



Lane Cove Council

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Date: 30 November 2022

Doc Ref: 66328/22

Mr Michael Cassel
Secretary,
NSW Department of Planning and Environment
320 Pitt Street,
SYDNEY NSW 2000

Attention: Ms Charlene Nelson

Dear Mr Cassel,

Re: Request for Gateway Determination to exhibit Planning Proposal 41 for subdivision of certain dual occupancies

At the Lane Cove Council meeting of 24 November 2022, (AT-1) Council resolved (AT-2) to submit a planning proposal (AT-3) to the Department seeking to permit subdivision of currently approved dual-occupancies under certain circumstances. This letter requests Gateway approval to proceed to exhibition.

The planning proposal seeks:-

1. to permit owners of dual occupancies on lots of a minimum area of 750sqm registered in the R2 zone of Lane Cove local government area on or before Thursday 16th June 2022 to subdivide their properties. It is estimated that this applies to approximately 30 dual occupancies currently not subdivided, and, includes four subdivided and registered under company title.
2. to prevent "*an influx of dual occupancy development applications generally*" by limiting permission to existing dual occupancy developments or to those falling under the proposed sub clause 4.1A(2)) approved prior to the date of 16 June 2022. This date was when Council published its original intention to amend the LEP to permit strata subdivision of R2 dual occupancies currently approved and registered under company title.
3. to retrospectively only allow subdivision of buildings that were originally intended for separate occupation.

The purpose is to make it ultimately possible for owners or potential owners of dual-occupancies approved under a development consent or complying development certificate granted on or before 16 June 2022 to subdivide R2 land having a minimum area of 750sqm. All other planning controls applying to the site will remain unchanged.

Note that the planning proposal was reported to Council as PP40, but because the Lane Cove design excellence planning proposal is to be PP40, this PP becomes PP41.

Background

- Clause 4.1A of Lane Cove Local Environmental Plan 2009 prohibits development consent for the subdivision of land containing or approved to contain a dual occupancy,

if the subdivision would result in the dwellings that comprise the dual occupancy being located on separate lots.

- The aim of this prohibition has been to maintain a “*desired low-density character*”, especially in the R2 residential zones by discouraging dual occupancies in smaller lots.
- Minimum Lot size in the R2 zone is 550 square metres.
- Clause 4.1 (4A) allows:

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.

As a result of the above two controls, the owner of a dual occupancy in an R2 zone in Lane Cove is only able to subdivide to create separate lots of 550 square metres. That is, to subdivide a lot of a minimum area of 1100 square metres. Therefore, a dual occupancy may be built upon 750 sqm or 900 sqm lots, but not subdivided.

The original Planning Proposal was limited to the four dual occupancies registered under company title in Lane Cove LGA. According to a submission by a resident (**AT-4**), as a result of the 2019 Banking Royal Commission, it was claimed that most lenders [banks] will no longer accept Company Title or similar as security for finance. Accordingly, the resident sees this as “*unfair*” on dual occupancy owners under company title.

Discussion

At its 23 June 2022 meeting, Council originally supported a planning proposal limited to permitting only certain dual occupancies registered *under company title* (**AT-5 & AT-6**) in R2 zones. This proposal copied wording similar to a comparable clause in The Hills LEP (**AT-7**). On November 8, Council’s Local Planning Panel considered the strategic and site-specific merit of the original proposal (**AT-8**). The Panel noted 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 have remained unsubdivided.

As a result, the Panel 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*”.

At its 24 November meeting, Council resolved to accept this advice and amended the original Planning Proposal accordingly.

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 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.*

Conclusion

This Planning Proposal, prepared by Lane Cove Council, seeks to permit subdivision of certain dual occupancy dwellings that were approved by development consent or complying development certificate in the R2 zone on or before Thursday 16th June 2022. It also is alleged to allow owners of dual occupancies currently registered under company title to obtain finance or equity release from a banking institution or other lender. All other planning controls applying to the site will remain unchanged.

Please feel welcome to contact Terry Tredrea, Strategic Planner, on 9911 3580 or at ttredrea@lanecove.nsw.gov.au to discuss any matters relating to this submission.

Yours sincerely



Christopher Pelcz
Coordinator, Strategic Planning

Attachments

- AT-1** Report 24 November 2022 meeting
- AT-2** Minutes 24 November 2022 meeting
- AT-3** Planning Proposal No. 41 (November 2022)
- AT-4** Letter from resident
- AT-5** Report 23 June 2022 meeting
- AT-6** Minute 23 June 2022 meeting
- AT-7** Three model councils
- AT-8** Advice – Local Planning Panel