



## **DEVELOPMENT CONSENT AUTHORITY**

### **KATHERINE DIVISION**

### **MINUTES**

**MEETING No. 176 – WEDNESDAY 3 JULY 2019**

**DIPL CONFERENCE ROOM  
1<sup>ST</sup> FLOOR GOVERNMENT CENTRE  
5 FIRST STREET  
KATHERINE**

**MEMBERS PRESENT** Suzanne Philip (Chair via videoconference), John King, Peter Gazey and Fay Miller

**APOLOGIES:** Nil

**OFFICERS PRESENT:** Alana Mackay, Julie Bennett and Ben Wollinski (via videoconference) (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Nil

**Meeting opened at 10.15 am and closed at 10.41 am**

**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 TIMES DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.**

**ITEM 1                      CLEARING OF NATIVE VEGETATION**  
**PA2019/0169              NT PORTION 6165 (8368) STUART HIGHWAY, COSSACK**  
**APPLICANT                RAZOR ROCK FARM**

Ms Whitney Dollemore and Mr Nick Ormsby (Razor Rock Farm) attended and tabled an amended plan.

**RESOLVED**  
**48/19**

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 NT Portion 6165 (8368) Stuart Highway, Cossack for the purpose of clearing of native vegetation, subject to the following conditions:

**CONDITIONS PRECEDENTS**

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 on the advice of Department of Environment and Natural Resources 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 must be generally in accordance with the plans submitted with the application but modified to show:
  - (a) No strips of remnant vegetation between the northern boundaries of block 7 and 8 and the northern fenceline;
  - (b) Exclude the existing gravel pit from the proposed clearing area;
  - (c) Amended boundary of Block 9, as illustrated on the tabled plan;
  - (d) Illustrate the correct land area and size to be cleared.
2. Prior to the commencement of works (including site preparation), the applicant is to obtain an Authority Certificate under the *Northern Territory Aboriginal Sacred Sites Act 1989* from the Aboriginal Areas Protection Authority.

**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. 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](http://www.austieca.com.au) and the NTG website <https://nt.gov.au/environment/soil-land-vegetation>

**NOTES:**

1. The Aboriginal Areas Protection Authority advises you should immediately apply online for an Authority Certificate. Obtaining an Authority Certificate will indemnify against prosecution under the *Northern Territory Aboriginal Sacred Sites Act 1989*. For advice on how to obtain a certificate please contact the Aboriginal Areas Protection Authority on (08) 8999 4365.
2. A permit to burn is required from the Regional Fire Control Officer, Department of Environment and Natural Resources, 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*.
3. 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](http://www.austieca.com.au) and the NTG website <https://nt.gov.au/environment/soil-land-vegetation>.
4. The permit holder is advised that the proposal may have assessment implications under the *Waste Management and Pollution Control Act 1998*. More information can be found on the Northern Territory Environment Protection Authority website at: <https://ntepa.nt.gov.au/waste-pollution>. The applicant is encouraged to contact the NT EPA on (08) 8924 4218 or [ntepa@nt.gov.au](mailto:ntepa@nt.gov.au).
5. The Northern Territory Environment Protection Authority has advised that the proponent must comply with their General Environment Duty provided by section 12 of the *Waste Management and Pollution Control Act 1998*.
6. 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 and Natural Resources.
7. The Water Resource Division at the Department of Environment and Natural Resources recommend the proponent contact them on (08) 8999 3692, to confirm the existing bore/s location on the subject land.

## REASONS FOR THE DECISION

1. Pursuant to section 51(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 applies to the land to which the application relates. The application was assessed against Clauses 2.7 (Reference to Policy), 2.8 (Reference to Guidelines), 5.17 (Zone A – Agriculture), 10.2 (Clearing of Native Vegetation in Zones H, A, RR, RL, R, CP, CN, RD and WM and on Unzoned Land), 10.3 (Clearing of Native Vegetation – Performance Criteria), and is generally compliant.

The primary purpose of Zone A is to provide suitable land for agriculture. Lot sizes will depend on the capability of the land for commercially viable agriculture. The intent of the clearing is to expand the existing horticulture (mango) plantation.

The clearing of native vegetation is supported as:

- the assessment by the Department of Environment and Natural Resources against the Land Clearing Guidelines 2019, found that:
  - clearing is unlikely to have adverse impacts on the flora and fauna in the area
  - the soil is suitable for the proposed use
  - there is sufficient buffers to the existing sinkhole located on the lot
- the future water use is anticipated to remain under the existing water licence issued
- the clearing boundaries will be realigned to exclude the existing gravel pit to avoid erosion issues.

2. Pursuant to section 51(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 Katherine Land Use Plan 2014 (KLUP) is a referenced document in the Northern Territory Planning Scheme and provides detailed planning specific to the Katherine region. The aim of the KLUP is to position the town to respond to opportunities for growth while improving well-being and protecting valued environmental and productive assets in the locality. The KLUP includes land use policy to manage growth and guide the interpretation of the Northern Territory Planning Scheme.

A focus of the KLUP is the identification and protection of prime agricultural land resources for that use. The site is located in an identified 'Rural Lifestyle' area. Key rural lifestyle objectives are to:

- preserve land with high and medium capability for agriculture for those activities within the context of competing rural living and rural residential use
- preserve and enhance the natural resources, biodiversity and heritage values of a locality.

Rural lifestyle areas place a high emphasis on protecting residential amenity with larger lots suitable for horticulture. The two land uses are for potentially incompatible and require a degree of separation. The southern boundary has an area zoned RL (Rural Living) and abuts rural lifestyle lots. The clearing on the northern section of the lot has a significant land separation of approximately 1km to the closest rural living lot.

The proposal is considered consistent with the KLUP rural lifestyle areas objectives with the land clearing and future horticulture use providing a suitable separation distance to not unduly impact on land uses.

The proposal is unlikely to have an adverse impact on the existing and future amenity of the area.

3. Pursuant to section 51(r) of the *Planning Act 1999*, the consent authority must take into consideration any potential impact on natural, social, cultural or heritage values, including, for example, the heritage significance of a heritage place or object under the *Heritage Act 2011*.

There is a known natural, social, cultural or heritage value associated with the subject site.

The applicant had provided a letter from the Aboriginal Areas Protection Authority (AAPA). AAPA advised there is a restricted work area on the lot and before entering or undertaking works in or on the vicinity, advice should be sought. An AAPA map was provided showing the approximate location of the restricted works area to protect the features of a sacred site.

The applicant marked up the map which identified the land proposed clearing is outside of the restricted works area. However, as AAPA are the authority for managing sacred sites and to ensure there is no conflict between the *Northern Territory Aboriginal Sacred Sites Act 1989* and the *Planning Act 1999*, an Authority Certificate is required to be obtained prior to the commencement of works.

**ACTION:** Notice of Consent and Development Permit

**ITEM 2**                    **CHANGE OF USE FROM WAREHOUSE TO LEISURE AND RECREATION (GYM) WITHIN A DEFINED FLOOD AREA**  
**LOT 209 (47) VICTORIA HIGHWAY, KATHERINE SOUTH, TOWN OF KATHERINE**  
**APPLICANTS**        **MUNTA FITNESS**

DAS tabled a submission from the Department of Environment and Natural Resources.

The applicant did not attend.

Interested parties who attended: Mr Ivan Horvat and Ms Amanda Kingdon.

**RESOLVED  
49/19**

That, pursuant to section 76 of the *Planning Act 1999*, the Development Consent Authority issue notices to cease to the landowners and the persons using the land to cease using the land for leisure and recreation.

**RESOLVED  
50/19**

That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse to consent to the application to develop Lot 209 (47) Victoria Highway, Town of Katherine for the purpose of a change of use from warehouse to leisure and recreation for the following reasons:

1. Pursuant to section 51(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 primary purpose of Zone SC (Service Commercial) is to provide for commercial activities which, because of the nature of their business or size of the population catchment, require large sites.

The application is to operate gym classes from within an existing shed and use of a demountable structure as an associated office. The use is defined as leisure and recreation. The application has not demonstrated that the proposed use meets the purpose of the zone. The zone permits showroom sales without consent, which is indicative of the intended use of the land within the zone. The proposed use is not considered to require a large site due to the nature of the business or size of the population catchment, as would be reasonably expected for permitted uses in the zone such as showroom sales.

2. Pursuant to section 51(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.

In the NT Planning Scheme “amenity” in relation to a locality or building, means any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable. The site is located adjacent a residential area and it is expected that activities in this locality are not of such a kind as to adversely affect the amenity by reason of the emission of noise.

The large sliding shed doors provide the main entry point, source of light and ventilation which is also a source of noise emission. The ability to close the doors to contain the noise is unlikely to address the noise emissions. Together with consideration of required light and ventilation upgrades to the building to obtain approval under the *Building Act 1993* for the change in building class it is unclear how the current structure could be altered to mitigate the noise impact arising from the use.

The use came to the attention of the consent authority through a report about the noise levels associated with music. The Northern Territory Environment Protection Authority reported the premises as a source of noise related complaints and advised that the application identifies that the development proposed will not comply with NT EPA Northern

Territory Noise Management Framework Guideline, specifically table 3.12 – Operating periods for indoor and outdoor entertainment venues.

The application has not demonstrated how the operation of a gym on the surrounding residential area will avoid impacting on the enjoyment of the use of the land by the residents.

**ACTION:** Notice of Refusal

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

**SUZANNE PHILIP**  
**Chair**

09 July 2019