

## DEVELOPMENT APPLICATION SUBMISSION – OBJECTION TO DEVELOPMENT STANDARD

**Applicant:** TEEBEE HOLDINGS PTY LIMITED  
**Title:** Lot 1 DP 1155350 & Lot 301 DP 752396, South West Rocks  
 Cnr McIntyre & Mitchell Street, South West Rocks

An application is being made to subdivide the subject land into lots that do not comply with the lot size in KLEP2013 – LSZ 13B.

KLEP 2013

- LZN\_13B R3 – Medium Density Residential
- LSZ\_13B S – minimum 800m<sup>2</sup>

### Zone R3 Medium Density Residential

#### 1 Objectives of zone

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage urban infill and redevelopment in areas that surround existing or proposed facilities and services.

#### 3 Permitted with consent

Attached dwellings; Boarding houses; Child care centres; Community facilities; Group homes; Home industries; Multi dwelling housing; Neighbourhood shops; Places of public worship; Respite day care centres; Roads; Seniors housing; Any other development not specified in item 2 or 4

### BACKGROUND

#### 4.1A Exceptions to minimum subdivision lot sizes for certain residential development

- (1) The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.
- (2) This clause applies to development on land in the following zones:
  - (a) Zone RU5 Village,
  - (b) Zone R1 General Residential,
  - (c) Zone R3 Medium Density Residential.
- (3) Development consent may be granted to a single development application for development to which this clause applies that is both of the following:
  - (a) the subdivision of land into 2 or more lots,
  - (b) the erection of a dwelling house, an attached dwelling or a semi-detached dwelling on each lot resulting from the subdivision, if the size of each lot is equal to or greater than 300 square metres.

It is clear in KLEP 2103, subdivision into lots of less than 800m<sup>2</sup> is contemplated and provided for. KLEP 2103 Clause 4.1A(3)(b) sets a secondary minimum area of 300m<sup>2</sup>, provided the application(s) for dwellings and subdivision are made together. For subdivision without dwellings the only option appears to be an application under Clause 4.6.

## Proposal

Resubdivision  
Zone R3 – Medium Density Residential  
Existing Lot 1 = 400.3m<sup>2</sup>  
Existing Lot 301 = 953.7m<sup>2</sup>  
Proposed Lot 1 = 600m<sup>2</sup>  
Proposed Lot 2 = 673m<sup>2</sup>  
Proposed Road Widening = 80.6m<sup>2</sup>

Comparable Development: *refer Annexure Ai(a)*

There is a history of similar recently approved development, visible on the aerial view. DPs 1004980, 1069967 and 1159966 are adjacent but in areas where minimum lot size of 500m<sup>2</sup> applies. DPs 1003183 and 1101128 are in areas where minimum lot size of 800m<sup>2</sup> applies. The proposal is for a boundary adjustment so new lots are not being created. The new lots will be consistent with surrounding development and still of a size to encourage density in development. I note also that the proposed lots will be consistent with older historical patterns as visible on the aerial image.

Bushfire Hazard Assessment Report: *refer Annexure L* (Building Code and Bushfire Hazard Solutions Pty Ltd)

The report considers use of the existing Lane 6.235 wide to provide asset protection. The area is currently maintained by residents and used as pedestrian access. The aerial image shows pedestrian access diverting onto the subject land because of the Council stormwater outlet. The stormwater outlet feeds into an open drain.

Advice from Department of Industry – Crown Land is that easements for access to Crown Public Road to maintain an APZ will be considered in some cases (SILAS email 15/11/2016).

Whilst the report recommends use of the lane for the APZ, I note that an area of some 293m<sup>2</sup> is still available for residential development adopting the 8m setback referred to in RFS correspondence 22/10/2018. Ultimate resolution of how asset protection will be provided will be for any particular future proposal for construction on the resulting lot. At this point, it is clearly demonstrated that a viable area for residential development will exist on an approved lot.

Lane 6.235 wide to Orara Street: *refer Annexures Ai(a) and Ai(b)*

The owners efforts to investigate development of the land include concept plans and cost estimates by Hamilton Schreiber Architects together with recent sales data provided by Raine and Horne South West Rocks. See samples attached. The result of the investigations is that return on investment would be negative even before any allowance is made for land value. *Annexure Ai(c)*

The aerial image shows vehicular access at the eastern end near Trial Street both on bitumen seal and beyond that to lot 297 and possibly to lot 298. Council has further assets for disposal of stormwater and sewer within the lane reserve. *Refer Annexure Ai(d)*

**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.*

Applicant has investigated development of the land using the existing lots. An assessment of the design options and costs has shown the proposal to be economically unviable. *Annexure Ai(c)*

This proposal is to change the existing common boundary to create lots of 600m<sup>2</sup> and 673m<sup>2</sup> and offering 80.6m<sup>2</sup> for widening of Mitchell Street.

*(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.*

Not Applicable

*(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.*

The investigation by the applicant shows development to be economically unviable using the current lot layout. Compliance with the Standard will not improve viability of development.

The proposal creates lots of area in excess of 600m<sup>2</sup>. The resulting lots may still be investigated for attached dwellings and multi-dwelling housing.

Further, the lots will support an application under Clause 4.1A providing flexibility in future development options.

Lot 2 has single street frontage and may be constrained by bushfire management requirements. Lot 1 has dual street frontage and does not face the same constraints.

Lot 2 has therefore been proposed as a larger lot. Lot 1 provides for the existing dwelling and future medium density redevelopment.

*(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.*

The proposed development will be in the public interest providing alternate options for medium density development in accordance with the land zone.

*(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 Not Applicable*
- (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.*

Proposed development provides best opportunity for further development utilising existing public infrastructure.

*(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.*

Proposed Zone R3 Medium Density Residential. Not any of the prescribed 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.*

Not Applicable.