



DEVELOPMENT CONSENT AUTHORITY

LITCHFIELD DIVISION

MINUTES

MEETING NO. 289 – WEDNESDAY 15 MAY 2024

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

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

APOLOGIES: Nil
LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), George Maly, Ben Wollinski and Wayne Vowles (Development Assessment Services)

COUNCIL REPRESENTATIVE: Rodney Jessup and Jaimie O'Connor

Meeting opened at 10.45 am and closed at 12.40 pm

THE MINUTES RECORD OF THE EVIDENTIARY STAGE AND THE DELIBERATIVE STAGE ARE RECORDED 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
PA2024/0074 **SUBDIVISION TO CREATE 6 LOTS**

SECTION 618 (160) MIRA ROAD SOUTH, DARWIN RIVER, HUNDRED OF CAVENAGH

APPLICANT Earl James and Associates

Applicant: Kevin Dodd (Earl James and Associates) and Brendan Sawyer (landowner) attended.

RESOLVED
20/24

That, the Development Consent Authority vary the requirements of Clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Section 618 (160) Mira Road South, Hundred of Cavenagh for the purpose of subdivision to create 6 lots, subject to the following conditions:

CONDITION PRECEDENT

1. Prior to the commencement of works, 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.

GENERAL CONDITIONS

2. The works carried out under this permit shall be in accordance with the drawing numbered 2024/0074/1, endorsed as forming part of this permit.
3. The owner of the land must enter into agreements with the relevant authorities for the provision electricity facilities to each lot shown on the endorsed plan, in accordance with the authorities' requirements and relevant legislation at the time.

Please refer to notations 1 for further information.

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 on the plan of subdivision submitted for approval by the Surveyor General.
5. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to the Litchfield Council, to the satisfaction of the consent authority.

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6. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the Litchfield Council, to the satisfaction of the consent authority.
7. Before the use commences the owner must, in accordance with Part 6 of the *Planning Act 1999*, pay a monetary contribution to Litchfield Council for the upgrade of local infrastructure, in accordance with its Development Contribution Plan.
8. 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. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (powerdevelopment@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.
2. All land in the Northern Territory is subject to the *Weeds Management Act 2001* (WM Act). The WM Act describes the legal requirements and responsibilities that apply to owners and occupiers of land regarding declared weeds. Section 9 general duties include the requirement to take all reasonable measures to prevent land being infested with a declared weed and to prevent a declared weed from spreading. There are additional duties including a prohibition on buying, selling, cultivating, moving or propagating any declared weed and the requirement to notify the Weed Management Branch of a declared weed not previously present on the land within 14 days of detection.

Should you require further weed management advice contact the weed management branch by phone on (08) 8999 4567 or by email to weedinfo@nt.gov.au.
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 5356. The numbers shown on the plans endorsed as forming part of this permit are indicative only and are not for addressing purposes.

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4. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
5. 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*.
6. Any new on-site wastewater management system is to be installed in accordance with the Code of Practice for Wastewater Management.
7. 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.

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 subdivision to create 6 lots requires consent under Clause 1.8 (When development consent is required). It is identified as Impact Assessable under Clause 1.8(1)(c)(ii), therefore the strategic framework (Part 2) of the Scheme, including the Litchfield Subregional Land Use Plan 2016, Overlays (Part 3), zone purpose and outcomes (Part 4) of clauses 4.21 (Zone R – Rural), and subdivision and consolidation requirements (Part 6) clauses 6.3.2 (Lot Size and Configuration for Subdivision in Zones RL, R and H, and Unzoned Land), 6.3.3 (Site Characteristics for Subdivision for Lots of 1ha or Greater in Zones RR, RL, R and H, and Unzoned Land), 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land), need to be considered.

These clauses have been considered and it is found that the proposal complies with the relevant requirements of the Planning Scheme except for clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land).

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2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NT Planning Scheme 2020, the consent authority may consent to a proposed development which 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).

Under Clause 1.10(4) (Exercise of Discretion by the Consent Authority), In considering an application for a use or development identified as Impact Assessable the consent authority must take into account all of the following:

- (a) any relevant requirements, including the purpose of the requirements, as set out in Parts 5 or 6;
- (b) any Overlays and associated requirements in Part 3 that apply to the land;
- (c) the guidance provided by the relevant zone purpose and outcomes in Part 4, or Schedule 4.1 Specific Use Zones; and
- (d) any component of the Strategic Framework relevant to the land as set out in Part 2.

Part 2 – Strategic Framework

Litchfield Subregional Land Use Plan 2016 (LSLUP)

The LSLUP, a policy document in Schedule 2, provides more detailed planning than the regional plan. It includes statements of policy specific to the Litchfield subregion, and land use concept plans to guide the future preparation of area plans for the rural activity centres.

The LSLUP is a long-term plan that identifies the land to support growth while protecting the established rural areas. The LSLUP identifies the site is within a 'Rural Area'. The proposal to subdivide the land into 6 lots is consistent with the statements of policy for rural areas as:

- The proposed lot sizes are consistent with maintaining rural amenity and lifestyle choice.
- The lots meet the minimum lot size of 8ha in Zone R (Rural).
- The existing bore on Section 618 yielded 6 l/s and demonstrates sufficient groundwater to meet domestic requirements. The Department of Environment, Parks and Water Security also advise there is adequate groundwater to support the subdivision proposal.
- Stormwater naturally drains towards the Blackmore River and does not adversely impact on the receiving environment.
- There are no significant concerns raised with the subdivision proposal or the PEM area.

The subdivision application is considered to be broadly consistent with the intent and does not conflict with principles and strategic direction of the policy.

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Part 3 – Overlays and Part 4 – Zone Purpose and Outcomes

There are no relevant Overlays that apply to this proposal and the site is within zone R (Rural). The primary purpose of zone R is to provide for residential, horticulture, 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.

The subdivision proposal is consistent with the zone purpose and outcomes with providing for residential uses. The subdivision design is informed by a land suitability assessment (LSA) and puts forward that the land is able to support residential development.

Lots B to F all have access of 1ha of unconstrained land that abuts a public road and Lot A has over 1ha of unconstrained land that is accessed via an existing all-weather access adjacent to the northern boundary.

Part 6 – Subdivision and Consolidation requirements

The subdivision complies with clauses 6.3.2 (Lot Size and Configuration for Subdivision in Zones RL, R and H, and Unzoned Land), 6.3.3 (Site Characteristics for Subdivision for Lots of 1ha or Greater in Zones RR, RL, R and H, and Unzoned Land). However, does not comply with clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land).

6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land)

The purpose of this clause is to ensure that subdivision of land in Zones RL, R and Unzoned land is integrated with infrastructure, community services and facilities and will not unreasonably affect the environment.

The proposal does not comply with subclause 6(f) as roads should provide direct access to lots and avoid battle-axe strips, however, where justified, battle-axe strips should be not less than 10m wide and less than 250m in length.

The length of the battle-axe strip for Lot A is 535m, which does not comply.

In accordance with subclause 1, the consent authority may consent to a subdivision that is not in accordance with subclause 6, only if it is satisfied the subdivision is consistent with the purpose of the clause.

The subdivision is considered to be consistent with the purpose of the clause as there is no reticulated water or sewerage services available to connect to. The battle-axe strip will not unreasonably affect the environment, and a variation to the battle-axe requirements is appropriate in this instance because:

- The minimum lot size lot in Zone R (Rural) is 8ha which requires battle-axe lots to have larger access strips than the 250m length requirement.

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- Proposed Lots B-F are compliant, are a regular shape and do not exceed a depth to width ratio of 4:1.
 - The width of the strip is 55.3m, which is significantly greater than the 10m width requirement, which can provide future road access.
 - Lot A (89.6ha) is a remnant land parcel which contains the Blackmore River channel and which is far greater than the minimum lot size requirement.
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.

The land is capable of supporting the proposed development. There is reticulated power available, 4ha of unconstrained land with suitable soils for a wastewater management system. The lots are of a size to provide adequate separation distances between bore and septic systems, and there is adequate groundwater in the area.

A Site and Soil Evaluation report (SSE) advised that a wastewater management system complying with the requirements of the Code of Practice for Wastewater Management can be installed on each lot.

Additionally, the Department of Environment, Parks and Water Security and the Water Resources Division did not identify or raise any issues of concern in relation to land capability or potential impacts on surrounding land.

4. Pursuant to section 51(1)(m) of the *Planning Act 1999*, the consent authority must take into consideration 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.

The Litchfield Council requested road upgrades to a portion of Mira Road South as well as a monetary contribution for the upgrade of local infrastructure in accordance with the Litchfield Council's development contribution plan.

The applicant put forward that the reason for establishing the development contribution plan was to provide for infrastructure, which includes roads. Requiring both the upgrade of the Road and a monetary contribution was not required. As the cost of upgrading the road directly in front of the site was considered to be substantially higher than the monetary contribution required, the applicant was supportive of providing a monetary contribution only.

At the Litchfield Division of the Development Consent Authority meeting held on 15 May, the Litchfield Council further requested and tabled two

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additional conditions for approval, stating that Council's support for the proposal is only premised on the conditions requested being included in any permit granted. The conditions broadly stipulated that upgrades to the section of the Mira Road South fronting the allotment were required as it was unformed, not being maintained, had limited use and was affected by a floodway. The Authority acknowledged that the relevant section of Mira Road South had not been formally constructed and noted the Council's view that the narrow track currently located within the road corridor is not of sufficient standard to facilitate an access to each lot. The Authority also noted that the landowner, Mr Brendan Sawyer, disputed that the existing road was insufficient.

The Authority also further noted, that the relevant section of Mira Road South had been formally opened and vested in Council ownership and the applicant had therefore a right to connect to the road and a right to only construct an access to each lot from the corridor.

The Council suggested that the cost to the developer of constructing the road upgrade could be offset against the monetary contribution under the Litchfield Council's development contribution plan. The applicant indicated that the cost of the road construction would far exceed the amount of contribution and was not warranted by a 6 lot subdivision.

In noting these issues, the Authority resolved to not impose a requirement for upgrades to the road and instead resolved to impose a standard condition requiring kerb crossovers and driveways to meet the technical standards of the Litchfield Council and a standard condition requiring a monetary contribution for the upgrade of local infrastructure.

The Authority considered that there is a well-established body of law concerning the scope of power to impose conditions on a development under planning legislation. While the discretion is wide, it is circumscribed by the subject matter of planning, and therefore must be for a planning purpose and involve a fair and reasonable nexus to the subdivision of development: *Western Australian Planning Commission v Temwood Holding Pty Ltd (2004) 221 CLR 30*. The concept of a condition being a quid pro quo for subdivision or development is not acceptable and to satisfy the nexus test, a condition must be capable of being justified by reference to the consequences of the subdivision or development if the condition were not imposed. The connection between the anticipated adverse consequence, and its alleviation by means of the condition, must be established as a matter of fact. In this case, the Authority did not consider there was a sufficient nexus demonstrated between the six lot subdivision and the need to upgrade the public road to support the Council's requested condition. The Authority noted that the Council's position that without the requested condition for a road upgrade, it could not support the development. However, the Authority considered that such a condition was not a valid exercise of its power.

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The Authority also included the standard condition for the construction of crossovers for each lot to meet the technical standards of the Litchfield Council, to the satisfaction of the consent authority.

5. 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.

The proposal, generally accords with the Litchfield Subregional Land Use Plan 2016 and is considered that future residential development on the proposed lots are unlikely to adversely impact the area or alter community expectations for the site. The proposed lot sizes and subdivision density are expected in the area and the lots can achieve appropriate levels of residential amenity.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

**ITEM 2
PA2024/0070**

**OUTBUILDING (SHED) ADDITION TO AN EXISTING DWELLING-SINGLE WITH A REDUCED BUILDING SETBACK TO THE SIDE AND REAR BOUNDARIES
SECTION 4193 (150) SHEWRING ROAD, MCMINNS LAGOON, HUNDRED OF STRANGWAYS**

APPLICANT

Cunnington Rosse Town Planning and Consulting

Applicant: Gerard Rosse (Cunnington Rosse Town Planning and Consulting) attended.

**RESOLVED
21/24**

That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse to consent to the application to develop Section 4193 (150) Shewring Road, Hundred of Strangways for the purpose of outbuilding (shed) addition to an existing dwelling-single with a reduced building setback to the side and rear boundaries for the following reasons:

REASONS FOR THE DECISION

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 outbuilding (shed) addition to an existing dwelling-single with a reduced building setback to the side and rear boundaries requires consent under Clause 1.8 (When development consent is required). It is identified as Merit Assessable under Clause 1.8(1)(b)(ii)(2), therefore only Part 5 clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), needs to be considered.

This clause have been considered and it is found that the proposal does not comply with sub-clause 6, as the building setbacks of residential

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buildings and ancillary structure are to be setback 10m from side and rear lot boundaries in zone RL (Rural Living) where only 8m and 6m respectively are proposed.

Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), sub-clause 2, of the Northern Territory Planning Scheme 2020, in considering an application for consent for a use or development that has become Merit Assessable under Clause 1.8(1)(b)(ii)(2), the consent authority must consider the requirements in Part 5 that are not complied with and whether the proposal meets the purpose of the requirements.

Clause 5.4.3 (Building Setbacks for residential buildings and ancillary structures)

The purpose of this clause is to ensure that residential buildings and ancillary structures are located in a manner that:

- a) Is compatible with the streetscape and surrounding development including residential buildings on the same site;
- b) Minimises adverse effects of building massing when viewed from adjoining land and the street;
- c) Avoids undue overlooking of adjoining properties; and
- d) Facilitates breeze penetration through and between buildings.

The shed is proposed to be 6.0m from the rear boundary and 8.0m from the side boundary.

In accordance with sub-clause 3, the consent authority may consent to a development that is not in accordance with sub-clause 6 if it is satisfied that the reduced setback is consistent with the purpose of the clause and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.

The proposed shed will be of a considerable height, being 5.146m high, with long expanses of walls extending 12m in length along the side and rear boundaries. As such the shed is considered likely to be highly visible from adjoining land and likely to create a visual impact and building massing when viewed from neighbouring land. Three large roller doors were also proposed along the front and rear façade to facilitate ventilation of the structure.

The application states that proposed setbacks also include 4m wide firebreaks which cannot be landscaped leaving a two metre wide corridor at the rear and a four metre wide corridor at the side to accommodate landscaping to form visual screening for the structure.

Noting the relatively large site (>2ha) the Authority asked why a reduction of a minimum setback is required. The applicant could not provide any specific reasons for the request other than it was the owner's wish and that a compacted earth pad had already existed. The applicant further stated that a 2 metre wide landscaping between the shed and the edge of a firebreak, at the rear, consisting of frangipani trees, was sufficient to

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screen the structure from view from the neighbouring property. The applicant has also argued that existing vegetation on other properties also adequately screens the structure from view.

Whilst the Authority recognised that firebreaks for the site are legally required under the *Fire and Emergency Act 1996*, it also noted that the remaining two and four metre wide corridors or the existing and proposed landscaping surrounding the shed are not together capable of screening the structure from view or likely to prevent building massing when viewed from adjoining land.

At the Litchfield Development Consent Authority meeting, the applicant also tabled site photos and a response to the Development Assessment Services report, in support of the proposal.

The tabled materials were considered but not supported as they did not match the exhibited plans. Having regard to these and in this instance, the consent authority resolved to not support a variation to the setback requirements because:

- The size, scale and location of the shed is not compatible with the surrounding development and would unreasonably impact amenity of adjoining and nearby land.
- The location of the shed could achieve compliance with the setback requirements of the Northern Territory Planning Scheme 2020.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Refusal

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

SUZANNE PHILIP

Chair

21 May 2024