

For the att'n of the Honourable Anthony Roberts MP, Member for Lane Cove

THE UNTENABLE SITUATION IN WHICH A SMALL NUMBER OF LANE COVE DUPLEX OWNERS FIND THEMSELVES

BACKGROUND

A very small number of residents in Lane Cove North now find themselves substantially disadvantaged by an unfortunate and unintended situation, that Lane Cove Council could alleviate, but has so far shown no inclination to address.

The conflict that has emerged in the last two years is between certain details of the LEP sustained by Lane Cove Council regarding multi-occupancy dwelling titles in R2 development areas, and recent changes in lending policy towards Company Title and other forms of shared title by banks and other financial institutions, particularly following the 2019 Banking Royal Commission. In short, *most lenders will no longer accept Company Title or similar as security for finance*, following the Commission. *(see letter from Chatham House Financial attached confirming this situation)*

Since, following the issuing of the relevant LEP, Council effectively no longer grants separate title to duplex properties in R2 areas, this previously left company title as the only solution, now presenting an impossible conundrum for existing owners.

The result of this is that it is now almost impossible for purchasers or owners of, for example, recently built modern duplex properties of the sort favoured by both younger couples and families, and particularly downsizers, to raise finance against these properties. The consequences (evidenced by correspondence attached) are as follows:

- Both initial sale and resale are made extremely difficult, severely disadvantaging owners who, even if they did not need finance to purchase (eg downsizers), will at a future stage need to resell.
- Owners are unable to release equity to finance significant maintenance or enhancements to their properties, which will likely also disadvantage the immediate neighbourhood.
- Business owners are unable to secure business finance against their property as security, as many small business owners do.
- The recent government policy towards retirees encourages increased usage of equity release or reverse mortgage approaches to supplement pension income, and to finance possible care requirements. The same issues with title will apply in this instance, potentially severely disadvantaging elderly residents. *(see letter from Crystal Wealth Partners attached confirming this situation)*

Approaches to Council, from the Mayor downwards, to assist with this substantial issue, have produced a refusal to offer any solution to the few residents affected; we are merely provided further reference to the LEP covering multi-occupancy dwellings in R2 areas of Council's jurisdiction. This specifies that lots must be of minimum 550sqm size to be allowed single/strata title, as required by lenders (ie duplex properties in R2 areas would need to be on plots of 1100 sqm+). This appears to be a policy unique to Lane Cove Council in NSW, since other Councils have plot sizes of 400sqm or substantially lower able to receive strata title in R2 areas. Indeed there are, ironically, many duplex properties with strata title in R2 areas of Lane Cove on plots of even 300sqm or less, but whose titles were granted prior to the current LEP.

In the case of the properties owned by the parties appealing here, they are substantial, attractive modern homes of 4 bedrooms, 3 bathrooms, with good-sized front and rear gardens, on plots generally in the 450sqm range. They clearly enhance the immediate streetscapes (see attached layout views of 25 and 25A Parklands Avenue). These properties were built in the period immediately before the Banking Royal Commission.

LANE COVE COUNCIL'S POSITION

We are not at this time challenging the intent behind LCC's LEP, even if we find it to be ambivalent in its approach. The intent has been explained to us as being to maintain what is perceived to be a suitable streetscape in R2 areas, and restrict developers or others from making unsuitable splits of existing sites or buildings.

Assuming that this principle is accepted, then it seems totally unreasonable for Council to give DA's for development of what are clearly intended to be separate duplex dwellings to any rational overview of the plans, with only a mere reference in the DA itself to the clause in the LEP regarding single title. Purchasers will not generally have been involved in the development process anyway. There is nothing to compel vendors/developers or Estate Agents not to market and sell the properties separately, and conveyancing solicitors will have advised purchasers in the recent past that Company Title or variants on that, while antiquated and being phased out almost everywhere in NSW, have been a workable solution.

Unfortunately that is no longer the case, and we believe that it is unreasonable of Council to take the attitude that none of this is their business. The welfare of a small number of residents who purchased duplex properties in R2 areas in good faith since the application of the LEP, but before the implications of the changes in Lending Policy were known, has been seriously jeopardised, and a potential solution is easily achievable with Council's cooperation.

Whilst Council might also suggest that there is no Community Support for any modification to the LEP, or compromise thereof, this is patently not the case. The attached correspondence from the Convenor of the Lane Cove North Residents' Association to Council confirms that that representative group had no knowledge of this restriction of title

on single plots of less than 550sqm, and requests that the implications of this for existing residents caught by the changes be alleviated by some form of concession. Apart from an initial brief acknowledgement, a full response to this request and the Convenor's follow-up letter has never been received.

Discussions with certain individual Councillors have also indicated that there was little or no knowledge of the implications of this for the residents affected, which we believe remains a very small group.

The group impacted and appealing here is only four households, all in Lane Cove North; however, it is possible that others in R2 areas are similarly affected.

POSSIBLE SOLUTIONS

Despite multiple representations, Council has not provided any suggestions for how this small group of residents might obtain relief for what is clearly an extremely difficult situation, with significant hardship implications. The only feedback has been that the LEP covering 'multi-occupancy developments' (which incorporates duplex properties) is a legal document that Council cannot compromise, and that an amended LEP would be necessary for Council to grant strata title to the subject properties.

- 1) An Amended LEP:** this would clearly be a major project to be embarked upon by our small group, without Council support. An amended LEP would need to be supported by a majority of councillors, and also go out for community consultation. If necessary, we will pursue this option, and have already retained a barrister to advise on the course to follow. However, this would surely represent overkill, when the number of households involved could be as small as four. Council also almost certainly wishes to maintain restrictions on future multi-occupancy developments in R2 areas, and the change in lender policy should now be known and advised to potential new developers and purchasers of new duplex properties..

We are therefore suggesting less dramatic alternatives that, *if Council would agree to support*, could hopefully provide relief to the small number of existing owners caught by this change.

- 2) The Randwick Solution:** a precedent exists for a compromise from Council in the recent actions of Randwick Council. When approached (and challenged) by a number of duplex owning residents who had similarly suffered from the changing bank policy on lending against company title, Randwick Council agreed to create an amendment to their LEP. This allowed strata or Torrens title only to those duplexes where DA's were granted during a single window ending around the time of the Royal Commission on Banking. Following that window, we understand that their LEP policy, although less stringent than Lane Cove's, applies; it is presumably assumed that a developer or buyer would now have no excuse for being unaware of changes to lending policy. As we understand it, the number of properties involved was substantially greater than in Lane Cove R2, so the implications here would be far

less, and precedent would be avoided by the closing of the time window. This quote from the Mayor of Randwick in the press at the time reflects an attitude we wish we could see demonstrated in Lane Cove:

"I'm pleased that Council has been able to help out residents affected by Banks' tightening lending practices," says Randwick Mayor Kathy Neilsen. "We said we'd listen to residents and have now reviewed our planning controls to deliver planning reform for existing company title property owners."

- 3) **The Willoughby Solution:** although we have less background information than is the case with Randwick, we understand that Willoughby Council, recognising the same emerging issue with duplex properties on a single title, have introduced a 5 year waiting period following establishment of company title, at the end of which duplex properties meeting certain criteria can apply for and receive strata title. Whilst not as clear a solution as the Randwick situation, if this was felt to be a suitable alternative by Lane Cove Council we would be agreeable to such an approach, since at least it should eventually alleviate our problem.
- 4) **Spot Rezone:** Planning Consultants we have approached have mentioned an alternative possibility, since the number of properties affected is small. That is a possible spot rezoning of those sites to allow strata title. Since the properties are on plots only slightly less than the current R2 zoned minimum size for dual titles, this might perhaps minimise any disruption to LEP policy, particularly if combined with a tightly defined time window.

There may well be other possible solutions short of a new LEP, but we are appealing for help with obtaining support from Lane Cove Council to assist a small number of residents who are severely disadvantaged through no fault of their own.

Documents referred to in this document, attached separately:

1. Letters from Chatham House Financial and Crystal Wealth Partners confirming situation with Lenders.
2. Correspondence from Convenor of Lane Cove North Residents' Association to Lane Cove Council requesting assistance for the small number of duplex owners caught in this trap, and supporting their position.
3. Floor Plan of 25 and 25A Parklands Avenue, Lane Cove North as example