

DEVELOPMENT APPLICATION SUBMISSION

Applicant: HAYES, Andrew John
Title: Lot 21 DP1052637, 14 Hilton Trotter Place, West Kempsey

An application is being made to subdivide the subject land into lots that do not comply with the lot size map.

KLEP 2013

- LZN_11A R1 – General Residential
- LZS_11A 1 – minimum 500m²

Background

KLEP 1987 – Clause 16 specified minimum lot sizes

KLEP 1987 – Clause 16A specified exceptions to standards in residential zones

- 16A(3) contemplated granting *consent to subdivision of a building or buildings and the land on which they are situated into lots of any size, if: (a) in the case of ... a dual occupancy building, a multiple dwelling ... (i) was or were erected in accordance with a development consent granted by Council ...*

KLEP 2013 – Clause 4.1A specifies exemptions to minimum subdivision lot sizes for certain residential development

- 4.1A(3) contemplates consent for *'single development application for development ... that is both of ... (a) the subdivision of land into 2 or more lots, (b) the erection of a dwelling house on each lot resulting from the subdivision, if the size of each lot is equal to or greater than 300 square metres'*

Three separate dwellings were approved under KLEP 1987 T6-03-696 and constructed under Construction Certificate CB-04-220.

It is clear that in both KLEP 1987 and KLEP 2103, subdivision into lots of less than 500m² is contemplated and provided for. KLEP 2103 sets a secondary minimum area of 300m², provided the application(s) are made together. For dwellings approved and constructed prior to KLEP 2013 the only option appears to be an application under CL 4.6.

Proposal

The development has been designed and constructed in accordance with prevailing DCPs, allowing for separate private space areas. The new boundaries make separate allowance to clear the overhang, creating areas of occupation. The resulting areas are 308.1m² Lot 1; 303.3m² Lot 2; 342.5m² Lot 3, which would be acceptable if the application was being made afresh, under CL4.1A(3).

Subdivision was not necessarily contemplated in the design stage of the dwellings. Services are provided separately with proposed easements for drainage of water, sewage and services.

Onsite reversing of vehicles is provided for within the development.

Access to lots is existing constructed concrete driveway with proposed reciprocal rights of access to facilitate legal use thereof.

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Director-General has been obtained.

(5) In deciding whether to grant concurrence, the Director-General must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

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

(a) a development standard for complying development,

(b) development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(ca) clause 6.1, 6.2 or 7.9.

There is nothing in the clause disallowing granting of consent.

Compliance within the development standard (minimum area) is unreasonable and unnecessary in the circumstance of this case because the dwellings have been approved under KLEP 1987. KLEP 2013 has no provision for approval for subdivision into lots with areas less than 500m² unless an application is made for a dwelling and subdivision as the same time. That is clearly not practicable in this circumstance.

There is sufficient environmental planning ground to justify contravening the Development Standard. The dwellings have been designed, approved and constructed for separate occupation. Introducing separate Torrens Title does not compromise the designed occupation.

An application to develop in the same way under KLEP 2013 would be permissible and it is only the wording in the Plan rather than any objective which does not permit consent.