



DEVELOPMENT CONSENT AUTHORITY

LITCHFIELD DIVISION

MINUTES

MEETING No. 276 – WEDNESDAY 15 FEBRUARY 2023

**AGORA ROOM
HUDSON BERRIMAH
4 BERRIMAH ROAD
BERRIMAH**

MEMBERS PRESENT: Suzanne Philip (Chair), Adam Twomey, Marion Guppy, Emma Sharp and Rachael Wright

APOLOGIES: Keith Aitken
LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), George Maly, Steven Kubasiewicz, Josh Larder and Eponine Richardson (Development Assessment Services)

COUNCIL REPRESENTATIVE: Julie Hillier

Meeting opened at 11.00 am and closed at 3.00 pm

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.

The Chair, Development Consent Authority, under section 93(1) of the *Planning Act 1999*, appointed Marion Guppy who is a member in relation to the Darwin Division, to act as a member for Keith Aitken in relation to the Litchfield Division from 7 February 2023 to 22 February 2023 as Keith Aitken is prevented from performing his duties of office because of absence.

ITEM 1
PA2022/0414 DWELLING-SINGLE WITHIN LAND SUBJECT TO FLOODING

APPLICANT **LOT 11 (80) GULNARE ROAD, BEES CREEK, HUNDRED OF STRANGWAYS**
C.A.T. Contractors P/L

Applicant - Clayton Holland (C.A.T. Contractors P/L) and the landowner's partner Nick Joyce attended.

Mr Holland tabled a copy of the Technical Assessment dated 12 January 2023.

RESOLVED
10/23

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 11 (80) Gulnare Road, Bees Creek, Hundred of Strangways for the purpose of a dwelling single within land subject to flooding, subject to receipt of further information from a suitably qualified and certified practicing engineer, which either:

- a) confirms that adequate access exists for the proposed use, to the satisfaction of the consent authority; or
- b) provides a suitable engineered solution for the access to the proposed dwelling which will minimise the risk to safety of future residents of the dwelling during a defined flood event, without compromising options for their safe evacuation if required. The information is to also include consideration of the construction of the said access in a manner that will minimise:
 - the hydrological impact on the land and neighbouring land upstream from the proposed crossing; and
 - the impact on the environmental values of Bees Creek, including spread of weeds and further clearing of native vegetation in the area identified for Priority Environmental Management, on the advice of the Department of Environment, Parks and Water Security, to the satisfaction of the consent authority.

REASON FOR THE DECISION

The proposed dwelling is fully compliant with the requirements in Parts 5 and 6 of the NTPS 2020 but the land falls within the Land Subject to Flooding (LSF) Overlay in Part 3 of the Scheme. Clause 3.6 states its purpose is to *Identify areas with a known risk of inundation from riverine flooding and ensure that development in these areas demonstrates adequate measure to minimise the associated risk to people, damage to property and costs to the general community.*

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The DAS Report notes that “access to the proposed dwelling is to be via an existing access track. A part of this track is located within an existing Priority Environmental Management (PEM) area, which is subject to flooding. No infrastructure is proposed to allow for all weather access to the dwelling.”

The application is merit assessable and the only relevant matter to be considered by the Authority under the NTPS 2020 Clause 1.10.3(b) is the overlay. The Authority notes the Applicant’s submission that the requirements of Clause 3.6.6 are fully met by the proposal and that neither DEPAWS nor the Litchfield Council raised issues in relation to the proposal. However, the Authority is also obliged to consider the matters in Section 51(1) of the Planning Act 1999. Section 51(1)(j) requires that the Authority consider

(j) 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

Further information is sought to ensure that access to the proposed dwelling suitably responds to the physical characteristics of the land, its effect on that land and other land is minimised and to confirm that it meets the purpose of Clause 3.6 LSF (Land Subject to Flooding) which seeks to ensure that development in areas subject to riverine flooding demonstrates adequate measures being taken to minimise the associated risk to people, damage to property and costs to the general community.

**RESOLVED
11/23**

That, pursuant to section 86(1) of the *Planning Act 1999*, the Development Consent Authority delegate to the Chair or in the Chair’s absence any other member of the division the power under section 53 *Planning Act 1999*, to determine the application to develop Lot 11 (80) Gulnare Road, Bees Creek, Hundred of Strangways subject to the provision of deferral requirements.

FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Deferral

**ITEM 2
PA2022/0454**

CLEARING OF NATIVE VEGETATION

**SECTIONS 1772 AND 224 (390 & 470) ACACIA GAP ROAD, MANTON,
HUNDRED OF COLTON**

APPLICANT

Tous Garden

Applicant – Saramet Ruchkaew (Tous Garden) and Paul Quin attended.

**RESOLVED
12/23**

That, pursuant to section 53(b) of the *Planning Act 1999*, the Development Consent Authority alter the proposed development and consent to the proposed development as altered to develop Section 1772 (390) and Section 224 (470) Acacia Gap Road, Manton, Hundred of Colton for the purpose of clearing of native vegetation, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into Litchfield Council's stormwater drainage system shall be submitted to and approved by Litchfield Council.
2. Prior to the endorsement of plans and prior to the commencement of works, amended plans showing the precise dimensions of the footprint of the clearing must be submitted to and approved by the Department of Environment, Parks and Water Security, to the satisfaction of the consent authority. The amended plans must show the following:
 - a) A minimum native vegetation buffer of 250m to be retained around the outer edge of the rainforest patch within Section 224, with minor adjustments in areas that have already been planted;
 - b) A minimum native vegetation buffer of 25m along the eastern and northern boundaries of Section 224 and the removal of native vegetation buffer along the entire western boundary with Section 1772, Hundred of Colton; and
 - c) Any retained boundary buffer should account for an additional 10m to allow for the firebreak.

GENERAL CONDITIONS

3. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
4. The clearing of native vegetation is to be undertaken only in the areas identified on the endorsed drawing as "Permitted Clearing". All remaining native vegetation is to be maintained to the satisfaction of the consent authority.
5. The permit holder must ensure that the clearing operator has a copy of the permit, including the endorsed drawing, at all times during the clearing operation.
6. Before the vegetation removal starts, the boundaries of all vegetation stands to be removed and retained must be clearly marked on the ground or marked with tape or temporary fencing to the satisfaction of the consent authority.
7. Before the land clearing work commences, 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, Parks and Water Security).
8. 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.

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9. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to Litchfield Council, to the satisfaction of the consent authority.
10. Appropriate erosion and sediment control measures must be effectively implemented throughout the construction phase of the development (including clearing and early works) and all disturbed soil surfaces must be satisfactorily stabilised against erosion at completion of works, to the satisfaction of the consent authority. Information resources are available on the IECA website www.austieca.com.au and the Department of Environment, Parks and Water Security ESCP Standard Requirements 2019 and Land Management Factsheets available at <https://nt.gov.au/environment/soil-land-vegetation>. For further advice, contact the Land Development Coordination Branch: (08) 8999 4446.

NOTES

1. For the purposes of best practice land management and environmental protection it is recommended that a **Type 1** Erosion and Sediment Control Plan (ESCP) be developed in accordance with the Department of Environment, Parks and Water Security ESCP Standard Requirements 2019 available at <https://nt.gov.au/environment/soil-land-vegetation>. The ESCP should be prepared prior to commencement of works and implemented during the construction phase (including clearing and early works); and all disturbed soil surfaces should be satisfactorily stabilised against erosion at completion of works. For further advice, contact the Land Development Coordination Branch: (08) 8999 4446.
2. Information resources are available on the IECA website www.austieca.com.au and the Department of Environment, Parks and Water Security Erosion and Sediment Control Plan (ESCP) procedures available at <https://depws.nt.gov.au/rangelands/technical-notes-and-fact-sheets/land-management-technical-notes-andfact-sheets>.
3. A permit to burn is required from the Regional Fire Control Officer, Department of Environment, Parks and Water Security, prior to the ignition of any felled vegetation on the property. Fire prevention measures are to be implemented in accordance with the requirements of the *Bushfires Management Act 2016*.
4. There are statutory obligations under the *Waste Management and Pollution Control Act 1998* (the Act), that require all persons to take all measures that are reasonable and practicable to prevent or minimise pollution or environmental harm and reduce the amount of waste. The proponent is required to comply at all times with the Act, including the General Environmental Duty under Section 12 of the Act. There is also a requirement to obtain an authorisation prior to conducting any of the activities listed in Schedule 2 of the Act. Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority website at <http://ntepa.ntg.gov.au/waste-pollution/guidelines/guidelines>.

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The proponent is advised to take notice of the SCHEDULE OF ENVIRONMENTAL CONSIDERATIONS provided by DEPWS.

The Act, administered by the Northern Territory Environment Protection Authority, is separate to and not reduced or affected in any way by other legislation administered by other Departments or Authorities. The Environment Operations Branch of the Environment Division may take enforcement action or issue statutory instruments should there be non-compliance with the Act.

5. There are statutory obligations under the *Weeds Management Act 2001* to take all practical measures to manage weeds on the property. For advice on weed management please contact the Department of Environment, Parks and Water Security.
6. Litchfield Council's current Fees and Charges may apply to the above conditions. Additional information can be found at www.litchfield.nt.gov.au.
7. A *Works Permit* is required from Litchfield Council before the commencement of any work within the road reserve, which would include the creation of any driveway crossover connecting to Litchfield Council's road network.

REASONS FOR THE DECISION

1. Pursuant to section 51(1)(a) of the *Planning Act 1999*, the consent authority must take into consideration the planning scheme that applies to the land to which the application relates.

The NT Planning Scheme 2020 applies to the land and Clearing of native vegetation requires consent under Clause 1.8 (When development consent is required). It is identified as Impact Assessable under Clause 1.8(1)(c)(i), therefore the strategic framework (Part 2 of the Scheme, including the Litchfield Subregional Land Use Plan 2016, which is relevant to this application), purpose and requirements of Clause 3.2 (CNV – Clearing of Native Vegetation), zone purpose and outcomes of Clause 4.19 (Zone H - Horticulture) and Clause 4.21 (Zone R – Rural), and Clause 5.7.1 (Rural Development – Agriculture, Horticulture and Intensive Animal Husbandry) need to be considered.

The strategic framework and relevant clauses of the NT Planning Scheme 2020 have been considered. The Authority considers that the proposal is generally consistent with the Litchfield Subregional plan in that the subject land falls within a rural area and the proposed development is intended to facilitate a mango orchard. The Authority further considers that the proposal, subject to amendments to the proposed buffers as identified in Condition Precedent 2, is consistent with and complies with the relevant requirements of the Scheme.

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Clearing of Native Vegetation is dealt with as an Overlay in Part 3 of the NTPS2020, the relevant provision being found in Clause 3.2. The Requirements for such clearing are contained in Clause 3.2.5 as follows - *Requirements*

5. *The clearing of native vegetation is to:*

- (a) avoid impacts on environmentally significant or sensitive vegetation;*
- (b) be based on land capability and suitability for the intended use;*
- (c) avoid impacts on drainage areas, wetlands and waterways;*
- (d) avoid habitat fragmentation and impacts on native wildlife corridors; and*
- (e) avoid impacts on highly erodible soils*

The Authority carefully considered the Applicant's Statement of Effect, Revised Clearing Plan, Justification for Buffers and the oral submissions made at the meeting. It also noted the advice provided by the Department of Environment, Parks and Water Security (DEPWS) in assessing the impact of the proposal against the requirements set out in Clause 3.2.5 and concluded that, provided that the buffers are adjusted as set out in Condition Precedent 2, the requirements of that clause can be met.

2. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent authority must take into consideration any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application.

The application was placed on public exhibition from 25 November 2022 to 9 December 2022. One public submission was received under section 49(1) of the *Planning Act 1999*.

The submission raised concerns regarding the impacts of the clearing of native vegetation on the native flora and fauna in the locality. The submitter also raised concerns the proposed 50m buffers around some portions of the remnant monsoonal rainforest and first order stream are inadequate and do not provide enough protection from spray drift and other horticultural activities on the subject and surrounding sites.

The Department of Environment, Parks and Water Security (DEPWS) advised that nine threatened species may occur within or immediately adjacent to the rainforest, however the risks for most of these threatened species from the proposed clearing is likely to be low. One of those species, a Pale Field Rat (*Rattus tunneyi*), was identified as potentially being affected by the land clearing due to the loss of habitat. DEPWS advises that the potential impacts on this species habitat can be reduced through the retention of a 250m wide native vegetation buffer around the perimeter of the rainforest area.

The submitter also indicated concerns relating to water usage and the impacts of the proposal on the current water licence. DEPWS (Water Resources Division) confirmed that proposed water demand is within the current water licence capacity limits.

The Development Consent Authority considers that concerns raised in the submission have been suitably addressed while number of other issues raised in the submission, including those relating to a shortage of workers to pick fruit, setting the land aside for an eco-tourism venture and sealing of roads in the rural area were considered irrelevant to the application.

3. Pursuant to section 51(1)(j) of the *Planning Act 1999*, 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.

With a combined site area of 253 hectares including Section 224 having a site area of 129 hectares, the subject land is capable of accommodating a proposal for the clearing of native vegetation to facilitate the development of a mango orchard. With the exception of the south- eastern corner, the site is not significantly constrained and is suitable for the proposed land use.

The south-eastern corner of Section 224 contains a patch of spring-fed and uniquely shaped monsoon rainforest containing vegetation of a significant importance to the Northern Territory. DEPWS advised that the vegetation types in this area are sensitive and vulnerable to a range of threats from the land clearing and the horticultural land use process, recommending a 250m wide native vegetation buffer be retained around its outer edge to ensure the area is sufficiently protected, as per recommendations of the NT Clearing Guidelines.

DEPWS also advised that while the Land Clearing Guidelines require a 200metre wide buffer along property boundaries, a 110m wide native vegetation buffer (inclusive of a firebreak) along the eastern side boundary of Section 224 would be a more adequate protection from spray drift and improved visual amenity for surrounding properties than the 25m buffer proposed by the application.

The applicant explained that the reasons for the proposed reduction of the width of buffers to the rainforest and to the eastern boundary to Section 224 include a need for efficient land and plantation management practices across both land parcels and the need to utilise highly suitable soils located in the south-western corner of Section 224, for a new mango variety. The applicant also described the need to clear native vegetation in order to minimise pest and weed infestation on the property.

The Authority considered DEPWS comments and the further information from the applicant against the recommendations of the Land Clearing Guidelines, noting the need to balance protection of vulnerable fauna and flora against the need to maximise development and the economic value of land suitable for horticultural production. The Authority has also considered that Section 224 is zoned R (Rural) rather than H (Horticulture) and noted DEPWS submission that a reduction in the size of the side boundary buffer would be preferable to a reduction to the buffer around

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the rainforest. In consideration of these site-specific land capability matters the Authority determined to allow the applicant to remove native vegetation buffer along the western boundary of Section 224 to allow the applicant the opportunity to improve efficiency in the land use practices around existing plantations, given that the applicant owns both land parcels. The Authority has also determined to allow the applicant to reduce the native vegetation buffer along the northern and eastern boundaries of Section 224, as clearing in this location is preferable to that around the rainforest.

4. Pursuant to section 51(1)(n) of the *Planning Act 1999*, 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.

There is unlikely to be any adverse impact on the existing and future amenity of the area as a result of the proposed clearing, as mango orchard plantations are a predominant land use in the locality. The removal of the buffer along western boundary will not impact on the amenity of Section 1772 as that land also has a mango plantation and is in the ownership of the applicant. The reduction of the buffer of native vegetation along the boundary with Section 212 may not impact on the amenity of the locality as that land is presently undeveloped. A retention of native vegetation buffers along road boundaries will provide some form of visual screening of the site's use from the public realm. In all other aspects the proposal complies with the purpose and outcomes of the zone. Horticultural production is a common land use in the locality so the proposed clearing of native vegetation is considered appropriate to facilitate an irrigated mango orchard.

FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

**ITEM 3
PA2022/0419**

**HOME BASED BUSINESSES (STORAGE OF VEHICLES AND MACHINERY)
INCLUDING STORAGE OF MORE THAN 3 VEHICLES AND OCCUPYING A
SITE AREA EXCEEDING 200SQM**

APPLICANT

LOT 52 (80) MCINTYRE ROAD, HOWARD SPRINGS, HUNDRED OF BAGOT
Tatam Planning Co

Applicant – Cat Tatam (Tatam Planning Co) attended.

Submitters – Edward Whiteaker, Steven and Cathy Hilder attended.

**RESOLVED
13/23**

That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse to consent to the application to develop Lot 52 (80) McIntyre Road, Howard Springs, Hundred of Bagot for the purpose of home based businesses (storage of vehicles and machinery) including storage of more than 3 vehicles and occupying a site area in excess of 200m².

REASONS FOR THE DECISION

1. Pursuant to section 51(1)(a) of the *Planning Act 1999*, the consent authority must take into consideration the planning scheme that applies to the land to which the application relates.

The NT Planning Scheme 2020 (NTPS) applies to the land. The proposed development is merit assessable under Clause 1.8 (1) (b) (ii) (2). It is shown as permitted development in Zone RL (Rural Living) but requires consent as the development does not comply with the relevant development requirements set out in part 5 of the NTPS.

The consent authority is required to take into consideration the requirements of Part 5 of the NTPS that are not met, and whether the proposal meets the purpose of the requirements. The proposed development does not comply with the requirements of Clause 5.4.10.1 (Home Based Business). The application sought to consent to establish two home based businesses on the subject land for the same purposes, being the storage of materials and vehicles.

Subclause 3 of Clause 5.4.10.1 states that *more than one home based business may operate on a site provided that individually and collectively the home based businesses accord with sub-clauses 4 and 5, and provided that there will not be more than one home based business of each category operating on the site.*

While the Authority noted a lack of clarity about what is a “category”, particularly as there are a huge range of business types that could come under the umbrella of home based business, the applicant advised the meeting that one of the businesses, “NT Custom Homes and Sheds” had been sold and sought to amend the application to seek consent to establish one home based businesses on the subject land for the purpose of the storage of materials and vehicles. The applicant also asked that the application be deferred to allow further evidence to be adduced examining the implications of removal of one of the proposed home based businesses on compliance with subclause 5.4.10. The Authority noted the proposed change to the application as advertised but considered that, as this was a retrospective application, arising out of protracted enforcement action, and that the business of NT Site Solutions, proposed to be continued on site, would still produce the bulk of non-compliances with the NTPS 2020, no deferral would be granted. The applicant agreed that the total area of the site and the number of vehicles used in the business would not be significantly reduced by the removal of NT Custom Homes and Sheds from the site

The proposal, even reduced to one business, does not accord with sub-clauses 4 and 5. The administrative limitations of sub clause 5.4.10.1(1) allow the consent authority to approve a home based business that is not in accordance with sub-clauses 4 and 5 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and

it is appropriate to the site having regard to such matters as its location, nature, scale and impact on surrounding amenity.

Subclause 4 identifies the conditions necessary for a business to comply with the purpose of Clause 5.4.10.1 (Home Based Business):

4. A home based business will comply with the purpose of this clause if:

- (a) it is carried out by a person residing in the dwelling;*
- (b) it operates in a manner that is ancillary to the use of the dwelling as a private residence at all times;*
- (c) it is compatible with the character of the local area and does not unreasonably impact upon the amenity of adjoining or nearby residential uses;*
- (d) no greater demand or load is imposed on the existing reticulated services than that which is ordinarily required in the locality;*
- (e) if reticulated services are not available:*
 - i. development does not impose unsustainable demands on surface water and groundwater; and*
 - ii. the land is suitable for the on-site disposal of effluent in a manner that does not pollute ground or surface waters;*
- (f) no more than 1 sign is erected on the site of a home based business, and is not more than 0.5m² in area; and*
- (g) it demonstrates that the surrounding road network is capable of accommodating the additional traffic generated without adverse impacts.*

Subclause 4(b) requires that it operates as an ancillary use to the dwelling on the site. The Authority considers that the proposed use is not ancillary having regard to its scale and impact and noting that it requires the use of a non-resident employee. The site area of the use (500 m²) and the number of vehicles (in excess of 3 and potentially 12) proposed do not indicate that the proposed use of the land is ancillary to the dwelling as they significantly exceed the permitted standards and show a scale and intensity beyond the ambit of a home based business as defined in Schedule to of NTPS 2020 as:

use of a dwelling or the site of a dwelling by a person who resides in the dwelling for a business activity which is subordinate to the primary residential use including;

- (a) family day care for no more than 7 children;*
- (b) storage of materials and vehicles;*
- (c) carrying out of an occupation or profession; and*
- (d) provision of temporary accommodation on a commercial basis within the dwelling;*

In relation to subclause 4(c) complaints have been received from adjoining owners/occupiers expressing concern about the impacts of the use on their amenity and the road network.

Subclause 5 identifies the requirements applicable for each category of home based business. Specifically subclause 5(b) relates to the storage of materials and vehicles:

5. (b) the storage of materials and vehicles as part of a home based business is acceptable in Zones RL, R, H, A or FD where:

- i. the total area of the site that is used (including areas used temporarily) does not exceed 200m² ;
- ii. no goods or equipment are visible from outside the site; and
- iii. not more than three vehicles kept on the site are associated with the home based business;
- iv. it does not involve any materials or equipment that cause nuisance or emissions that adversely impact on the amenity of the locality;

The area to be used for the home based business measures 500m². While there is some doubt around the meaning of “vehicle” as used in the Clause, the number of vehicles is well in excess of 3 and may be as high as 12.

The purpose of Clause 5.4.10.1 is to ensure that a home based business facilitates small scale business activities, while remaining ancillary to the dwelling on the site, that are compatible with and conducted in a manner that:

- (a) is appropriate to the amenity of the locality and the primary purpose of the zone in which the home based business is established;
- (b) protects the amenity of adjoining premises;
- (c) can be supported by the existing utilities infrastructure provided in the locality; and
- (d) limits the traffic impacts to that which might reasonably be expected in the locality.

The purpose and relevant outcomes for zone RL (Rural Living) is to provide for a range of rural lifestyles, choices and rural activities with an outcome where home based businesses are of a scale, intensity and nature that is compatible with the character and amenity of the surrounding locality.

The locality is characterised by predominately single dwellings with numerous outbuildings on lots around 2 hectares in area. The proposed development originally sought to establish two home based businesses but even as a single business, NT Site Solutions operates at a scale and level of intensity beyond that which could reasonable considered as a home based business, requiring a non-resident employee to undertake the day to day operations and an area and number of vehicles significantly exceeding those permitted for a home based business.

The proposed development it is not considered to be a home based business, ancillary to the dwelling on site, but rather establishes another primary use on the land due to the scale and intensity of operation as well as the impact on the amenity of adjoining premises.

For the reasons given above the proposed development, even amended to one business, NT Site Solutions, is not considered to be compatible with or able to be conducted in a manner that is consistent with the purpose of Clause 5.4.10.1 (Home Based Business), the purpose and outcomes of

Clause 4.7 Zone RL (Rural Living) or appropriate to the site having regard to its location, nature, scale and impact on surrounding amenity.

2. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent authority must take into consideration any submissions made under Section 49 , and any evidence received under Section 50 , in relation to the development application.

Two submissions were received pursuant to Section 49 of the Act. Both submissions objected to the proposal. In summary the submissions noted that:

- The application is retrospective with the use being established and operating in the manner proposed for a significant amount of time.
- Impact of the movement of vehicles within the property is detrimental to the peace and amenity of the area.
- The proposed development impacts on the submitter's visual amenity.
- Machinery noise and activities on site correspond with when the employee is present on the site and can be clearly heard from neighbouring properties.
- Increased traffic in and out of the property all hours of day and night and seven days a week is impacting on the road surface of McIntyre Road and its intersections with other roads.
- Businesses is in fact operating seven days a week.
- A shed on the land is being used for manufacturing and storage of goods, materials and equipment.
- Designated area for the Home Based Business is not representative of the area used and the movement of vehicles on site.
- Questions the use of the number of vehicles used and the use of designated private vehicles.

The Authority has considered submitter's statements, noting that, since the application is retrospective, the submitters have the ability to provide comment based on their firsthand experience. In light of the submissions the Authority considers that the proposed development has the potential to adversely impact on the amenity of the locality and is not representative of the character of the locality.

3. Pursuant to section 51(1)(n) of the *Planning Act 1999*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in locality.

The scale and intensity of the proposed home based businesses is not consistent with the rural living residential character of the locality. The Authority has taken into consideration that the application is retrospective and this has provided members of the community the opportunity to assess the impacts on their amenity. In consideration of these comments and the proposed scale and intensity of the development, it is considered that the proposed development has the potential to significantly impact on the existing and future amenity of the locality.

FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Refusal

ITEM 4
PA2022/0363

TRANSPORT TERMINAL AND CLEARING OF NATIVE VEGETATION

SECTION 4914 (141) KOWARI ROAD, BERRY SPRINGS, HUNDRED OF STRANGWAYS

APPLICANT

Tatam Planning Co

Emma Sharp and Rachael Wright are community members of the Development Consent Authority and Councillor's respectively, for Litchfield Council. Litchfield Council is a submitter to this application under Section 49 of the *Planning Act 1999*.

The Chair noted that section 98A of the *Planning Act 1999* - Independence of Community Members – contemplates that Community Members of the Development Consent Authority, while acting independently, may take account of opinion of a local government/council in relation to a development application. No parties present raised any concerns with Ms Sharp or Ms Wright considering the application.

Pursuant to section 97 of the *Planning Act 1999*, the Chair determined that Ms Sharp and Ms Wright interest or relationship was not significant or relevant, and both were permitted to form part of the quorum and participate in determination of this item.

Applicant - Cat Tatam (Tatam Planning Co) attended.

Submitters who sent their apology - Jayne Stockwell, Amanda Bosanac, Ruth Billany and Litchfield Council.

Submitters - Mathew Bosanac, Stephen Pennington, Mirjam Kaestli, Stuart Stockwell, Joshua and Diane Relton, Luke Relton and Kaylene Brumby

Interested Parties in attendance - Chris Woolley, Derek Marshall and Chiara Randazzo (Cunnington Rosse Town Planning).

**RESOLVED
14/23**

That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse to consent to the application to develop Section 4914 (141) Kowari Road, Berry Springs, Hundred of Bagot for the purpose of a transport terminal and clearing of native vegetation for the following reasons:

REASONS FOR THE DECISION

1. Pursuant to section 51(1)(a) of the *Planning Act 1999*, 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 2020 (NTPS 2020) applies to the land and a transport terminal and clearing of native vegetation requires consent under Clause 1.8 (When development consent is required). It is identified as *Impact Assessable* under Clause 1.8(1)(c)(iii) of the NTPS 2020.

The strategic framework (Part 2 of the Scheme, including the Darwin Regional Land Use Plan and Litchfield Subregional Land Use Plan), zone purpose and outcomes of Clause 4.21 Zone R (Rural) must be considered for an impact assessable use.

The strategic framework (Darwin Regional Land Use Plan and Litchfield Subregional Land Use Plan) identify the land for rural lifestyle and there is no area plan or planning scheme amendment identifying the area for change. Key objectives of the land use plans seek to maintain rural amenity and lifestyle choice and protect the natural environment. Additionally, clearing native vegetation is to have regard to any adverse impacts on areas identified on the Priority Environmental Management (PEM) map with the Litchfield Subregional Land Use Plan (LSLUP).

The application includes limited information on the operation of the transport terminal and it is unclear how the key objectives for Rural Lifestyle Areas, which relate to residential development in the rural area, are met.

The site is adjacent to, and the north western corner of the property within, a Priority Environmental Management Area (PEM) for drainage and riparian values as identified in the Litchfield Subregional Land Use Plan (LSLUP).

The Department of Environment, Parks and Water Security (DEPWS) confirms the site is adjacent to a waterway with two non-perennial streams 150m from the property boundaries (as identified within the PEM area) with the premises expected to slope towards the north-west and both streams. DEPWS advises with the site is mostly cleared, the slope of the land and proximity of the waterways, there is clear potential for soils to erode, along with any mobile contaminants or wastes from the premises, being transported offsite and into the waterway.

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The application includes limited information on how the use will limit adverse impacts on the area identified for a Priority Environmental Management (PEM).

The application indicates that approximately 4,000m² of the site has been cleared to facilitate the construction of two dams.

DEPWS have indicated that an exemption from requiring a permit to build a 'rural dam' exists, if the dam is constructed with a wall height of < 3 metres and has a catchment area of < 5km². DEPWS have also indicated that the site owner/land use operator has potentially already imported fill material to the site. No testing or classification of any fill material on site has been provided in this retrospective application.

Notwithstanding the above, the application has not provided details of the dam construction nor has it addressed related concerns about stormwater management and sediment and erosion control, in order to demonstrate the use does not impact on the receiving environment and adequately addresses the objectives of the LSLUP.

The purpose of Clause 4.21 Zone R (Rural) is to provide residential, horticultural, agricultural and other rural activities on large lots to provide separation between potentially incompatible uses and restrict closer settlement in areas where access to reticulated water and sewerage may not be available.

Zone Outcome 3 provides for development such as animal boarding, industry-primary, intensive animal husbandry and transport terminal, where *the scale and intensity and nature of the activity if compatible with the rural character and amenity of the surrounding locality.*

The nature of the use, both the past and that proposed, is not considered to be of a scale and intensity compatible with the site or the rural area generally. Given that the use had been in operation for some time, significant impacts on the local road network and amenity of the surrounding locality due to dust, noise, outdoor activities and generation of heavy vehicle traffic flows, have been observed as part of enforcement action and through submissions from Litchfield Council and surrounding residents.

5. Clause 1.10(5) provides that the consent authority may consent to a proposed use or development that is not in accordance with a requirement set out in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:
 - (a) the purpose and administration clauses of the requirement; and
 - (b) the considerations listed under Clause 1.10(3) or 1.10(4).

The application is not in accordance with the development requirements of the NTPS 2020 including Part 3 Overlay Clause 3.2 (Clearing of native vegetation), and Part 5 development requirements of Clause 5.2.4.1 (Vehicle Parking), Clause 5.2.4.4 (Parking Layout), Clause 5.2.6

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(Landscaping). Clause 5.7.3 (Transport Terminals in Zones R and H) and Clause 5.8.7 (Demountable Structures).

The purpose of Clause 3.2 CNV (Clearing of Native Vegetation) is to identify areas with limits to the clearing of native vegetation to ensure that clearing in these areas does not:

- (a) impact on the conservation values of the land within Zone CN; or
- (b) unreasonably contribute to environmental degradation of the locality.

Clearing of native vegetation of more than one hectare in aggregate of land (including any area already cleared) requires consent.

As the clearing has already occurred, a formal assessment against the Land Clearing Guidelines has not been prepared or submitted with the application as required by the clause. The applicant asserts the clearing was considered necessary for the establishment of the transport terminal use and to control weeds.

DEPWS have indicated that the retrospective clearing would appear to be consistent with the recommended buffer distances to the identified Priority Environmental Management area and the site does not contain wetland features or significant and sensitive vegetation nor populations of threatened species as required by the overlay.

The application advises that the 10 domestic buffalos are used to control weeds on the property. The use of domestic livestock must be in accordance with Interim Development Control Order (IDCO) No. 32 dated 23 August 2022.

The 'Indicative Clearing Plan' submitted with the application neither details the dimensions of cleared areas, firebreak widths, or retained vegetation buffers to demonstrate that the clearing was appropriate for the intended use nor adequately addresses the requirements of the overlay and IDCO No. 32.

The application provides no details of the garaging and maintenance of fleet vehicles or plant and equipment storage as per the definition of transport terminal in Schedule 2 of the NTPS 2020, which is:

transport terminal means premises used for the:

- (a) loading, discharge or storage of goods in the course of the transport of those goods by air, road, rail or ship;
 - (b) garaging and maintenance of fleet vehicles; or
 - (c) servicing, repair and garaging of buses;
- and may include where *ancillary* an **office**

No details of the hours of operation, how the site is used or accessed, the total number and type of vehicles or construction equipment, are provided in the application, and there is no building or office component included.

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The Authority expressed uncertainty as to whether the use being undertaken on the site could properly be described as a “transport terminal” but noted that the lack of detail made it impossible to fully consider the question and proceed on the basis of the application as advertised. The development requirements of Clause 5.7.3 (Transport Terminals in Zones R and H) are:

1. *A transport terminal, and any activity associated with it, is located at least 50m from the side and rear boundaries of the site and 100m from any public road.*
2. *The boundary setbacks are landscaped to provide an effective visual screen to minimise the potential impacts on the existing and future amenity of adjacent areas and any public road.*
3. *The transport vehicles associated with the use will not substantially:*
 - (a) *impact on the amenity of other users in the locality; or*
 - (b) *damage the road network.*

The application is seeking retrospective approval and the photographic evidence provided in submissions received by the consent authority, demonstrate that the use of the property as a civil works and plant hire company, will have potential ongoing impacts on the receiving environment, has significantly impacted the rural lifestyle amenity of the locality, and the local road network, and the use continues to demonstrate non-compliance with the requirements and purpose of the clauses of the NTPS2020.

It would appear the activities on site are an over intensification of use of rural zoned land, and does not accord with the definition of ‘transport terminal’. Furthermore by virtue of DEPWS-Water Resources considering the use ‘industry’ for the purpose of water licensing, gives rise to the question of the use being considered an industrial use which is prohibited in the zone.

6. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent authority must take into consideration any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application.

The public submissions raised the following issues of concern:

- Kowari Road is a cul-de-sac which does not provide for heavy vehicle manoeuvrability and was not built to cater for constant flow of heavy vehicles.
- Road intersections leading to the subject site from Cox Peninsula Road to the north or from the local rural roads from the south, are not designed to cater for heavy vehicle traffic and/or provide appropriate turning circles for road trains.
- Heavy vehicle traffic coming and leaving the site conflicts with local area traffic and causes damage to road verges and surfaces.
- The soils in the area are subject to seasonal waterlogging and evidence has been provided showing heavy machinery being bogged

on site indicating the site is not capable of supporting the proposed use.

- Excess fill has been brought onto the land to raise site levels above the inundated soils. The manner in which the fill had been placed and treated is causing erosion and loss of sediment which is transported via water runoff to the neighbouring properties.
- Excessive numbers of heavy construction vehicles (road trains with trailer, heavy plant equipment, fuel tankers, excavators etc.) are being moved to and from the site.
- Stockpiling of construction materials.
- Heavy vehicles parked on the road blocking access to neighbouring properties.
- Gravel, dirt and rocks spilled onto the road causing traffic hazards.
- Noise from exhaust brakes of vehicles impacts on rural residential amenity.
- Concerns have been raised over impact of heavy vehicle traffic on pedestrian safety.
- Heavy vehicles are killing native wildlife.
- The use of buffalo to maintain weeds has potential to cause compaction of soils and exacerbate erosion and sediment control issues. and
- Industrial uses are not appropriate in a rural zone.

Litchfield Council has been approached and is aware of community concerns raised by several residents in relation to the use of the site, impacts to the road and safety, which have not been addressed in the application. Photos provided within Council's submission show evidence of the damage caused and alterations and road works to Council infrastructure and assets by the proponent have taken place without appropriate approval from the Council.

Council's concerns also include but are not limited to:-

- Kowari Road being a lower-order cul-de-sac and oversized heavy vehicle use by the proponent business has damaged the road, impacted culverts and concrete drain collars at crossovers.
- Heavy vehicle traffic conflicting with oncoming local traffic having to move onto the verge resulting in further road damage.
- Wet season conditions, water logging and deep standing water has worsened road hazards as a result of the unapproved development and use of the land. and
- Pedestrian and bicycle safety for the local residents.

The Authority has considered and taken into account when making its determination, the matters raised in the public submissions and the photographic evidence provided, in addition to the concerns and issues reiterated by Litchfield Council in their opposition to the development.

7. Pursuant to section 51(1)(n) of the *Planning Act 1999*, 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.

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The use of the subject site as a civil works and plant hire company has demonstrated significant impacts on the amenity of the rural locality by way of dust, noise, outdoor activities, damage to the local road network and impeding access to properties, including vehicular and pedestrian safety conflicts with heavy vehicle machinery. The use has potential ongoing impacts on the receiving environment in the absence of stormwater management and erosion and sediment control management.

The use has significantly impacted the rural lifestyle amenity of the locality and is not considered to be appropriate for the subject land.

FOR: 4

AGAINST:

ABSTAIN: 0

ACTION: Notice of Refusal

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

SUZANNE PHILIP
Chair

23 February 2023