



Lane Cove Council

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24 August 2012
Our ref: 44021/12

Mr Sam Haddad,
Director-General,
NSW Department of Planning
& Infrastructure,
23-33 Bridge St,
SYDNEY NSW 2000

Attention: Ms Susan Sky,
Sydney Region East

Dear Mr Haddad,

**RE: SUBDIVISION OF ROADS AS EXEMPT DEVELOPMENT –
LANE COVE: PLANNING PROPOSAL 5/2011 FINALISATION**

Council requests that the Department proceed to finalise Planning Proposal 5/2011 relating to the subdivision of roads as exempt development. The proposal is unchanged since the Gateway approved it for exhibition. A copy of the Planning Proposal is attached (AT A).

Gateway Determination: I refer to the Department's letter of 28 February 2012, your reference: PP_2011_LANEC_005_00 (11/11751), issuing a Gateway Determination classifying the proposal as low-impact, and permitting exhibition for a period of 14 days, subject to:-

- Providing further clarification regarding the impact of the proposal on s.117 Direction 6.2 Reserving Land for Public Purposes, clause 4: This information was included with the exhibition material within the planning proposal in a statement in Appendix B that reserve status would not be altered by subdivision.
- Confirming that Exempt Development to permit subdivision of a closed road will not apply to land classified as community land: This information was included with the exhibition material within the planning proposal in a Note at the end of Appendix B.
- Consulting with NSW Roads & Maritime for a 21 day period: This was done by Council letter of 18 May 2012 (AT B), with no submission being made by the RMS.

Exhibition: The exhibition was held from 9 May to 19 June 2012, the six-week period being in accordance with Council's Consultation Policy. No public submissions were received on the proposal.

Council Resolution: Council's Report to the meeting of 16 July 2012, following exhibition, is attached (AT C). At that meeting, Council resolved:-

"that Council approve LEP Planning Proposal 5/2011 – Subdivision of Roads as exhibited for submission to the Department requesting finalisation by amendment of LEP 2009".

Please feel welcome to contact me Stephanie Bashford on 9911 3612 or at sbashford@lanecove.nsw.gov.au if you wish to discuss the matter.

Yours sincerely,



per 

Michael Mason,
Executive Manager – Environmental Services

Subject: LEP Amendment - Subdivision of Roads
Record No: SU4467 - 33999/12
Division: Environmental Services Division
Author(s): Stephanie Bashford

Executive Summary

This purpose of this planning proposal is to permit subdivisions for road closures to become exempt development under the Local Environmental Plan (LEP 2009). A copy of the planning proposal is attached at **AT-1**.

The proposal would remove the requirement for Council to prepare a development application when subdividing a portion of road. The aim is to avoid duplication of Council resources, as road closures require both (a) public consultation under the Roads Act 1993, and (b) planning assessment under the Environmental Planning & Assessment Act prior to a subdivision certificate being issued. The proposal was exhibited in accordance with Council's Policy with no submissions being made.

Council is requested to approve the LEP planning proposal as exhibited for submission to the Department for finalisation.

Background

The planning proposal was submitted to the Department of Planning & Infrastructure on 24 August 2011. On 25 October the Department requested additional information on its purpose and process, and a copy of Council's response of 9 November is attached at **AT-2**.

The Gateway approval to exhibit the draft proposal was received on 5 March 2012. A copy of the Gateway letter is attached at **AT-3**. It included a requirement to consult with the NSW Roads & Maritime Services providing twenty-one days consultation period. The RMS did not make any comment on the proposal.

The planning proposal was then exhibited from 9 May to 19 June 2012. No public submissions were received on the proposal.

Discussion

Gateway Requirements

The requirements of the Department's LEP Gateway were as follows:-

- (i) Prior to public exhibition, Council was "to confirm that Exempt Development to permit subdivision of a 'closed road' will not apply to land classified as 'community land' ". This information was included in the exhibition material as requested with the amendment of the planning proposal to include the statement:-
 - "2. An explanation of the provisions that are to be included in the proposed local environmental plan. [Act s. 55(2)(b)]
 - * Road closures (other than road closures on community land)".
- (ii) Prior to exhibition, clarification was to be made regarding the impact of the proposal on S.117 Direction 6.2 Reserving Land for Public Purposes, as a planning proposal must not create, alter, or reduce existing reservation of land for public purposes without the Director-General's approval:-

The planning proposal's Appendix "B" as exhibited referred to this issue. This Direction is not affected by the proposal, because "reserve" status would not be altered by subdivision; in fact, many reserves comprise several lots. The planning proposal does not remove the requirement for Council to consult with the Department before undertaking a road closure.

- (iii) Consultation was required with the NSW Roads & Maritime Services: This was undertaken, as above.
- (iv) The Department classified the proposal as "low impact", requiring exhibition for only fourteen days. Exhibition was, however, held for the standard six weeks under Council's Consultation Policy.

Consideration of Road Closures

The proposal will achieve the objective of reducing duplication of Council resources in terms of staff time, advertising costs etc. and of community time, in not having to prepare and respond to duplicated public exhibitions for both a development application and a road closure.

The NSW Department of Lands requires a subdivision certificate to be lodged in relation to a road closure. The DA Section would be able to produce such a subdivision certificate without the need for a DA assessment under Part 4 of the Environmental Planning & Assessment Act.

Council's DA Section would, however, still undertake an assessment under Part 5 of the Act for the subdivision certificate application.

Subdivision, to create an identifiable parcel of land, is a pre-requisite for a road closure. The Roads Act 1993 Part 4 has requirements for 28-day public notification of road closures, which would continue to ensure public scrutiny of a road closure proposal.

The process is that the Department of Planning & Infrastructure would finalise with Parliamentary Counsel the amendment wording to the LEP and, if appropriate, State Environmental Planning Policy (Exempt & Complying Development Codes) 2008.

Conclusion

This purpose of this planning proposal is to permit subdivisions for road closures to become exempt development under the Local Environmental Plan (LEP 2009). The purpose is to avoid duplication of Council resources, so that two separate advertisement period are not required for both a development application as well as a roads closure.

A roads subdivision proposal would continue to be publicly notified under the Roads Act, and a subdivision certificate would continue to be assessed under the Environmental Planning & Assessment Act.

Council is requested to approve the LEP planning proposal for submission to the Department for finalisation.

RECOMMENDATION

That Council approve LEP Planning Proposal 5/2011 – Subdivision of Roads as exhibited for submission to the Department requesting finalisation by amendment of LEP 2009.

Ordinary Council Meeting 16 July 2012
LEP AMENDMENT - SUBDIVISION OF ROADS

Michael Mason
Executive Manager
Environmental Services Division

ATTACHMENTS:

AT-1 <u>View</u>	Planning Proposal 5/2011 - Subdivision of Roads	4 Pages
AT-2 <u>View</u>	Council's Additional Information of 9 November 2011	3 Pages
AT-3 <u>View</u>	Gateway Approval Letter	3 Pages

