inconsistent with this SEPP. |
| 65  | Design Quality of Residential Flat Development                | The planning proposal is not inconsistent with this SEPP. |
| 70  | Affordable Housing (Revised Schemes)                          | The planning proposal is not inconsistent with this SEPP. |
| 71  | Coastal Protection                                            | This SEPP does not apply to Auburn LGA.                   |
|     | (Affordable Rental Housing) 2009                              | The planning proposal is not inconsistent with this SEPP. |
|     | (Building Sustainability Index: BASIX) 2004                   | The planning proposal is not inconsistent with this SEPP. |
|     | (Exempt and Complying Development Codes) 2008                 | The planning proposal is not inconsistent with this SEPP. |
|     | (Housing for Seniors or People with a Disability) 2004        | The planning proposal is not inconsistent with this SEPP. |
|     | (Infrastructure) 2007                                         | The planning proposal is not inconsistent with this SEPP. |
|     | (Kosciuszko National park Alpine Resorts) 2007                | This SEPP does not apply to Auburn LGA.                   |
|     | (Kurnell Peninsula) 1989                                      | This SEPP does not apply to Auburn LGA.                   |
|     | (Major Development) 2005                                      | The planning proposal is not inconsistent with this SEPP. |
|     | (Mining, petroleum Production and Extractive Industries) 2007 | The planning proposal is not inconsistent with this SEPP. |
|     | (Rural Lands) 2008                                            | This SEPP does not apply to Auburn LGA.                   |
|     | State and Regional Development 2011                           | The planning proposal is not inconsistent with this SEPP. |
|     | (Sydney Drinking Water Catchment) 2011                        | This SEPP does not apply to Auburn LGA.                   |
|     | (Sydney Region Growth Centres) 2006                           | This SEPP does not apply to Auburn LGA.                   |
|     | (Temporary Structures) 2007                                   | The planning proposal is not inconsistent with this SEPP. |
|     | (Urban Renewal) 2010                                          | This SEPP does not apply to Auburn LGA.                   |
|     | (Western Sydney Employment Area) 2009                         | This SEPP does not apply to Auburn LGA.                   |
|     | (Western Sydney Parklands) 2009                               | This SEPP does not apply to Auburn LGA.                   |

## Appendix 5: Consistency with deemed SEPPs

The checklist below shows how the planning proposal is consistent with the State Regional Environmental Plans (deemed SEPPs).

| No. | Title                                 | Consistency with Planning Proposal                        |
|-----|---------------------------------------|-----------------------------------------------------------|
| 5   | (Chatswood Town Centre)               | This deemed SEPP does not apply to Auburn LGA.            |
| 8   | (Central Coast Plateau Areas)         | This deemed SEPP does not apply to Auburn LGA.            |
| 9   | Extractive Industry (No.2 – 1995)     | This deemed SEPP does not apply to Auburn LGA.            |
| 11  | Penrith Lakes Scheme                  | This deemed SEPP does not apply to Auburn LGA.            |
| 16  | Walsh Bay                             | This deemed SEPP does not apply to Auburn LGA.            |
| 18  | Public Transport Corridors            | This deemed SEPP does not apply to Auburn LGA.            |
| 19  | Rouse Hill Development Area           | This deemed SEPP does not apply to Auburn LGA.            |
| 20  | Hawkesbury-Nepean River (No.2 – 1997) | This deemed SEPP does not apply to Auburn LGA.            |
| 24  | Homebush Bay Area                     | The planning proposal is not inconsistent with this SEPP. |
| 25  | Orchard Hills                         | This deemed SEPP does not apply to Auburn LGA.            |
| 26  | City West                             | This deemed SEPP does not apply to Auburn LGA.            |
| 28  | Parramatta                            | This deemed SEPP does not apply to Auburn LGA.            |
| 29  | Rhodes Peninsula                      | This deemed SEPP does not apply to Auburn LGA.            |
| 30  | St Marys                              | This deemed SEPP does not apply to Auburn LGA.            |
| 33  | Cooks Cove                            | This deemed SEPP does not apply to Auburn LGA.            |
|     | (Sydney Harbour Catchment) 2005       | The planning proposal is not inconsistent with this SEPP. |

## Appendix 6: Consistency with s117 directions

The tables below demonstrate how the planning proposal is consistent with the s117 directions.

### 1. Employment and Resources

| No. | Title                                                | Consistency with Planning Proposal                                                              |
|-----|------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| 1.1 | Business and Industrial Zones                        | The planning proposal does not alter or modify the boundary of any Business or Industrial zone. |
| 1.2 | Rural Zones                                          | This Ministerial Direction does not apply to Auburn LGA.                                        |
| 1.3 | Mining, Petroleum Production & Extractive Industries | This Ministerial Direction does not apply to Auburn LGA.                                        |
| 1.4 | Oyster Aquaculture                                   | This Ministerial Direction does not apply to Auburn LGA.                                        |
| 1.5 | Rural Lands                                          | This Ministerial Direction does not apply to Auburn LGA.                                        |

### 2. Environment and Heritage

| No. | Title                          | Consistency with Planning Proposal                                                      |
|-----|--------------------------------|-----------------------------------------------------------------------------------------|
| 2.1 | Environmental Protection Zones | The planning proposal does not have any effects on the environmentally sensitive areas. |
| 2.2 | Coastal Protection             | The planning proposal does not have any effects on the coastal protection zones.        |
| 2.3 | Heritage Conservation          | The planning proposal is not inconsistent with this Ministerial Direction.              |
| 2.4 | Recreation Vehicle Areas       | The planning proposal is not inconsistent with this Ministerial Direction.              |

### 3. Housing, Infrastructure and Urban Development

| No. | Title                                       | Consistency with Planning Proposal                                                                                                                                                                                                                                                       |
|-----|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.1 | Residential Zone                            | The planning proposal does not create, remove or alter a residential boundary. It is consistent with this direction as it would broaden the choice of building types and locations available in the housing market, and make more efficient use of existing infrastructure and services. |
| 3.2 | Caravan Parks and Manufactured Home Estates | The planning proposal is not inconsistent with this Ministerial Direction.                                                                                                                                                                                                               |
| 3.3 | Home Occupations                            | The planning proposal is not inconsistent with this Ministerial Direction.                                                                                                                                                                                                               |
| 3.4 | Integrating land use and Transport          | The planning proposal does not modify boundary or a provision relating to urban                                                                                                                                                                                                          |

|     |                                      |                                                                                                                                      |
|-----|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
|     |                                      | land, including land zoned for residential, business, industrial, village or tourist purposes.                                       |
| 3.5 | Development near Licensed Aerodromes | The planning proposal does not modify boundary or a provision relating to land in the vicinity of a licensed aerodrome.              |
| 3.6 | Shooting ranges                      | This planning proposal does not modify boundary or a provision relating to land adjacent to or adjoining an existing shooting range. |

#### 4. Hazard and Risk

| No. | Title                             | Consistency with Planning Proposal                                                                                                                                          |
|-----|-----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.1 | Acid Sulfate Soils                | The planning proposal is not inconsistent with this Ministerial Direction.                                                                                                  |
| 4.2 | Mine Subsidence and Unstable Land | This Ministerial Direction does not apply to Auburn LGA.                                                                                                                    |
| 4.3 | Flood Prone Land                  | The planning proposal is not inconsistent with this Ministerial Direction. The planning proposal does not modify any boundary or a provision that affects flood prone land. |
| 4.4 | Planning for Bushfire Protection  | This Ministerial Direction does not apply to Auburn LGA.                                                                                                                    |

#### 5. Regional Planning

| No. | Title                                                                    | Consistency with Planning Proposal                       |
|-----|--------------------------------------------------------------------------|----------------------------------------------------------|
| 5.1 | Implementation of Regional Strategies                                    | This Ministerial Direction does not apply to Auburn LGA. |
| 5.2 | Sydney Drinking Water Catchments                                         | This Ministerial Direction does not apply to Auburn LGA. |
| 5.3 | Farmland of State and Regional Significance on the NSW Far North Coast   | This Ministerial Direction does not apply to Auburn LGA. |
| 5.4 | Commercial and Retail Development along the Pacific Highway, North Coast | This Ministerial Direction does not apply to Auburn LGA. |
| 5.5 | Second Sydney Airport: Badgerys Creek                                    | This Ministerial Direction does not apply to Auburn LGA. |

## AUBURN CITY COUNCIL

March 21, 2012  
To the Ordinary Meeting of Council

Director's Report  
Planning and Environment  
Department

**033/12 Proposed Planning Proposal - Subdivision of Dual Occupancies**

PP-1/2012 AK : EG

**SUMMARY**

This report seeks a resolution from Council to prepare a planning proposal to amend ALEP 2010 in order to allow for the strata title and community title subdivision of dual occupancies and strata title and community title subdivision to be exempt from clause 4.1 'Minimum subdivision lot size'.

**RECOMMENDATION**

- (1) *That Council resolve to prepare and submit to the Department of Planning and Infrastructure (DOP) a planning proposal to amend Auburn Local Environmental Plan 2010 in order to:*
  - (a) *allow for the strata title and community title subdivision of dual occupancies; and*
  - (b) *allow for strata title and community title subdivision to be exempt from clause 4.1 'Minimum subdivision lot size'.*
- (2) *That Council resolves to amend Auburn Development Control Plan 2010 as necessary to ensure consistency with any amendments in the planning proposal in the ALEP 2010.*

**INTRODUCTION**

The subdivision of dual occupancies in the Auburn Local Government Area is prohibited by clause 6.6 in Auburn Local Environmental Plan 2010 (ALEP 2010). The clause operates to prohibit the subdivision of dual occupancies.

Preliminary planning analysis has identified that there is an issue with the prohibition and that the ALEP 2010 should be amended to allow for the strata subdivision of dual occupancies to occur.

**REPORT**

The Clause 6.6 in Auburn Local Environmental Plan 2010 (ALEP 2010) prohibits the subdivision of dual occupancies. Clause 6.6 is set reproduced below:

**6.6 Particular dual occupancy subdivision must not be approved**

- (1) Development consent must not be granted for a subdivision that would create separate titles for each of the two dwellings resulting from a dual occupancy development.
- (2) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.

March 21, 2012  
To the Ordinary Meeting of Council

Director's Report  
Planning and Environment  
Department

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Proposed Planning Proposal - Subdivision of Dual Occupancies (cont'd)

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Dual occupancy development is a common form of housing that is undertaken by many members of the community. It provides for a range of affordable dwelling types in a low density context and has been undertaken in the Auburn area for many decades. The prohibition of strata subdivision of dual occupancies provides a significant barrier for people to undertake it as a form of development, as the dwellings cannot be individually sold under separate titles.

The previous LEP 2000 permitted the strata subdivision of dual occupancies and the proposed amendment would simply seek to reinstate the previous planning controls.

The exact nature of the amendment(s) to ALEP 2010 is yet to be determined. It is likely that more than one clause in the LEP may need to be amended in order to achieve the intended outcome. Further investigation into the most appropriate way to amend the LEP will need to be undertaken.

The objective of the proposed amendment is to:

- (a) allow the strata title and community title subdivision of dual occupancies to be permitted with consent;
- (b) exempt strata title subdivision and community title subdivision from clause 4.1 'Minimum subdivision lot size'.
- (c) amend Auburn DCP 2010 where necessary to ensure consistency with ALEP 2010.

The term 'dual occupancy' includes an *attached dual occupancy* (sometimes known as a duplex), and a *detached dual occupancy* (two separate houses on the one lot); but does not include a granny flat or a row of townhouses.

## CONCLUSION

That as a result of a preliminary planning analysis the ALEP 2010 should be amended to allow for the strata subdivision of dual occupancies to occur and strata title and community title subdivision to be exempt from clause 4.1 'Minimum subdivision lot size'.

During the detailed assessment it may be necessary to amend further clauses in the LEP and DCP.

## For Action

Council MEETING

21/03/2012

TO: Alia Karaman

Item No. 033/12  
Subject: Proposed Planning Proposal - Subdivision of Dual Occupancies  
File No.  
Notes:

MINUTE BELOW (Resolution in Bold Italics)

***RESOLVED on the motion of Cllr Lam, seconded Cllr Attie:***

1. ***That Council resolve to prepare and submit to the Department of Planning and Infrastructure (DOPI) a planning proposal to amend Auburn Local Environmental Plan 2010 in order to:***
  - (a) ***allow for the strata title and community title subdivision of dual occupancies; and***
  - (b) ***allow for strata title and community title subdivision to be exempt from clause 4.1 'Minimum subdivision lot size'.***
2. ***That Council resolves to amend Auburn Development Control Plan 2010 as necessary to ensure consistency with any amendments in the planning proposal in the ALEP 2010.***

For: Councillors Zraika, Anmak, Attie, Au, Lam and Simms.

Against: Councillors Curtin and Di Paolo.

Note: Voting on the above motion was by way of a division.

Open Item in Minutes

RESOLVED  
BY COUNCIL

This action sheet has been automatically produced by the Administration Team using **InfoCouncil**, the agenda and minutes database.

The report for this item is located in the same Container in Trim as this action.

**Council's Procedure for Actions Arising from Council Decisions can be found in TRIM Document No. T010442/2011**



**Planning &  
Infrastructure**

  
qA211821  
12/11236  
Department Generated Correspondence (Y)

Mr John Burgess  
General Manager  
Auburn City Council  
PO Box 118  
AUBURN NSW1835

Your Ref: PP-1/2012

Attention: Ms Alia Karaman

Dear Mr Burgess

**Auburn Local Environmental Plan 2010 – Clauses 4.1(4) and 6.6(2).**

I refer to Council's letter received 26 April 2012 seeking the Department's interpretation of the abovementioned clauses and I apologise the delay in responding to your request.

I understand that your request specifically relates to the interpretation of clause 4.1(4) so that you can clarify its meaning and application in the Auburn Local Environmental Plan 2010, particularly in conjunction with clause 6.6(2).

In the first instance I would advise that the Department is not in a position to provide Auburn Council with legal advice, and the Department's response in relation to Council's request is not to be treated as such.

Your concerns relating to clause 6.6 are noted and the Department agrees with Council's view that clause 6.6(2) does not permit a development application to be made for the strata or community title subdivision of a Torrens title lot that would result in each dwelling in an existing (or approved) dual occupancy being situated on a separate strata or community title lot. Subclause (2) would therefore only allow a dual occupancy on a lot in an existing strata or community title scheme to be further subdivided so that each dwelling was situated on a separate lot in the scheme.

Despite the same wording used in clauses 4.1(4) and 6.6(2), there is no linkage between the two clauses. Therefore, the words should be read in the context of each clause and in view of their own provisions and as such are not linked.

Council should consider the intended principal purpose of clause 6.6 and whether an amendment the local environmental plan is required to achieve that purpose. If Council is unsure of what type of amendment it needs to make, Council should provide a plain English outline of its desired outcome (including details of development scenarios) and the Department will draft for Council appropriate provisions to achieve this outcome.

I hope this information assists you and should you have any questions in relation to this matter please do not hesitate to contact either myself on (02) 9860 1174 or Rachel Cumming on (02) 9860 1556.

Yours sincerely



27/7/2012

Peter Goth  
**Regional Director  
Sydney West**

Peter Goth  
Department of Planning and Infrastructure  
Level 5, 10 Valentine Avenue  
Parramatta NSW 2150

PP-1/2012  
Alia Karaman - 97351238  
TRIM No: T028867/2012  
20<sup>th</sup> April 2012

Dear Peter,

SUBJECT: **Written advice sought in regards to clauses 4.4(1) and 6.6(2) of Auburn Local Environmental Plan 2010**

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Auburn City Council would like to request written advice from the Department regarding the legal interpretation of clauses 4.1(4) and 6.6(2) in Auburn Local Environmental Plan 2010 (ALEP 2010). Clause 4.1(4) is an optional clause in the Standard Instrument, while clause 6.6 is an additional local clause. Both are identical.

In July 2011 Council sought independent legal advice in relation to the interpretation of clause 6.6 in ALEP 2010 'Particular dual occupancy subdivisions must not be approved'. Clause 6.6 is set out below:

**6.6 Particular dual occupancy subdivision must not be approved**

- (1) *Development consent must not be granted for a subdivision that would create separate titles for each of the two dwellings resulting from a dual occupancy development.*
- (2) *This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.*

At the time, Council was seeking to clarify whether clause 6.6(2) exempted strata title subdivision from the general prohibition on dual occupancy subdivision established in clause 6.6(1). This occurred in relation to an application Council received to strata subdivide an existing dual occupancy development.

The subsequent legal advice put forward an opinion that clause 6.6(2) does not allow for the establishment of a new strata plan for dual occupancies. The advice stated that it only allows for existing strata plans to undertake further subdivision (not to establish new ones). Because the strata plan has not yet been registered at the time that Council assesses a new strata subdivision application, it was deemed that clause 6.6(2) does not apply, due to the fact that it refers to the subdivision of individual lots in a strata plan or community title scheme.

Importantly, the legal advice also put forward a view that the interpretation given for clause 6.6(2) should also be applied to clause 4.1(4) Minimum subdivision lot size, given that both clauses are identical. Council notes that clause 4.1(4) is part of the Standard Instrument, and plays a significant role in allowing for strata subdivision to occur outside the standards imposed by the Lot Size Map under clause 4.1(3).

Due to the difficulties that this interpretation may pose on the operation of clause 4.1, Council requires that the Department provide written advice in relation to the interpretation of clause 4.1(4) so that its meaning and application in ALEP 2010 can be resolved.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'Alia', with a horizontal line extending to the right.

**ALIA KARAMAN**  
**MANAGER, STRATEGY**