

Agenda  
Lane Cove Local Planning Panel Meeting  
8 November 2022,



## Notice of Meeting

Dear Panel Members,

Notice is given of the Lane Cove Local Planning Panel Meeting, to be held in the Council Chambers on Tuesday 8 November 2022 commencing at 4pm. The business to be transacted at the meeting is included in this business paper.

Yours faithfully



Craig Wrightson  
**General Manager**

## Lane Cove Local Planning Panel Meeting Procedures

The Lane Cove Local Planning Panel (LCLPP) meeting is chaired by The Hon David Lloyd QC. The meetings and other procedures of the Panel will be undertaken in accordance with the Lane Cove Lane Cove Local Planning Panel Charter and any guidelines issued by the General Manager.

The order of business is listed in the Agenda on the next page. That order will be followed unless the Panel resolves to modify the order at the meeting. This may occur for example where the members of the public in attendance are interested in specific items on the agenda.

Members of the public may address the Panel for a maximum of 3 minutes during the public forum which is held at the beginning of the meeting. All persons wishing to address the Panel must register prior to the meeting by contacting Council's Office Manager – Environmental Services on 9911 3611. Speakers must address the Chair and speakers and Panel Members will not enter into general debate or ask questions during this forum. Where there are a large number of objectors with a common interest, the Panel may, in its absolute discretion, hear a representative of those persons.

Following the conclusion of the public forum the Panel will convene in closed session to conduct deliberations and make decisions. The Panel will announce each decision separately after deliberations on that item have concluded. Furthermore the Panel may close part of a meeting to the public in order to protect commercial information of a confidential nature.

Minutes of LCLPP meetings are published on Council's website [www.lanecove.nsw.gov.au](http://www.lanecove.nsw.gov.au) by 5pm on the Friday following the meeting. If you have any enquiries or wish to obtain information in relation to LCLPP, please contact Council's Office Manager – Environmental Services on 9911 3611.

Please note meetings held in the Council Chambers are Webcast. Webcasting allows the community to view proceedings from a computer without the need to attend the meeting. The webcast will include vision and audio of members of the public that speak during the Public Forum. Please ensure while speaking to the Panel that you are respectful to other people and use appropriate language. Lane Cove Council accepts no liability for any defamatory or offensive remarks made during the course of these meetings.

The audio from these meetings is also recorded for the purposes of verifying the accuracy of the minutes and the recordings are not disclosed to any third party under the Government Information (Public Access) Act 2009, except as allowed under section 18(1) or section 19(1) of the PPIP Act, or where Council is compelled to do so by court order, warrant or subpoena or by any other legislation.

**DECLARATIONS OF INTEREST**

**APOLOGIES**

**NOTICE OF WEBCASTING OF MEETING**

**LANE COVE LOCAL PLANNING PANEL REPORTS**

**PLANNING PROPOSAL NO. 40 - COMPANY-TITLED DUAL OCCUPANCIES ..... 4**

**Lane Cove Local Planning Panel Meeting 08 November 2022**  
**PLANNING PROPOSAL NO. 40 - COMPANY-TITLED DUAL OCCUPANCIES**

**Subject:** Planning Proposal No. 40 - Company-titled Dual Occupancies  
**Record No:** SU8814 - 62145/22  
**Division:** Environmental Services Division  
**Author(s):** Terry Tredrea; Christopher Pelcz

Property:	LGA-wide
PP No:	Planning Proposal No. 40
Date Lodged:	Supported by Council 23 June 2022
Cost of Work:	n/a
Owner:	n/a
Applicant:	Lane Cove Council
Description of Proposal	To permit strata subdivision of certain approved dual occupancy dwellings that were registered under company title in the R2 zone on or before Thursday 16th June 2022.
Planning Proposal documents	Links to all the documents are provided in Attachments at the end of this report ( <b>AT-1</b> to <b>AT-5</b> ).
Relevant Strategic Planning documents	<i>A Metropolis of Three Cities – dated March 2018</i> <i>North District Plan – dated March 2018</i> <i>Section 9.1 Ministerial Directions</i> <i>Local Strategic Planning Statement 2020 – dated 30 March 2020</i> <i>Local Housing Strategy</i> <i>Local Environmental Plan 2009</i>
Recommendation	That Planning Proposal No. 40 be supported.

**PURPOSE OF REPORT**

The Lane Cove Local Planning Panel is requested to consider and provide its advice on Planning Proposal No. 40 (**AT-1**).

**REASON FOR REFERRAL**

The Planning Proposal (**AT-1**) is referred to Council's Local Planning Panel under Section 9.1 of the *Environmental Planning and Assessment Act 1979*. This Section requires referral of any Planning Proposal to the Local Planning Panel for advice with an assessment report which sets out recommendations in relation to the Proposal and whether it should be forwarded to the Minister under Section 3.34.

The Planning Proposal fails to meet any of the following matters for exemption from referral:-

- a) the correction of an obvious error in a local environmental plan;
- b) matters that are of a consequential, transitional, machinery or other minor nature; or
- c) matters that Council's General Manager considers will not have any significant adverse impact on the environment or adjoining land.

Therefore, the Planning Proposal must be referred to the Local Planning Panel for advice prior to Council making any determination on the matter.

## **EXECUTIVE SUMMARY**

The purpose of this report is to seek the Panel's advice on the planning merits of the proposal to permit strata subdivision of certain approved dual occupancy dwellings that were registered under company title in the R2 zone on or before Thursday 16th 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).

The sub division of such though is prohibited refer to 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.

Historically, a small number of landowners have created dual occupancies while entering into company title ownership. Their purpose has been to provide some degree of discrete ownership of the two dwellings on the one lot. In the last approximately 25 years, 4 out of 59 approved dual occupancies were covered by company title under the *Corporations Act 2001*.

However, according to a letter written to Council by a local resident (see **AT-2**), following the *2019 Banking Royal Commission*, it is alleged that most lenders [banks] will now 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.

Council resolved at its Ordinary meeting 23 June 2022 (**AT-3** and **AT-4**) to prepare a planning proposal in support of the view 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."*

Council has resolved to prepare Planning Proposal No 40 to allow those owners of dual occupancies under company title in R2 zones to *strata* subdivide their properties.

Planning Proposal No 40 (**AT-1**) is also accompanied by:

- **AT-2** – Letter from John Edwards
- **AT-3** – Council Report 23 June 2022
- **AT-4** – Council Resolution 23 June 2022
- **AT-5** – Three LEP model councils.

The Panel is 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.

## **BACKGROUND**

During the 1990s, *State Environmental Planning Policy 25* (SEPP25) expressed the State government's objective at the time of encouraging dual occupancies as a form of infill development, to counter 'urban sprawl'.

As part of the general resistance to dual occupancies among some Sydney councils, on March 10 1995 *Lane Cove LEP 1987* was amended (Clause 4(2)) to exclude SEPP 25 from applying to the LEP.

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Further to this, on May 24 1996 *Lane Cove LEP 1987* was amended (Clause 9C(2)) to prohibit dual occupancy development “under certain circumstances” (to prevent lots any smaller than 750 sqm (attached) or 900 sqm (detached)).

And finally, on December 15 2017 *Lane Cove LEP 2009* was amended (Clause 4.1A) to prevent subdivision that would result in the dwellings that comprise the dual occupancy being located on separate lots.

#### *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 Local Environmental Plan (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.*

This represents a total prohibition of subdivision of dual occupancies, even where they are permitted to be constructed.

Note that the meaning of “subdivision” of land (under clause 6.2 of the Environmental Planning & Assessment Act 79) is:

*“...the division of land into 2 or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition.”*

#### **PROPOSAL**

The Council-led Planning Proposal seeks the following amendments to Lane Cove LEP 2009 (no maps are involved):-

Amend the Lane Cove LEP 2009 to:

- permit the subdivision to a strata plan of land on which a dual occupancy is erected, or proposed to be erected, on condition that this applies to:-
  - R2 land only; and
  - current subdivision of the land (being a subdivision that requires development consent) is under the *Corporations Act 2001*; and
  - the dual occupancy had been erected, or the building work for the erection of the dual occupancy had commenced, before 16 June 2022; and
  - the erection was, or is being carried out, under a development consent granted

before 16 June 2022;

- the plans approved by the development consent above show parts of the building as being intended for separate occupation; and
- the subdivision would create lots that substantially correspond with the parts shown on those plans as being for separate occupation; and
- the size of each lot resulting from the subdivision is not to be less than 375 square metres. This is consistent with Council's current requirement that attached dual occupancies must be on a minimum lot size of 750 square metres.

## **INTENDED OUTCOME**

By adopting this Planning Proposal, Council intends to:

1. permit company title or tenants-in-common owners of dual occupancies registered in the R2 zone of Lane Cove local government area on or before Thursday 16th June 2022 to subdivide their properties as strata subdivision.
2. The date of 16 June 2022 is when Council published its intention to amend the LEP to permit strata subdivision of dual occupancies currently owned under company title. Therefore, the purpose of the date is to prevent, as a result of the legislative change, owners of other R2 lots deciding to construct dual occupancies under company title as an intermediary step towards strata title. That is, the new clause should prevent a new practice of subdividing new dual occupancies under Company title as an interim stage towards strata title. That is to say, an open-ended permission to strata subdivide a company title property could result in dual occupancy development applications on lots as small as 750sqm being submitted on such a scale which might threaten the prevailing character of lower density residential areas.
3. To retrospectively only 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*.

In conclusion, the intent of the additional local provision is to make it potentially possible for current and future owners of company-titled dual occupancies to obtain finance or equity release from a banking institution or other lender, where it is alleged this is currently not possible. All other planning controls will remain unchanged.

## **DISCUSSION**

This section examines the provisions of the Planning Proposal against the strategic and site-specific merit tests, as well as consistency against Council's Local Environment Plan.

When considering a Planning Proposal, the *Local Environmental Plan Making Guideline* (prepared by NSW Department of Planning & Environment) addresses the following strategic and site-specific merit test questions in assessing proposals.

## **STRATEGIC MERIT TEST**

1. ***Is the planning proposal a result of an endorsed LSPS, strategic study or report?***

The Planning Proposal may be regarded as the result of a report – specifically a Notice of Motion - *Duplex Property Title in Lane Cove R2 Areas* (Councillor report to Council meeting 23 June 2022) (AT-3).

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

The Planning Proposal assesses three alternative model clauses. The Planning Proposal (AT-1) considers alternative model clause, which are contained in AT-5.

**3. *Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?***

The Planning Proposal is consistent in part with *A Metropolis of Three Cities*, and the *North District Plan* which seek to increase:

- supply of higher density housing; and
- more affordable housing; and
- more housing choice.

Although the proposal seeks merely to permit existing dual occupancies under company title to strata subdivide, it does however, by enabling and so encouraging some land-owners to unlock the equity in their (company-titled) dual occupancies, permit those retired landowners in particular to be able to afford to remain in their increasingly expensive homes in the location of their choice

**4. *Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?***

The Planning Proposal is consistent in part with the *Lane Cove Local Housing Strategy* (July 2021) which seeks to increase affordable housing, although it focusses on the R3 and R4 zones. It discourages pursuing other proposals “*unless they substantially achieve priorities related to affordable housing*”. This proposal does not substantially achieve this.

However, the LHS does aim to encourage medium density housing, again focusing on the R3 zone. It is supportive of proposals “encouraging smaller medium density housing that is targeted to smaller and downsizing households.” However, “*Given the low take up of dual occupancies in the Lane Cove LGA, development would be contingent on site specific and market factors being overcome, such as site constraints, potential lot consolidation and individual land-owner preference.*” (p72)

While not directly in support of the current Planning Proposal, the LHS suggests that dual occupancies are a desirable means of increasing possibly more affordable housing supply. But only as a source of future housing diversity.

The Planning Proposal is consistent in part with Planning Priority No. 5 of the *Lane Cove Local Strategic Planning Statement*, which aims to:

*“plan for the growth of housing that creates a diverse range of housing types and encourages housing that is sustainable, liveable, accessible and affordable”* (p25)

A similar response applies to *Liveable Lane Cove 2036*, which is Council’s *Community Strategic Plan*.

**5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?**

Not inconsistent.

**6. Is the planning proposal consistent with applicable SEPPs?**

Potentially relevant SEPPs are:

- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*; and
- *State Environmental Planning Policy (Housing) 2021*.

Other SEPPS are not applicable to this particular proposal.

**7. Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions)?**

The Planning Proposal is not inconsistent with *Ministerial Directions* (section 9.1 Directions), in particular:

*3.1 Residential zones.* The proposal is not inconsistent with the objective of Direction 3.1 “to encourage a variety and choice of housing types to provide for existing and future housing needs.”

It is not inconsistent insofar as it supports decisions previously made by landowners to build dual occupancies, thereby providing a variety and choice of housing types

**Effectively passes the strategic merit test.**

**SITE-SPECIFIC MERIT TEST**

**8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?**

**9. Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?**

**10. Has the planning proposal adequately addressed any social and economic effects?**

**11. Is there adequate public infrastructure for the planning proposal?**

The Planning Proposal aims to change the subdivision status of existing housing only. Therefore it is not of relevance to consider the following:

- the likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal;
- other likely environmental effects of the planning proposal and how they are proposed to be managed;
- any social and economic effects;
- the adequacy of public infrastructure for the planning proposal

**12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?**

The views of State and Commonwealth public authorities will be known when formal consultation has occurred in accordance with the Gateway determination of the Planning Proposal

**Passes the site-specific merit test**

**ASSESSMENT AGAINST SECTION 3.33 of the EP&A ACT**

**Not inconsistent with Section 3.33 of the *Environmental Planning and Assessment Act*.**

*Reason*

This section of the Act deals with the preparation, explanation and justification of Planning Proposals – which requires Proposals to state whether they will give effect to both a Local Strategic Planning Statement and comply with the relevant directions under section 9.1.

Having considered the above, the Planning Proposal is not inconsistent with Section 3.33 (2)(c) of the EP&A Act because the Planning Proposal will “give effect to” Council’s Local Strategic Planning Statement and is not inconsistent with the relevant Section 9.1 Ministerial Direction (i.e. Direction 3.1).

**Sufficiency of information provided.**

The basis for the interpretation of the impact of the Banking Royal Commission on lending policies with respect to properties under company title is the attached letter from an affected resident (AT-2).

**CONCLUSION**

Planning Proposal No. 40 for the most part passes the strategic merit test, passes the site-specific merit test, and so is not inconsistent with Section 3.33 of the EP&A Act.

On the basis of the information provided, Council supports what is effectively a minor amendment to the LEP affecting potentially four (4) landowners of dual occupancies under company title in the R2 zone of Lane Cove LGA.

**RECOMMENDATION**

Pursuant to Section 9.1 of the Environmental Planning and Assessment Act 1979, the Lane Cove Planning Panel at its meeting of 10 May 2022 is recommended to support Planning Proposal No. 40, because it for the most part passes the strategic merit test, passes the site-specific merit test, and is not inconsistent with Section 3.33 of the EP&A Act.

Mark Brisby  
**Executive Manager**  
**Environmental Services Division**

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**ATTACHMENTS:**

<b>AT-1</b>	<a href="#">View</a>	Planning Proposal No. 40	12 Pages
<b>AT-2</b>	<a href="#">View</a>	Letter in support from resident	4 Pages
<b>AT-3</b>	<a href="#">View</a>	Notice of Motion - 23 June 2022 Meeting	3 Pages
<b>AT-4</b>	<a href="#">View</a>	Minute - PP40 - 23 June 2022 meeting	1 Page
<b>AT-5</b>	<a href="#">View</a>	Three model clauses	3 Pages



# Planning Proposal No. 40

Subdivision of certain dual occupancy properties

October 2022



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## Overview

### Purpose

This Planning Proposal, prepared by Lane Cove Council, seeks to permit strata subdivision of certain approved dual occupancy dwellings that were registered under company title in the R2 zone on or before Thursday 16th June 2022.

Council resolved at its of 23 June 2022 meeting (**AT-1** and **AT-2**) to prepare a planning proposal to this effect, in support of the view 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.” (AT-2)*

Council therefore resolved to prepare a planning proposal in support of this view.

### Local Context

In a submission by a local resident (see **AT-3**) to Council, it has been claimed that following the *2019 Banking Royal Commission*, 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.

### Legislative Context

- On December 15, 2017, Council introduced into its LEP Clause 4.1A of *Lane Cove Local Environmental Plan 2009* regarding subdivision of dual occupancies, which 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.*

- This total prohibition of subdivision of dual occupancies has been a long-standing policy of Council’s (See Historic Context below). It was aimed at maintaining the desired low density character of the R2 residential zones in particular. That is, to support the existing, consistent subdivision pattern.
- The minimum Lot size in the R2 zone is 550 square metres.
- Clause 4.1 (4A) 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.*
- 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. Otherwise, a dual occupancy may be built upon 750sqm or 900sqm lots, but not subdivided.

- Note** Under clause 6.2 of the *Environmental Planning & Assessment Act 79*:

The meaning of “subdivision” of land

“(1) For the purposes of this Act, subdivision of land means the division of land into 2 or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition.”

Note Under LEP Dictionary:

“dual occupancy” [attached or detached] means 2 dwellings on one lot of land, but does not include a secondary dwelling.
- Note that Clause 4.1A is not subject to a 4.6 objection:

“(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(ca) clause 4.1A,”

*Historic Context*

**State Environmental Planning Policy 25 (SEPP25)** was in force during the 1990s, and expressed the State government’s objective at the time in part to encourage dual occupancies as a form of infill development, to counter ‘urban sprawl’.

**Lane Cove LEP 1987** on March 10, 1995, was amended (Clause 4(2)) to exclude SEPP 25 from applying to the LEP. This was part of a more general resistance to dual occupancies among Sydney councils.

**Lane Cove LEP 1987** on May 24, 1996, was amended (Clause 9C(2)) to prohibit dual occupancy development “under certain circumstances” (to prevent lots any smaller than 750sqm (attached) or 900smw (detached)).

**Lane Cove LEP 2009** on December 15, 2017, was amended (Clause 4,1A) to prevent any subdivision that would result in the dwellings that comprise the dual occupancy being located on separate lots.

*Assessment Context*

Dual occupancies (approx. 1995 – 2022)			Pre-1999	Post-1999	Totals
Approved	plus Subdivided	(15% Strata; 85% Torrens)	29	1	30
	Not Strata / Torrens subdivided	No subdivision title	4	21	25
		Company titled	1	3	4
Refused			4	6	10
Withdrawn			5	1	6
Totals			43	32	75

Analysis of the 75 dual occupancies applied for in Lane Cove LGA over an approximate period from 1995 to 2022 reveals that approval of subdivision of dual occupancy was very common (29 out of 43 were successful). Post-1999, as a result of the historical trend of Council’s growing opposition to permitting sub-divided dual occupancies, it became almost impossible to achieve subdivision of an approved dual occupancy (1 out of 32). During this time, 3 of the 4 company-titled dual occupancies identified were created.

## 1. Objectives and intended Outcomes

### 1.1. Objective

To amend the Lane Cove LEP 2009 to permit strata subdivision of approved dual occupancy dwellings that were registered in the R2 zone on or before Thursday 16th June 2022 as either company title or tenants-in-common. Analysis suggests this applies to four (4) properties within Lane Cove LGA.

### 1.2. Intended outcomes

- To permit company title or tenants-in-common owners of dual occupancies registered in the R2 zone of Lane Cove local government area on or before Thursday 16th June 2022 to subdivide their properties as strata subdivision.
- To prevent a consequent action by owners of other R2 lots to develop dual occupancies under company title as an intermediary step towards strata title. That is, to prevent a new practice of subdividing new dual occupancies under Company title as an interim stage towards strata title. This might have occurred as a result of Council having published its intention in this regard on 16 June 2022. That is, an open-ended permission to strata subdivide a company title property could result in an increase in dual occupancy development applications being submitted on a scale which might threaten the prevailing character of lower density residential areas.
- To retrospectively only allow subdivision of buildings that were originally intended for separate occupation.

## 2. Explanation of provisions

The intent of this Planning Proposal is to amend the Lane Cove LEP 2009 on *Principle Development Standards for Subdivision of Dual Occupancies* to

- Permit the subdivision to a strata plan of land on which a dual occupancy is erected, or proposed to be erected, on condition that this applies to:-
  - R2 land only;
  - current subdivision of the land (being a subdivision that requires development consent) that is under the *Corporations Act 2001*;
  - the dual occupancy had been erected, or the building work for the erection of the dual occupancy had commenced, before 16 June 2022;
  - the erection was, or is being carried out, under a development consent granted before 16 June 2022;
  - the plans approved by the development consent above show parts of the building as being intended for separate occupation;
  - the subdivision would create lots that substantially correspond with the parts shown on those plans as being for separate occupation; and
  - the size of each lot resulting from the subdivision is not to be less than 375 square metres. This is consistent with Council's current requirement that attached dual occupancies must be on a minimum lot size of 750 square metres.

Note: This permission applies despite the current prohibition under LEP Clause 4.1A of granting subdivision of land on which a dual occupancy is erected or proposed to be erected, and where the subdivision would result in the dwellings that comprise the dual occupancy being located on separate lots.

Note: The intent of the additional local provision is to make it potentially possible for current or future owners of company-titled dual occupancies to obtain finance or equity release from a banking institution or other lender. All other planning controls applying to the site will remain unchanged.

### 3. Justification of strategic and site-specific merit

#### 3.1. Introduction

This section provides a detailed assessment of the proposal's strategic and site-specific merit to determine whether the planning proposal should be supported.

#### 3.2. Strategic Merit

The proposal has minimal strategic merit. Refer to Sections A and B in Table 1 below.

Question	Consideration
<b>Section A – need for the planning proposal</b>	
1. <i>Is the planning proposal a result of an endorsed LSPS, strategic study or report?</i>	Yes. Notice of Motion - Duplex Property Title in Lane Cove R2 Areas (Councillor report to Council meeting 23 June 2022) ( <b>AT-1</b> )
2. <i>Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?</i>	<p>Yes. By permitting only retrospective strata subdivision of company-titled dual occupancies (prior to 16 June 2022), this prevents a sudden increase in applications to construct dual occupancies by R2 land-owners of lots of a minimum of 750 square metres, under company title, then re-subdividing them as strata.</p> <p>See <b>AT-4</b> for alternative model clauses,</p> <p><u>Alternative 1:</u> The Randwick LEP model: permits strata/torrens subdivision of DAs for dual occupancies made up until the time of the Royal Commission (July 22018). Presumably, developers would be aware of the upcoming issue once the Commission began. This is counter to Lane Cove Council's basic opposition to strata/torrens subdividing of any dual occupancies. Note the strata area is not less than 180m<sup>2</sup>, and the torrens area is 200m<sup>2</sup> (if no minimum size is specified).</p> <p><u>Alternative 2:</u> The Willoughby LEP model: offers a 5-year waiting period after a dual occupancy is created using company title. Final lot size is 350sqm. Again, this very broad-reaching approach is counter to Lane Cove's general opposition to dual occupancies.</p> <p><u>Alternative 3:</u> The Hills LEP model: offers a very carefully conditioned window for company titled dual occupancies created prior to the Royal commission, and clearly always intended as dual occupancies.</p> <p>Effectively, The Hills model is recommended for Lane Cove.</p>
<b>Section B – relationship to the strategic planning framework</b>	
3. <i>Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including</i>	<p>Partly. Relevant objectives of <i>A Metropolis of Three Cities</i>, and the <i>North District Plan</i> seek to increase:</p> <ul style="list-style-type: none"> <li>• supply of higher density housing; and</li> <li>• more affordable housing; and</li> <li>• more housing choice.</li> </ul> <p>Although the proposal seeks merely to permit existing dual occupancies under company title to strata subdivide, it does however,</p>

Question	Consideration
<i>any exhibited draft plans or strategies)?</i>	by enabling and so encouraging some land-owners to unlock the equity in their (company-titled) dual occupancies, permit those retired landowners in particular to be able to afford to remain in their potentially unaffordable homes in the location of their choice.
4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?	<p>Partly. The <i>Lane Cove Local Housing Strategy</i> (July 2021) seeks to increase affordable housing but focusses on the R3 and R4 zones. It discourages pursuing other proposals “unless they <u>substantially</u> achieve priorities related to affordable housing”. This proposal does not substantially achieve this.</p> <p>The LHS also aims to encourage medium density housing, again focusing on the R3 zone. It is supportive of proposals “encouraging smaller medium density housing that is targeted to smaller and downsizing households.” However,</p> <p style="text-align: center;"><i>“Given the low take up of dual occupancies in the Lane Cove LGA, development would be contingent on site specific and <u>market factors being overcome</u>, such as site constraints, potential lot consolidation and individual land owner preference.”</i> (p72)</p> <p>While not directly in support of the current Planning Proposal, the LHS supports dual occupancies as a desirable means of increasing possibly more affordable housing supply. But only as a source of future housing diversity.</p> <p>And also Planning Priority No.5 of the <i>Lane Cove LSPS</i> aims to:</p> <p style="text-align: center;"><i>“plan for the growth of housing that creates a diverse range of housing types and encourages housing that is sustainable, liveable, accessible and affordable”</i> (p25)</p> <p>As stated above in No.3, by encouraging certain land-owners to unlock equity or to finance repairs or alterations (e.g. granny flats), the proposal has the potential to make housing in effect more affordable. However, this only applies to the current owners. Planning proposal No.40 does not make purchase of housing any cheaper, and quite possibly more expensive.</p> <p>A similar response applies to <i>Liveable Lane Cove 2036</i>, which is Council’s Community Strategic Plan.</p>
5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?	Not inconsistent.
6. <i>Is the planning proposal consistent with applicable SEPPs?</i>	<p>Yes. Potentially relevant SEPPs are:</p> <ul style="list-style-type: none"> <li>• <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>: - Not applicable to this proposed amendment. Lot area requirements defer to the LEP.</li> <li>• <i>State Environmental Planning Policy (Housing) 2021</i> - Not</li> </ul>

Question	Consideration
	applicable to this proposed amendment.
7. <i>Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions)?</i>	Not applicable to Section 9.1 Directions 1.1 to 2.5, and 3.2 to 7.10. However, under: <ul style="list-style-type: none"> <li>3.1 Residential zones. The proposal is not inconsistent with the objective of Direction 3.1(a) "to encourage a variety and choice of housing types to provide for existing and future housing needs." It is not inconsistent insofar as it supports choices previously made by land-owners to build dual occupancies.</li> </ul>

### 3.3. Site-specific Merit

Refer to Sections C, D and E in Table 2 below. Site-specific merit is not relevant to a proposal to amend subdivision permissibility across an entire zone.

Question	Consideration
<b>Section C – environmental, social and economic impact</b>	
8. <i>Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?</i>	N/A because the proposal is to change the subdivision status of existing housing only.
9. <i>Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?</i>	N/A because the proposal is to change the subdivision status of existing housing only.
10. <i>Has the planning proposal adequately addressed any social and economic effects?</i>	Not applicable.  As the proposal is to change the subdivision status of existing housing only, it will have no effect on items or places of non-Aboriginal or Aboriginal cultural heritage. Nor will it affect the number of jobs or housing growth, nor impact existing social infrastructure, nor the need for public open space, nor existing retail centres. There are no proposed public benefits.
<b>Section D – Infrastructure (Local, State and Commonwealth)</b>	
11. <i>Is there adequate public infrastructure for the planning proposal?</i>	N/A because the proposal is to change the subdivision status of existing housing only.
<b>Section E – State and Commonwealth Interests</b>	

Question	Consideration
<p><i>12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?</i></p>	<p>The views of State and Commonwealth public authorities will be known when formal consultation has occurred in accordance with the Gateway determination of the Planning Proposal.</p>

#### 4. Community Consultation

No consultation has been undertaken with state agencies or authorities nor with other key stakeholders during the pre-lodgement stage.

Community consultation will take place after Gateway determination, and should be consistent with the Lane Cove *Community Participation Plan 2019*. Page 8 states that the minimum time for exhibition is:

**28 days** (or as specified by the Gateway Determination, which may find that due to the minor nature of the proposal that no public exhibition is required or only 14 days exhibition is required)

## 5. Project timeline & attachments

### 5.1. Timeline

This Planning Proposal is a **Standard** Category because it:

*“refers to any one or more of the following proposed LEP amendment types, including an amendment:*

- *That relates to altering the principal development standards of the LEP”*

Stage (+Benchmarks)	Timeframe and/or date
Consideration by council (done)	August (done)
Gateway determination (25 days)	November 2022
Commencement and completion of public exhibition period (28 days)	November-Dec 2022
Consideration of submissions (21 days)	January 2022
Post-exhibition review and additional studies (63 days)	February-March 2023
Submission to the Department for finalisation (where applicable) (55 days)	April 2023
Gazettal of LEP amendment	May 2023

### 5.2. Attachments

- AT-1 [Council Report 23 June 2022](#)  
 AT-2 [Council Resolution 23 June 2022](#)  
 AT-3 [Letter from John Edwards](#)  
 AT-4 [Three model councils.](#)

*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.

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*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

**Ordinary Council Meeting 23 June 2022**  
**NOTICE OF MOTION - DUPLEX PROPERTY TITLE IN LANE COVE R2 AREAS**

**Subject:** Notice of Motion - Duplex Property Title in Lane Cove R2 Areas  
**Record No:** SU8814 - 31926/22  
**Division:** Lane Cove Council  
**Author(s):** Councillor David Brooks-Horn; Councillor Scott Bennison; Councillor Andrew Zbik;  
Councillor Rochelle Flood

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### Executive Summary

This report seeks Council to prepare a planning proposal to permit strata sub-division of approved dual occupancy dwellings that are registered as either company title or tenants-in-common in Lane Cove.

### Background

In December 2017, Council's Local Environmental Plan was amended to prohibit the subdivision of dual occupancies based on a previous long-standing Council policy. Dual occupancies are still permitted with consent in the R2 low density zone provided that the lot sizes are not less than 750 m<sup>2</sup> (attached) and 900 m<sup>2</sup> (detached). However, for subdivision and strata title in R2 zones the lot size is set as a minimum of 1100sqm. There are a small number of Duplex Property Titles in Lane Cove R2 areas that fall short of the minimum lot size. These properties can still be subdivided under Company Title or Tenants-in-Common instead of Strata, which was a workable solution in the past. Company Title or Tenants-in-Common affects council rates and some utilities, but not street numbers.

The major issue with Company Title or Tenants-in-Common is for the owner or potential owner obtaining finance or equity release from a banking institution or other lender, due to recent universal changes in lending policy. Council records indicate that currently only 37 properties are identified as Shared (Company / Tenants-in-Common) title.

### Discussion

The 2019 Banking Royal Commission changed bank and other institutions' lending policies. Following this, most will no longer accept any form of shared title (e.g. Company or Tenants-in-Common) as security. There was little indication of this change in policy before the Commission. The inability to be able to release equity in properties for a variety of purposes, let alone resale, is a fundamental issue with very serious implications for owners. This clearly affects resale, subsequent release of equity for property improvements and maintenance, and the ability to secure business finance, a common practice for small business owners.

Perhaps most significantly in an ageing demographic, where the Government's recent White Paper encouraged retirees to use reverse mortgages or equity release schemes to supplement pension income, the major companies involved in these schemes have also indicated an unwillingness to consider shared title properties as security. This could severely disadvantage some elderly residents caught in this trap.

Other Councils in NSW have allowed limited subdivision of dual occupancies that meet a minimum size requirement in very narrow circumstances, to address this problem.

**Ordinary Council Meeting 23 June 2022**  
**NOTICE OF MOTION - DUPLEX PROPERTY TITLE IN LANE COVE R2 AREAS**

What other councils have done?

In **Randwick's Local Environmental Plan** (LEP), following considerable pressure from residents affected by lending policy changes, they only allow subdivision of dual occupancies (attached) if:

- A development consent for dual occupancies was granted before July 2018; and
- it meets the subdivision standards specified in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

In the **Hills Shire Council's** LEP, a number of conditions must be satisfied before development consent for subdivision can be granted. Such as:

- building work (for the dual occupancy) must have commenced on the site before December 2012;
- the erection of the building was under a development consent granted before October 1996;
- the approved plans showed parts of the building as being intended for separate occupation;
- the subdivision would create lots that align with the parts shown for separate occupation; and
- the land is being subdivided under a Strata Plan.

**Note From the General Manager – Code of Meeting Practice Clauses 3.14 and 3.15**

Should Council adopt the recommendation, given the administrative nature of the LEP amendment, the Planning Proposal can be prepared within existing resources and will have no additional budgetary impact.

**RECOMMENDATION**

That Council prepare a Planning Proposal to permit strata sub-division of approved dual occupancy dwellings that are registered as either company title or tenants-in-common on or before Thursday 16th June 2022.

Councillor David Brooks-Horn  
**Councillor**

Councillor Scott Bennison  
**Councillor**

Councillor Andrew Zbik  
**Councillor**

Councillor Rochelle Flood  
**Councillor**

Ordinary Council Meeting 23 June 2022  
NOTICE OF MOTION - DUPLEX PROPERTY TITLE IN LANE COVE R2 AREAS

**ATTACHMENTS:**

There are no supporting documents for this report.

**ORDINARY COUNCIL**

23/06/2022

**TO:** Executive Manager (Mark Brisby)

**FOR  
ACTION**

**Subject:** Notice of Motion - Duplex Property Title in Lane Cove R2 Areas  
**Target Date:** 7/07/2022  
**Notes:**

**NOTICE OF MOTION - DUPLEX PROPERTY TITLE IN LANE COVE R2 AREAS**

**118 RESOLVED** on the motion of Councillors Brooks-Horn and Flood that Council prepare a Planning Proposal to permit strata sub-division of approved dual occupancy dwellings that are registered as either company title or tenants-in-common on or before Thursday 16th June 2022.

For the Motion were Councillors Zbik, Southwood, Roenfeldt, Kennedy, Flood, Bryla, Bennison, Brooks-Horn and Mort (Total 9).

Against the Motion was Nil (Total 0).

**ACTION TAKEN BY OFFICER**

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**From The Hills LEP 2019****4.1C Subdivision of dual occupancies**

- (1) The objectives of this clause are as follows—
  - (a) to not allow development consent to be granted for the subdivision of certain dual occupancies,
  - (b) to maintain the prevailing character of lower density residential areas.
- (2) Despite any other provision of this Plan, development consent must not be granted for the subdivision of land on which a dual occupancy is erected, or proposed to be erected, if the subdivision would result in each of the dwellings that comprise the dual occupancy being located on separate lots unless—
  - (a) the dual occupancy was erected, or the building work for the erection of the dual occupancy had commenced, before 5 December 2012, and
  - (b) the erection was, or is being carried out, under a development consent granted before 18 October 1996, and
  - (c) the plans approved by the development consent showed parts of the building as being intended for separate occupation, and
  - (d) the subdivision would create lots that substantially correspond with the parts shown on those plans as being for separate occupation, and
  - (e) the land is being subdivided under a strata plan.

**From Randwick LEP 2012****4.1D Subdivision of dual occupancies (attached) in Zone R2**

- (1) This clause applies to a dual occupancy (attached) on land in Zone R2 Low Density Residential for which development consent was granted before 6 July 2018.
- (2) Despite any other provision in this Plan, development consent may be granted for the subdivision of a dual occupancy to which this clause applies if the development meets the standards specified in the following provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008—
  - (a) for strata subdivision—clause 6.2, or
  - (b) for Torrens title subdivision—clause 6.4.

**From Willoughby LEP****4.1C Minimum subdivision lot size for dual occupancies**

- (1A) Despite any other provision of this Plan, development consent must not be granted to the subdivision of a lot on which there is a dual occupancy except in accordance with this clause.
- (1B) Development consent may be granted to the subdivision of a lot on which there is a dual occupancy if the size of any lot resulting from the subdivision is not to be less than the minimum size shown on the Lot Size Map in relation to that lot.
- (1) Development consent may also be granted to the subdivision of a lot on which there is a dual occupancy if—
  - (a) the lot is not a lot in the area identified as “Area 1” on the Dual Occupancy Restriction Map, and
  - (b) the area of each lot resulting from the subdivision is at least 350 square metres, and
  - (c) each of the resulting lots will have one of the dwellings on it, and
  - (d) the floor space ratio of each dwelling does not exceed—
    - (i) 0.4:1, or
    - (ii) any floor space ratio specified under clause 4.4A for a building on the lot, whichever is the lesser, and
  - (e) a final occupation certificate was issued for the dual occupancy at least 5 years before the development consent is granted.