

Ordinary Council Meeting 24 November 2022
LEP AMENDMENT NO 40 – SUBDIVISION OF EXISTING APPROVED DUAL OCCUPANCY DWELLINGS

Subject: LEP Amendment No 40 – Subdivision of Existing Approved Dual Occupancy Dwellings
Record No: SU8814 - 65853/22
Division: Environmental Services Division
Author(s): Terry Tredrea; Christopher Pelcz

Executive Summary

This report outlines the Planning Proposal (**AT-1**) to permit subdivision of certain approved dual occupancy dwellings under company title in the R2 zone on or before Thursday 16 June 2022.

While it has always been permissible to construct dual occupancies in the R2 zone in Lane Cove LGA on lots with a minimum 750 sqm (attached) and 900 sqm (detached), it is prohibited to subdivide them.

This prohibition is Clause 4.1A of Council's *Local Environmental Plan*. The aim has been to maintain a "*desired low-density character*", especially in the R2 residential zones by discouraging dual occupancies in smaller lots.

At its Ordinary meeting 23 June 2022 (**AT-3** and **AT-4**) Council resolved to prepare a planning proposal in support of the view expressed by a resident (**AT-2**) that:

"the owner or potential owner of company-title residences [experience great difficulty in obtaining] finance or equity release from a banking institution or other lender, due to recent universal changes in lending policy."

In response, Planning Proposal No 40 was prepared to permit those four owners of dual occupancies currently registered under company title in R2 zones to *strata* subdivide their properties. That is, to amend clause 4.1A to permit strata subdivision of:

- certain approved dual occupancy dwellings
- in the R2 zone
- registered under company title
- on or before Thursday 16th June 2022.

In November 2022, Council's Local Planning Panel was requested to review and consider the proposal in relation to the Strategic Merit Test, the Site-Specific Merit Test and consistency with Section 3.33 of the Environmental Planning and Assessment Act and advise Council accordingly.

The Panel notes (**AT-6**) that "*the Planning Proposal as proposed in its original form fails to meet the strategic merit test*". Furthermore, such a selective amendment "*disadvantages those dual occupancies which have not gone down that path*" of using company title to create defacto subdivision and remained unsubdivided.

As a result, the Panel has suggested amending the wording to the original LEP amendment in order to "*introduce equity to the owners of all existing dual occupancies approved prior to 16 June 2022*". It was recommended that Council forward the amended Planning Proposal to the Department of Planning and Environment to request the issuing of a Gateway determination on behalf of the Council.

Background

Ordinary Council Meeting 24 November 2022
LEP AMENDMENT NO 40 – SUBDIVISION OF EXISTING APPROVED DUAL OCCUPANCY DWELLINGS

Current Planning Controls

- In the R2 Low Density Residential zone, Dual occupancies (both attached and detached) are permissible with consent. “Dual occupancy” is defined as 2 dwellings on one lot of land.
- However, Clause 4.1 (4A) of the Lane Cove LEP states that:

Despite subclause (3), the size of a lot for the purposes of a dual occupancy must not be less than—

- (a) for dual occupancy (attached)—750 square metres, and*
- (b) for dual occupancy (detached)—900 square metres.*

- Clause 4.1A of the LEP regarding subdivision of dual occupancies, states:

Despite any other provision of this Plan, development consent must not be granted to the subdivision of land on which a dual occupancy is erected or proposed to be erected if the subdivision would result in the dwellings that comprise the dual occupancy being located on separate lots.

The result is effectively a total prohibition of subdivision of dual occupancies in R2, even where they are permitted to be constructed.

Discussion

The Planning Proposal process is governed by Division 3.4 of the NSW Environmental Planning and Assessment Act and the *Local Environmental Plan Making Guideline* (prepared by NSW Department of Planning & Environment). The main steps involved can be summarised as:

- Step 1 – Applicant lodges Planning Proposal via NSW Planning Portal.
- Step 2 – Initial assessment report prepared by staff and presented to Local Planning Panel for advice (meeting is webcast and speakers can attend meeting).
- Step 3 – Panel’s advice reported to Council who determines whether or not to forward the Proposal for a Gateway Determination (we are at this stage).
- Step 4 – NSW Department of Planning & Environment assesses Proposal and decides whether or not to issue a conditional Gateway Determination (delegation will normally be issued to Council to finalise).
- Step 5 – Subject to Gateway conditions, full community consultation will be undertaken.
- Step 6 – A post-consultation report is presented to Council with a response to submissions. Council determines whether to finalise the Proposal and delegate authority to General Manager.
- Step 7 – Amendments are finalised and published.

Local Planning Panel’s advice

The Local Planning Panel have reviewed the proposal and were not supportive on the grounds that it did not meet the strategic merit test. They have suggested an alternative amendment of Clause 4.1A of the *Lane Cove LEP 2009* by the addition of a subclause states that despite the prohibition on subdivision of land containing a dual occupancy:

- (2) Development consent may be granted to the subdivision of a lot on which a dual*

Ordinary Council Meeting 24 November 2022
LEP AMENDMENT NO 40 – SUBDIVISION OF EXISTING APPROVED DUAL OCCUPANCY DWELLINGS

occupancy is erected or proposed to be erected on condition that this applies to:-

- a) the land is in Zone R2 Low Density Residential; and*
- b) the dual occupancy had been erected, or the building work for the erection of the dual occupancy had commenced, on or before 16 June 2022; and*
- c) the erection was, or is being carried out, under a development consent or complying development certificate granted on or before 16 June 2022; and*
- d) the plans approved by the development consent or complying development certificate show parts of the building as being intended for separate occupation; and*
- e) the subdivision would create lots that substantially correspond with the parts shown on those plans as being for separate occupation; and*
- f) the size of each lot resulting from the subdivision is not to be less than 375 square metres.*

The Amended Planning Proposal will:

1. Allow owners of dual occupancies in the R2 zone of the Lane Cove local government area that were approved on or before 16th June 2022 to subdivide their properties.
2. By reference to the date of 16 June 2022, prevent “*an influx of dual occupancy development applications generally, since it is limited to existing dual occupancy developments or to those falling under the proposed sub clause 4.1A(2)*”.
3. Only retrospectively allow subdivision of buildings that were originally intended for separate occupation.

The attached Planning Proposal (**AT-1**) explains this under Section 2 *Explanation of provisions*.

The Local Planning Panel also recommended that Council “*gives consideration to revising its Local Strategic Planning Statement and its Local Housing Strategy to bring those policies into harmony with Planning Proposal No. 40*”.

This Panel recommendation is not supported because under the NSW Environmental Planning and Assessment Act, Section 3.9 (3A) any Local Strategic Planning Statement must be reviewed, supported and approved (in writing) by the Greater Cities Commission before Council adoption. Further, any amendment to the Local Housing Strategy must also be reviewed, supported and approved by the NSW Department of Planning and Environment. This exercise would be time-consuming and ultimately unnecessary if the LEP amendment is supported by the Department of Planning and Environment.

Conclusion

It is recommended that Council support the amended Planning Proposal as suggested by the Local Planning Panel.

RECOMMENDATION

Ordinary Council Meeting 24 November 2022
LEP AMENDMENT NO 40 – SUBDIVISION OF EXISTING APPROVED DUAL OCCUPANCY DWELLINGS

That Council:

1. Support the amended version of the LEP clause 4.1A amendment;
2. Forward the amended Planning Proposal to the Department of Planning and Environment to request the issuing of a Gateway determination on behalf of the Council; and
3. Grant delegated authority to the General Manager to correct any minor anomalies of a non-policy and administrative nature that may arise during the amendment process.

Mark Brisby
Executive Manager
Environmental Services Division

ATTACHMENTS:

AT-1	View	Planning Proposal 40	12 Pages	Available Electronically
AT-2	View	Letter in support by resident	4 Pages	Available Electronically
AT-3	View	Notice of Motion - 23 June Meeting	3 Pages	Available Electronically
AT-4	View	Minute PP40 - 23 June Meeting	1 Page	Available Electronically
AT-5	View	Three model clauses	3 Pages	Available Electronically
AT-6	View	Advice - Lane Cove Local Planning Panel 8 November 2022	3 Pages	Available Electronically