



DEVELOPMENT CONSENT AUTHORITY

LITCHFIELD DIVISION

MINUTES

MEETING No. 232 – FRIDAY 15 MARCH 2019

**HOWARD HALL
325 WHITEWOOD ROAD
HOWARD SPRINGS**

MEMBERS PRESENT: Suzanne Philip (Chair), Keith Aitken, Wendy Smith and Christine Simpson

APOLOGIES: Bob Shewring

OFFICERS PRESENT: Margaret Macintyre (Secretary), Alana Mackay, Fiona Ray and Ben Wollinski (Development Assessment Services)

COUNCIL REPRESENTATIVE: Edward Li

Meeting opened at 10.30 am and closed at 11.00 am

MINUTES RECORD THE EVIDENTIARY STAGE AND THE DELIBERATIVE STAGE SEPARATELY. THESE MINUTES RECORD THE DELIBERATIVE STAGE. THE TWO STAGES ARE GENERALLY HELD AT DIFFERENT TIME DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.

ITEM 1 **SUBDIVISION TO CREATE 2 LOTS**
PA2018/0305 **LOT 15 (345) WHITEWOOD ROAD, HUNDRED OF BAGOT**
APPLICANT **GERARD AND ALANA ROSSE**

Submitter Mr Gerry Wood MLA sent his apologies.

Mr Gerard Rosse attended.

RESOLVED That, pursuant to section 53(a) of the *Planning Act*, the Development Consent Authority consent to the application to develop Lot 15 (345) Whitewood Rd, Hundred of Bagot for the purpose of subdivision to create two lots subject to the following conditions:

CONDITION PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and two copies must be provided. The plans must be generally in accordance with the plans submitted with the application but modified to show:
 - a. driveway crossovers separated by a minimum of 30m in accordance with AustRoads Guidelines.

GENERAL CONDITIONS

2. The works carried out under this permit shall be in accordance with drawings endorsed as forming part of this permit.
3. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
4. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or site is to be created.
5. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, electricity facilities and telecommunication networks to each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
6. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of Litchfield Council, to the satisfaction of the consent authority.

7. Engineering design and specifications for the proposed and affected roads, street lighting, stormwater drainage, site earthworks, vehicular access, pedestrian/cycle corridors and streetscaping are to be to the technical requirements of approval of Litchfield Council with all approved works constructed at the developers expense.
8. Appropriate soil erosion, sediment and dust control measures must be effectively implemented throughout the construction stage of the development and all disturbed soil surfaces must be suitably stabilised against erosion at completion of works, to the satisfaction of the consent authority.
9. Before the issue of titles, the owner must, in accordance with Part 6 of the *Planning Act*, pay monetary contribution to the Litchfield Council for the upgrade of local infrastructure, in accordance with its Development Contribution Plan.

Note: This monetary contribution can be made at any time during or at completion of the subdivision by contacting Litchfield Council <https://www.litchfield.nt.gov.au/>.

NOTES:

1. This permit will expire if one of the following circumstances applies:
 - i. the development is not started within two years of the dates of this permit; or
 - ii. the development is not completed within four years of the dates of this permit.

The consent authority may extend the periods referred to if a request is made in writing before the permit expires.
2. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
3. As part of any subdivision, the parcel numbers for addressing should comply with the Australian Standard (AS/NZS 4819:2011). For more information contact Survey and Land Records surveylandrecords@nt.gov.au 08 8995 5354. The numbers shown on the plans endorsed as forming part of this permit are indicative only and are not for addressing purposes.
4. Any new on-site wastewater system to be installed must be carried out by a qualified licensed Self-Certifying Plumber and must comply with the NT Code of Practice for Small On-site Sewage and Sullage Treatment Systems and the Disposal or Reuse of Sewage Effluent (The Code).
5. There are statutory obligations under the *Weeds Management Act* to take all practical measures to manage weeds on the property. For advice on weed management please contact the Department of Environment and Natural Resources.

6. Professional advice regarding implementation of soil erosion control and dust control measures to be employed throughout the construction phase of the development are available from the Department of Environment and Natural Resources. Information can be obtained from the IECA Best Practice Erosion and Sediment Control Guidelines 2008 available at www.austieca.com.au and the NTG website <https://nt.gov.au/environment/soil-land-vegetation>.

REASONS FOR THE DECISION

1. Pursuant to section 51(a) and 51(b) of the *Planning Act*, the consent authority must take into consideration the planning scheme that applies to the land to which the application relates and any amendments to such a planning scheme.

The application initially before the consent authority was to subdivide Lot 15 (345) Whitewood Road to create two lots. The application has not changed. However, the Northern Territory Planning Scheme (Amendment No. 505) has been amended during the course of the consideration of the application to zone the land Zone RR (Rural Residential).

The application was assessed initially against clauses 5.19 Zone RL (Rural Living), 11.1.1 (Minimum Lot Sizes and Requirements), 11.4.1 (Site Characteristics in Subdivisions of Rural Land or Unzoned Land for Lots of 1ha of Greater), 11.4.2 (Infrastructure in Subdivisions of Rural and Unzoned Land) and 11.4.3 (Lot Size and Configuration in Subdivision of Rural and Unzoned Land) of the Northern Territory Planning Scheme (the Scheme). It was also assessed against the *Litchfield Subregional Land Use Plan 2016* and Clause 14.7.3 (Planning Principles and Area Plan for the Howard Springs Rural Activity Centre). The assessment identified that the application was mostly compliant with the Scheme and supporting policy. The application proposes lots sizes no less than 1ha and the lots can be serviced by reticulated water, with no adverse impacts on groundwater resources. The land is located approximately 350m from the existing commercial centre in Howard Springs and adjacent to the rural residential transition areas in accordance with the Area Plan. The subdivision meets the intention to provide a buffer between the Activity Centre and land in Zone RL (Rural Living) and to protect the rural character of the broader area.

The identified non-compliances were primarily because the proposed lot size of 1ha did not meet the purpose of Zone RL and the minimum lot size requirements. The assessment against clause 5.19 Zone RL (Rural Living) was appropriate as the land was zoned RL at the time the application was initially considered by the consent authority.

On 20 February 2019, the Minister for Infrastructure, Planning and Logistics amended the Scheme (Amendment No. 505) to zone the land Zone RR (Rural Residential). The zoning of the land came into effect on 8 March 2019. In the determination, the zoning of the land was considered to be consistent with the Planning Principles and Area Plan for the Howard Springs Rural Activity Centre and the *Litchfield Subregional Land Use Plan 2016*.

Clause 11.1.1 requires the minimum lot size for land within Zone RR is 1ha of unconstrained land in Litchfield, where the land is located outside rural activity centres and adjacent to the transition area. The Land Suitability Assessment found the site to be suitable for subdivision with no significant limitations to support rural residential use and that each lot comprises 1ha of unconstrained land with access to Hamilton Road. The application demonstrates compliance with this clause.

The application was also assessed against clauses 5.18 Zone RR (Rural Residential) and 11.4.5 (Subdivision of Land Zoned RR) of the Scheme.

The Soil Assessment for On-site Wastewater Management and Disposal identified that the site/soil is well drained and capable of sustaining onsite wastewater treatment. The applicant identifies that disposal of effluent would be made on-site. The Land Suitability Assessment found the site to be suitable for subdivision.

The consent authority can only consent to an application that can demonstrate that the subdivision is to be connected to reticulated water. The site is serviced by reticulated potable water and power services. The additional lot would also utilise the reticulated water and power services.

Overall, the application demonstrates compliance with clauses 5.18 and 11.4.5, and the above-mentioned relevant clauses under the Scheme.

2. Pursuant to section 51(e) of the *Planning Act*, the consent authority must take into account any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application

There was a public submission by Mr Gerry Wood that raised concern that the proposal for subdivision did not comply with the minimum lot size requirements of the Scheme, being 2ha in Zone RL (Rural Living). Similarly, the Litchfield Council lodged an objection under section 49 of the *Planning Act* citing non-compliance with the minimum lot size and purpose of Zone RL of the Scheme. The latter stated in its submission that it would support the application if the land was rezoned to Zone RR, which has now occurred.

The consent authority considered that the Scheme amendment to zone the land Zone RR (Rural Residential) addresses the submitters concerns in respect to ad-hoc development and non-compliances with the Scheme. In particular, the rezoning provides the requisite controls to manage land use in a manner that maintains the level of amenity expected on RR lots.

3. Pursuant to section 51(j) and 51(m) of the *Planning Act*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development and the public utilities or infrastructure provided in the

area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

Power and Water Corporation identified that reticulated sewer service is currently unavailable in the area. The Land Suitability Assessment and the Soil Assessment for On-site Wastewater Management and Disposal found the site to be suitable for subdivision and identified that the site/soil is well drained and capable of sustaining onsite wastewater treatment. The Department of Environment and Natural Resources (DENR) provided advice that supports that the land is capable to support the proposed development.

The DENR had advised previously that the land is located within the Darwin Rural Water Control District and overlies the Mount Partridge, Howards Springs Howard River groundwater system. The system is considered to be over-allocated according to the Northern Territory Water Allocation Planning Framework.

The land in this application is required under clause 11.4.5 the Scheme to be serviced by reticulated water. This significantly reduces the risk of future residents also accessing a secondary water supply through groundwater bores, under section 14 of the *Water Act*. The demand for groundwater is likely to be low and further managed by the requirement for the provision of a reticulated water supply which is enforceable through proposed conditions on a development permit. Impacts on groundwater resources are likely to be low in this instance.

4. Pursuant to section 51(n) of the *Planning Act* the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated.

The applicant asserts that the subdivision is considered to be a suitable development that achieves the intent of the Scheme, demonstrates best practice planning and results in an improvement to the existing site and locality. The site is within 400m from the Activity Centre and directly opposite sporting fields, the community hall and skate park. Reticulated power and water is available and utilised by the existing dwelling.

ACTION: Notice of Consent and Development Permit

ITEM 2 **SUBDIVISION TO CREATE THREE LOTS**
PA2018/0510 **SECTION 4540 (405) ELIZABETH VALLEY ROAD, HUNDRED OF**
STRANGWAYS
APPLICANT **NURIYE AND SEAN PIENING**

Mrs Nuriye Pieming and Mr Sean Pieming and their son Mr Ethan Pieming attended.

RESOLVED That, pursuant to section 53(a) of the *Planning Act*, the Development Consent Authority consent to the application to develop Section 4540 (405) Elizabeth Valley Road, Hundred of Strangways for the purpose subdivision to create three lots, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans must be drawn to scale with dimensions and two copies must be provided. The plans must be generally in accordance with the plans submitted with the application but modified to show:
 - a. a site plan with an amended boundary between Lot B and Lot C. Altering the back (northern) boundary location to achieve the minimum 2ha lot size for Lot B.
 - b. scaled site plan showing the location of unconstrained land in accordance with the land suitability report prepared by VPS Land Assessment and Planning, the location of existing bores and waste water treatment systems and nominated locations of bores and septic tanks for the proposed lots within that portion of the land identified as unconstrained in a manner consistent with the requirements of Clause 11.4.3 of the NT Planning Scheme.
 - c. plans and details of the engineering solution proposed to provide unconstrained access to the unconstrained portion of Lots B and C, certified by an appropriately qualified professional.
2. Prior to the endorsement of plans and prior to commencement of works (including site preparation), a hydrological assessment to the satisfaction of the consent authority must be submitted to and approved by the consent authority. The hydrological assessment is to be prepared by a suitably qualified and experienced professional and demonstrate that the engineering solution proposed to provide unconstrained access to Lots B and C will not impact on the unconstrained land identified for Lots A, B and C.
3. Prior to the endorsement of plans and prior to the commencement of works, a driveway access plan and a schematic plan demonstrating the on-site collection of stormwater and its discharge into the Litchfield Council stormwater drainage system shall be submitted to and approved by the Litchfield Council, to the satisfaction of the consent authority. The plan shall include details of site levels and Council's stormwater drain connection point/s.

GENERAL CONDITIONS

4. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.

5. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or site is to be created on the plan of subdivision submitted for approval by the Surveyor General.
6. The owner of the land must enter into agreements with the relevant authorities for the provision of electricity facilities to each lot shown on the endorsed plan in accordance with the authorities requirements and relevant legislation at the time.
7. Engineering design and specifications for the proposed and affected roads, street lighting, stormwater drainage, site earthworks, vehicular access, pedestrian/ cycle corridors and streetscaping are to be to the technical requirements of the Litchfield Council to the satisfaction of the consent authority and all approved works constructed at the owner's expense.
8. Appropriate erosion and sediment control measures should be effectively implemented throughout the construction stage of the development and all disturbed soil surfaces must be satisfactorily stabilised against erosion at completion of works, to the satisfaction of the Consent Authority. Information can be obtained from the IECA Best Practice Erosion and Sediment Control Guidelines 2008 available at www.austieca.com.au and the NTG website <https://nt.gov.au/environment/soil-land-vegetation>.
9. Before the issue of titles, firebreaks along boundaries or at appropriate locations shall be provided to the satisfaction of the consent authority on advice from the Bushfires NT (Department of Environment and Natural Resources).
10. Before the issue of titles, the engineering solution proposed to provide unconstrained access to the unconstrained portion of Lots B and C shall be provided to the satisfaction of the consent authority.
11. Before the use commences the owner must, in accordance with Part 6 of the *Planning Act*, pay a monetary contribution to Litchfield Council for the upgrade of local infrastructure, in accordance with its Development Contribution Plan.

Note: This monetary contribution can be made at any time during or at completion of the subdivision by contacting Litchfield Council <https://www.litchfield.nt.gov.au/>.

NOTES:

1. This permit will expire if one of the following circumstances applies:
 - i. the development is not started within two years of the date of this permit; or
 - ii. the development is not completed within four years of the date of this permit.The consent authority may extend the periods referred to if a request is made in writing before the permit expires.
2. A "Permit to Work Within a Road Reserve" may be required from Litchfield Council before commencement of any work within the road reserve.

3. There are statutory obligations under the *Weeds Management Act* to take all practical measures to manage weeds on the property. For advice on weed management please contact the Department of Environment and Natural Resources.
4. A groundwater extraction licence may be required under the *Water Act* for any bore used for purposes other than rural stock and domestic water supply. For advice on water extraction licences please contact the Water Licensing and Regulation Branch of the Department of Environment and Natural Resources.
5. Notwithstanding any approved plans, signs within Litchfield Council's municipal boundaries are subject to approval under Clause 6.7 (Signs) of the Northern Territory Planning Scheme.
6. It is recommended that appropriate mitigation measures are developed and implemented to ensure that the risk to the population of *Cycad armstrongii* remain low. Individual *Cycad armstrongii* can either be conserved within the development, or salvaged as per the Management Program for Cycads in the Northern Territory of Australia 2009-2014 (Liddle, 2009). This may require a permit if salvage for commercial purposes is proposed.

REASONS FOR THE DECISION

1. Pursuant to section 51(a) of the *Planning Act*, the consent authority must take into consideration the planning scheme that applies to the land to which the application relates.

The Northern Territory Planning Scheme applies to the land to which the application relates. The application was assessed against Clauses 11.1 (Minimum Lot Sizes and Requirements), 11.4.1 (Site Characteristics in Subdivision of Rural Land or Unzoned Land for lots of 1ha or Greater) 11.4.2 (Infrastructure in Subdivision of Rural and Unzoned Land), and 11.4.3 (Lot Size and Configuration in Subdivision of Rural and Unzoned Land).

The proposal does not comply with 11.1 (Minimum Lot Sizes and Requirements). Lots A and C satisfy the minimum lot size requirements of 2ha, however Lot B only has an area of 1.92ha.

At the Development Consent Authority hearing, the applicant advised that it intends to alter the boundary line between Lot B and Lot C. The front boundary location would be maintained and rear boundary would be altered to achieve compliance with the minimum lot size for Lot B (i.e. 2ha).

A variation to the minimum lot size is no longer required and the proposal is compliant with the Northern Territory Planning Scheme.

The proposed altered lots (meeting the minimum lot sizes) are considered a size and configuration suitable for rural living, with the subdivision design generally responding to the constraints of the land.

2. Pursuant to section 51(n) of the *Planning Act*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated

The proposed subdivision would be unlikely to have an adverse impact on the existing and future amenity of the area.

ACTION: Notice of Consent and Development Permit

ITEM 3
PA2018/0484
APPLICANT **SUBDIVISION TO CREATE THREE LOTS
SECTION 4191 (160) MCMINNS DRIVE, HUNDRED OF STRANGWAYS
MICHAEL FAWCETT**

DAS tabled correspondence from Cozens Johansen Lawyers dated 12 March 2019.

Mr Michael Fawcett, Ms Tania Fawcett and Mr Nick Johansen (Partner – Cozens Johansen Lawyers) attended.

RESOLVED
36/19 That, pursuant to section 46(4)(b) of the *Planning Act*, the Development Consent Authority defer consideration of the application to develop Section 4191 (160) McMinn Drive, Hundred of Strangways to allow:

- The Department of Environment and Natural Resources (DENR) to consider the matters contained in the additional submission from the applicant and to provide further written comments to the Authority by 3 April, 2019;
- The applicant to consider and submit any further written response to DENR's comments within 14 days of receipt of such further comments, the Authority undertaking to forward DENR's comments to the Applicant upon provision of such to the Authority;
- The Authority to review in full the decision made by the Controller of Water Resources, referred to in the submission, to approve new bore construction permits; and
- Sufficient time for the Authority and the applicant to consider the application in light of a recent decision of the NT Civil and Administrative Tribunal (Jagdpanzer Pty Ltd, Mataguha Pty Ltd, Linscott Pty Ltd v Development Consent Authority, 12th March 2019), made in relation to the subdivision of rural land in an area where groundwater is similarly over allocated.
- The application and further information will be reconsidered by the Authority at its meeting on 10 May, 2019.

REASONS FOR THE DECISION

1. Pursuant to section 51(a) of the *Planning Act*, the consent authority must take into consideration the planning scheme that applies to the land to which the application relates.

The Northern Territory Planning Scheme is the relevant planning scheme.

Clause 4.1 (b) of the Scheme requires the administration of the Scheme to "contribute to the sustainable use and development of land and water resources so that the use and development of land is consistent with the principles of sustainable development and avoids

pollution and minimises degradation of the environment or over commitment of water resources”.

The Authority received advice from the Department of Environment and Natural Resources that the site is located in the west management zone of the Howard ground water system. When evaluating the availability of groundwater for development purposes the DENR considered the application in accordance with the NT Water Allocation Planning Framework that recommends at least 80 percent of the annual recharge is allocated for environmental and other public benefit, and 20 percent towards consumptive uses. Based on available information, consumptive use in the area is in the range of 70 – 110 percent of the estimated annual recharge. The volume of water ordinarily allocated to the environment and other public benefit provisions is being consumed.

The Authority, specifically in relation to subdivision, also considered Clause 11.4.3 Lot size and configuration in subdivisions of rural and unzoned land, which has the purpose to ensure at 11.4.3(1)(c) that proposed subdivisions do not impose unsustainable demands on groundwater or unreasonably degrade the environment.

The additional submission presented by the applicant questions the validity of the advice from DENR. It is reasonable for the DCA to provide DENR with the opportunity to consider the claims made by the applicant.

Pursuant to section 51(j) of the *Planning Act*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development.

As the development would invoke the right to draw groundwater for domestic and stock purposes from an aquifer that the DENR have advised is over allocated, the land would not be considered capable of supporting a further two lots. As discussed the sustainable level of use for “consumptive purposes” is 20 percent of the annual recharge. As noted the west management zone of the Howard groundwater system is estimated to be utilising between 70 - 110 percent of recharge for consumptive purposes. The worst case scenario would see a depletion of groundwater as recharge is directed to domestic purposes, grazing stock and irrigation.

As the DENR assessment of groundwater availability is challenged by the applicant in their submission made on 12 March, 2019, the Authority has determined that the DENR are provided the opportunity to review and reply to the claims.

2. Pursuant to section 51(n) of the *Planning Act*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated.

As a consequence of the over allocation of ground water further development has the potential, as indicated by the DENR, to impact future amenity of the area as the water available for environmental

benefit is significantly less than the 80 percent of recharge recommended in the NT Water Allocation Planning Framework.

3. Pursuant to 51(t) of the *Planning Act*, the consent authority may consider any other matter it thinks fit.

The Authority considers that in making its decisions it is relevant to refer to the Objects of the *Planning Act*, in particular 2A, sub-clause 2(d) control of development to provide protection of the natural environment, including by sustainable use of land and water resources.

The Authority has received advice from the Department of Environment and Natural Resources that it is unlikely that groundwater would be available to support the proposed subdivision without impacting the sustainability of the resource, the environment or existing groundwater users.

ACTION: Notice of Deferral

RATIFIED AS AN RECORD OF ATTENDANCE AND DETERMINATIONS MADE AT THE MEETING

SUZANNE PHILIP
Chair

19 March 2019