DEVELOPMENT CONSENT AUTHORITY

LITCHFIELD DIVISION

MINUTES

MEETING No. 227 – FRIDAY 14 SEPTEMBER 2018

HOWARD HALL
325 WHITEWOOD ROAD
HOWARD SPRINGS

MEMBERS PRESENT: Suzanne Philip (Chair), Bob Shewing, Wendy Smith and Christine Simpson

APOLOGIES: Keith Aitken

OFFICERS PRESENT: Poppy Zaronias (A/Secretary), Alana Mackay, Fiona Ray and Sonia Barnes (Development Assessment Services)

COUNCIL REPRESENTATIVE: Edward Lee

Meeting opened at 10.30 am and closed at 1.00pm
ILLUMINATED SIGN
SECTION 7449 (2) MANDER ROAD, HUNDRED OF BAGOT
APPLICANT GEORGE SAVVAS (CONCEPT DESIGNS)

Pursuant to section 97(1) of the Planning Act, Suzanne Philip declared an interest. She was not present during and did not take part in any deliberation or decision of the Division in relation to Item 1.

Pursuant to section 101(3) of the Planning Act, in the Chairs absence the members of the Litchfield Division of the Development Consent Authority elected Wendy Smith to preside at the hearing of Item 1.

George Savvas attended.

RESOLVED
151/18

That, pursuant to section 53(c) of the Planning Act, the Development Consent Authority refused to consent to the application to develop Section 7449 (2) Mander Road, Hundred of Bagot for the purpose of an Illuminated sign, for the following reasons:

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 (the Scheme) applies to the land.

The application was assessed against clause 5.11 (Zone L1 [Light Industry]) and clause 6.7 (Signs) of the Scheme. The application proposed a total illuminated area of 7.68m². The maximum area of illuminated signs in zone L1 is 5m².

Noting the information presented by the applicant, the consent authority considered clause 2.5 (Exercise of Discretion by the Consent Authority) of the Scheme. Sub-clause 2.5(4) states that ‘the consent authority may consent to the development of land that does not meet the standard set out in Parts 4 or 5 if it is satisfied that special circumstances justify the giving of consent’.

The application contended that special circumstances had been established in the large setback of the illuminated sign from the Stuart Highway. The authority, having considered the application documents, Development Assessment Services report, submission and service authority comments, determined that special circumstances were not established. It was noted that the impending street upgrades in the area would reduce the width of the road verge and thus the setback of the illuminated sign from the Stuart Highway. As such, a variation to the requirements of clause 6.7 was not supported.

ACTION: Notice of Refusal
ITEM 2
PA2018/0315
APPLICANT
HUMPTY DOO BARRAMUNDI PTY LTD

SOLAR PV FARM ANCILLARY TO EXISTING AQUACULTURE
(BARRAMUNDI FARM) AND CLEARING OF NATIVE VEGETATION
SECTION 1773 (1105) ANZAC PARADE, HUNDRED OF GUY

Sheena Ong (Ekistica) sent apologies.

RESOLVED
152/18

That, pursuant to section 53(a) of the Planning Act, the Development Consent Authority consent to the application to develop Section 1773 (1105) Anzac Parade, Hundred of Guy for the purpose of a Solar PV farm ancillary to an existing aquaculture (barramundi farm) and clearing of native vegetation, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the commencement of works, an Erosion and Sediment Control Plan (ESCP) is to be submitted to and approved by the consent authority on the advice of the Department of Environment and Natural Resources (DENR). The ESCP should detail methods and treatments for minimising erosion and sediment loss from the site during the construction phase and that all disturbed soil surfaces must be satisfactorily stabilised against erosion at completion of works. The IECA Best Practice Erosion and Sediment Control Guidelines 2008 may be referenced as a guide to the type of information, detail and data that should be included in an ESCP. Information regarding erosion and sediment control and ESCP content is available at www.austieca.com.au and the NTP website: https://nt.gov.au/environment/soil-land-vegetation. The ESCP should be emailed for assessment to: DevelopmentAssessment.DENR@nt.gov.au.

CONDITIONS

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

3. All works relating to this permit are to be undertaken in accordance with the approved ESCP to the requirements of the Consent Authority on the advice of the DENR.

4. In the case that more than 1000m³ of soil is to be disturbed as part of the approved development, a suitably qualified and experienced professional (preferably a person who holds certification as a Certified Professional Soil Scientist with Soil Science Australia) is to be engaged to prepare an acid sulfate soil management plan (ASSMP). The plan must be developed in accordance with the Queensland Acid Sulfate Soil Technical Manual: Soil Management Guidelines v4.0. Prior to engaging a professional, the applicant must inform the consent authority of the identity of the person it proposes to engage. The ASSMP is to be submitted to and approved by the consent authority on the advice of the DENR. The ASSMP should be emailed for assessment to: DevelopmentAssessment.DENR@nt.gov.au.

5. The owner of the land must enter into agreements with the relevant authorities for the provision of electricity facilities to the development shown on the endorsed plan in accordance with the authorities requirements and relevant legislation at the time.
6. 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.

7. 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.

8. 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.

9. 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.

NOTES

1. 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.

2. A permit to burn is required from the Regional Fire Control Officer, DENR, 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 Act.

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 DENR.

4. Any proposed works which fall within the scope of the Construction Industry Long Service Leave and Benefits Act 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.

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 (the Scheme) is the relevant planning scheme.

Section 1773 (1105) Anzac Parade, Hundred of Guy is located in Zone H (Horticulture) of the Scheme.
The application was for a Solar PV farm ancillary to an existing aquaculture (barramundi farm) and clearing of native vegetation. A ‘solar farm’ is not a defined land use in the Scheme and therefore requires consent. Additionally, the application proposed the clearing of approximately 4.5ha of native vegetation which is in excess of the permitted 1ha limit imposed under the Scheme and also requires consent.

The application was assessed against the requirements of Clauses 5.16 (Zone H – Horticulture), 6.1 (General Height Control), 6.5.1 (Parking Requirements), 10.2 (Clearing of Native Vegetation in Zones H, A, RR, RL, R, CP, CN, RD and WM and Unzoned Land) and 10.3 (Clearing of Native Vegetation – Performance Criteria) of the Scheme.

The Authority acknowledged that the proposed development does not fit within the definition of ‘horticulture’ despite it being proposed on land within Zone H. The application stated that the land had been degraded by historical uses with land constraints such as salinity of groundwater, heavy black clay soils, seasonal inundation and a lack of underlying fresh water making the land unsuitable for horticulture. In addition to the physical characteristics identified in the application, the Authority also noted that the Darwin Regional Land Use Plan 2015 identifies the site as having low horticulture potential and that the Litchfield Planning Concepts and Land Use Objectives 2002 also suggest aquaculture as being a more suitable use of the land. Having considered the information in the application and content of relevant land use policy, use of the land for a solar farm associated with the existing approved aquaculture/intensive animal husbandry operations on the site was considered a suitable use of the land.

Clause 6.1 (General Height Control) imposes a maximum building height of 8.5m for structures within the site. The application stated that no construction drawings were available but confirmed that the 8.5m height limit would be complied with. The indicative images at appendix B of the application were relied upon for scale and to confirm the intended height of the solar array. Given the specific nature of the development, reliance on these indicative images was considered adequate for confirming that the structures would be less than 8.5m in height.

Noting that the proposed land use is not defined by the Scheme, Clause 6.5.1 (Parking Requirements) required that the Authority determine the appropriate number of car parking bays for the development. The application argued that given the specific and specialised nature of the development and that vehicle parking would be determined by the purposes of access (i.e. vehicles may park within or around the solar array depending on the access need) no formal parking area would be necessary. The Authority were persuaded by these arguments and decided that provision of formal car parking was not necessary.

Clause 10.3 (Clearing of Native Vegetation – Performance Criteria) specifies the matters to be taken into account in considering an application for clearing. The application provided a detailed
assessment and was considered to have adequately responded to the requirements of the clause confirming that there were no areas of threatened flora, threatened native fauna or significant populations of native fauna on the site, no notable impacts on groundwater and that the likelihood of impacts on threatened species was unlikely. The Authority noted the advice of the Department of Environment and Natural Resources (DENR) which provided similar findings as the proponent. The DENR also advised that due to the size of area to be cleared, location near sensitive conservation areas and within a Priority Environmental Management area and the nature of works, it recommended preparation and implementation of an erosion and sediment control plan (ESCP). Based on this advice, a condition requiring an ESCP be prepared has been included in the permit. Condition 3 has been included in response to advice from DENR regarding the potential need for an Acid Sulphate Soil Management Plan (ASSMP) if more than 1000m³ of soil is disturbed as part of the development.

The applicant was considered to have adequately addressed the requirements of the Scheme and the conditions of approval would aid in ensuring the appropriate ongoing use of the land.

2. 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.

The application was circulated to relevant service authorities and government agencies for comment. The DENR raised no land capability concerns but recommended the preparation and implementation of an ESCP and an ASSMP should the total volume of soil disturbance exceed 1000m³. Noting this advice, the Authority determined to include conditions 1 and 3 requiring preparation and implementation of these management plans to ensure the physical characteristics of the land are not unreasonably affected by the development.

3. 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 solar facility is not expected to impact on the existing or future amenity of the area. The facility is not located close to any sensitive receptors and will reduce the site’s use of fossil fuels.

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

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**ITEM 3**

**PA2018/0327**

ALTERATIONS TO EXISTING MOORING FACILITY INCLUDING TICKET SALES OUTLET AND PASSENGER LOUNGE

SECTION 1615 MIDDLE POINT, HUNDRED OF GUY

APPLICANT

NORTHERN PLANNING CONSULTANTS PTY LTD

Brad Cunnington (Northern Planning Consultants Pty Ltd) attended.
RESOLVED 153/18

That, pursuant to section 53(a) of the Planning Act, the Development Consent Authority consent to the application to develop Section 1615, Hundred of Guy for the purpose of Alterations to existing mooring facility including ticket sales outlet and passenger lounge, subject to the following conditions:

GENERAL CONDITIONS

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

2. 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.

3. Carparking spaces, access lanes and driveways must be available at all times for the exclusive use of the occupants of the development and their visitors/clients.

4. No polluted and/or sediment laden run-off is to be discharged directly or indirectly into Litchfield Council drains or to any watercourse.

5. 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.

NOTES:

1. 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.

2. 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 http://nt.gov.au/environment/soil-land-vegetation.

3. 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.

4. The Northern Territory Environment Protection Authority has advised that the proponent must comply with its General Environment Duty provided by section 12 of the Waste Management and Pollution Control Act.

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.
Section 1615, Hundred of Guy is 2530 m² of land, subject to a crown lease in perpetuity to Arirrki Aboriginal Corporation. It is the location of the existing Spectacular Jumping Crocodile Cruise tourist facility, which has operated since 1995.

Section 1615 is located within Zone A (Agriculture) of the NT Planning Scheme and the primary purpose of Zone A is 'to provide suitable land for agriculture'.

The existing ground level building is periodically inundated by the Adelaide River and the operator wishes to replace the building with an elevated structure. The structure would enable all year access to operate as a ticket sales outlet and passenger lounge for the tourist facility.

The application was assessed against Clause 6.1 (General Height Control), Clause 6.5.1 (Parking Requirements) and Clause 10.2 (Clearing of Native Vegetation) and complies.

The replacement of the existing building would not alter the extent or intensity of the existing built form or land use. The proposal was not considered to impede the development and use of the adjacent and surrounding land for agriculture in accordance with Zone A (Agriculture) of the NT Planning Scheme.

2. 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.

The Litchfield Subregional Land Use Plan identifies the site as 'Wetland' under the Priority Environmental Management Areas. Statement of Policy No. 17 Environmental Management is to conserve natural systems and biodiversity and to manage development of recreation and tourism uses that will enhance people's experience of natural systems.

The purpose of the application is to replace the existing ground level structure with an elevated structure in the same location. The proposed development does not conflict with the intent of the Litchfield Subregional Land Use Plan and the elevated structure would provide less of an impact on the wetland environment.

The Department of Environment and Natural Resources did not raise any issues of concern in relation to land capability.

3. 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 site location is a significant distance to public roads and surrounding land uses and the proposed building is not expected to impact on the existing amenity of the site or the surrounding area.
ACTIONS:
Notice of Consent and Development Permit

ITEM 4
PA2018/0318
CHANGE OF USE FROM SHOPS TO LEISURE AND RECREATION (GYM) (TENANCY 1) AND OFFICE (TENANCY 8) SECTION 6493 (425) STUART HIGHWAY, HUNDRED OF BAGOT

APPLICANT
GWELO INVESTMENTS

Vince Albertoni (Gwelo Investments) attended.

RESOLVED 154/18
That, pursuant to section 53(a) of the Planning Act, the Development Consent Authority consent to the application to develop Section 6493 (425) Stuart Highway, Hundred of Bagot for the purpose of a Change of use from shop to leisure and recreation (tenancy 1) and office (tenancy 8), subject to the following conditions:

GENERAL CONDITIONS

1. The works carried out under this permit shall be in accordance with the drawing numbers endorsed as forming part of this permit.

2. The use and development as shown on the endorsed plans must not be altered without the consent of the consent authority.

3. The use and development of Tenancy 1 for ‘leisure and recreation’ (gymnasium) must be managed so that the amenity of the area is not detrimentally affected by undue noise to the satisfaction of the consent authority.

4. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage and electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

5. The car parking shown on the endorsed plans must be available at all times for the exclusive use of the occupants of the development and their visitors/clients.

6. The loading and unloading of goods from vehicles must only be carried out on the land within the designated loading bays and must not disrupt the circulation and parking of vehicles on the land.

NOTES:

1. 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.

2. 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.

REASONS FOR THE DECISION

These minutes record persons in attendance at the meeting and the resolutions of the Development Consent Authority on applications before it. Reliance on these minutes should be limited to exclude uses of an evidentiary nature.
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 application is for a change of use from shop to leisure and recreation (tenancy 1) and office (tenancy 8) as part of the Coolalinga Central Shopping Centre. The application changes the parking layout to include additional carparking spaces.

The application was assessed against Clause 5.9 Zone C (Commercial), Clause 6.4 (Plot Ratios), Clause 6.5.1 (Parking Requirements), Clause 6.5.3 (Parking Layout), Clause 6.6 (Loading Bays) and Clause 8.2 (Commercial and Other Developments in Zone C.) of the NT Planning Scheme and complies.

The revised net floor area, including the office and leisure and recreation uses, requires a total of 1047 carparking spaces. A total of 1126 carparking spaces have been constructed, which complies with the parking requirements for this application and other 'pad sites' that utilise the surplus parking at the Coolalinga Central Shopping Centre.

The development of an office and leisure and recreation is considered an appropriate use in Zone C (Commercial).

2. 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.

The site has been previously assessed as being capable of supporting the development of a commercial shopping complex. No additional issues regarding land capability were raised by service authorities during the assessment of this application.

3. 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 change of uses are for existing tenancies within an established shopping centre and works are for tenancy fit outs only. The floor area of the existing building would not increase. The proposed uses are not expected to detrimentally alter the existing or future amenity of the commercial premises.

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

**ITEM 5**
**PA2018/0234**

INDEPENDENT UNIT EXCEEDING 80M² IN FLOOR AREA, WITH AN INDEPENDENT EFFLUENT DISPOSAL SYSTEM

SECTION 2407 (350) SUNTER ROAD, HUNDRED OF STRANGLWAYS

**APPLICANT**

TIMOTHY JANS

Mr Timothy Jans (owner) attended

These minutes record persons in attendance at the meeting and the resolutions of the Development Consent Authority on applications before it.

Reliance on these minutes should be limited to exclude uses of an evidentiary nature.
RESOLVED

155/18

That, the Development Consent Authority vary the requirements of Clause 7.10.4 (Independent Units) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the Planning Act, consent to the application to develop Section 2407 (35) Sunter Road, Hundred of Strangways for the purpose of an Independent unit exceeding 80m² in floor area with an independent effluent disposal system, subject to the following conditions:

CONDITION 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, to the satisfaction of the consent authority. The plan shall include details of site levels and Council’s stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council’s system or an alternate approved connection.

2. 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.

And

The owner shall:

a. remove disused vehicle and/or pedestrian crossovers;
b. provide footpaths/cycleways;
c. collect stormwater and discharge it to the drainage network; and
d. undertake reinstatement works;
   all to the technical requirements of and at no cost to Litchfield Council,
   to the satisfaction of the consent authority.

GENERAL CONDITIONS

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

4. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street.

5. 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.

6. 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.

7. The owner of the land must enter into agreements with the relevant authorities for the provision of power to the development shown on the endorsed plans in accordance with the authorities’ requirements and relevant legislation.

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These minutes record persons in attendance at the meeting and the resolutions of the Development Consent Authority on applications before it.

Reliance on these minutes should be limited to exclude uses of an evidentiary nature.
NOTES:

1. A ‘Permit to Work within a Road Reserve’ may be required from Litchfield Council before commencement of any work within the road reserve.

2. 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.

3. The Northern Territory Environment Protection Authority advises that construction work should be conducted in accordance with the Authority’s Noise Guidelines for Development Sites in the Northern Territory. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.

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 (the Scheme) applies to the land.

The primary purpose of Zone RL is to provide for low-density rural living and a range of rural land uses including agriculture and horticulture. The proposal is for an independent unit which is a permitted use in the zone. A variation to clause 7.10.4 (Independent Units) of the Scheme is requested. Specifically, the proposal is non-compliant with sub-clause 2(b) and 2(d).

Sub-clause 2(b) specifies that an independent unit in Zone RL shall not exceed 80m². The application proposes an independent with a floor area of 96m².

The consent authority may approve an application for an independent unit that is not in accordance with sub-clause 2(b) only if it is satisfied the proposed independent unit is appropriate to the site having regard to the potential impact of the independent unit on the amenity of adjoining and nearby properties.

A variation to this sub-clause is supported given the:

- proposal seeks only a minor variation (16m²) to the allowable floor area.
- proposed independent unit is single storey, has large setbacks and is therefore not expected to have any impact on the amenity of adjoining and nearby properties.

Sub-clause 2(d) requires both dwellings on site be serviced by a common effluent disposal system or connected to reticulated sewage. The application proposes the existing septic tank for the existing single
dwelling to remain and a new septic tank to be installed for the independent unit.  

The consent authority must not consent to an independent unit that is not in accordance with sub-clause 2(d) unless:

a) a licenced certifying plumber and drainer provides documentary evidence that an existing effluent disposal system is incapable of accepting the increased load; and

b) documentary evidence is provided by:

i. the Department of Health that a proposed AWTS (Aerated Wastewater Treatment System); or

ii. a licensed certifying plumber and drainer that a proposed onsite wastewater treatment system is appropriate for the proposed development.

c) it can be demonstrated that the location of existing bores, wells and notional existing on-site effluent systems allow for effluent disposal systems to be sited at least 50m up slope from any seepage line and above the 1% AEP flood event and at least 100m from any groundwater extraction point.

A variation to this sub-clause was supported because:

- reticulated sewage is not available to the site
- the applicant has provided a letter from a certified plumber stating that the proposed independent unit will be unable to gravitate to the existing septic
- the letter also stated that a new septic system is required to service the new independent unit
- the Department of Environment and Natural Resources has indicated that the site is not affected by storm surge inundation or flooding.

With consideration to the above points made, the purpose of clause 7.10.4 (Independent Units) was considered to be achieved and variations to sub-clauses 2(b) and 2(d) can be granted through sub-clauses 4 and 5.

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 independent unit will be a single storey structure positioned 45m from the front boundary, a minimum of 30m from the side boundaries and 20m from the rear boundary. Given the large setbacks, there is not expected to be any impact on the amenity of adjoining and nearby properties. The applicant has also expressed intent to establish a double row of native trees and shrubs along the northern and southern fence lines, providing further privacy, dust suppression and wind protection.

3. Section 51(e) of the Planning Act requires the consent authority to consider any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application. The authority noted the written submission made by Litchfield Council and the further oral submissions made by Mr Lee on the Council’s behalf. Council contended that the intent of an independent unit clause is not to create multifamily blocks. In its written
submission Council noted that the applicant had not provided any special circumstances that are extraordinary or unusual regarding this proposal or site that would support the variation to exceed the 80m² floor area. Further Council referenced a site visit and stated that the existing structure was presently used as an independent unit in its current format and noted concerns that the separation of the new living and kitchen area from the bedrooms by the shed roof could lead to the area under the shed being illegally enclosed at a later date to form a fully second dwelling on the subject site. While acknowledging Council concerns, the authority noted that the requirement for approval of a variation to floor area is, as set out in Part 4, clause 7.10.4, paragraph 5 of the Planning Scheme – the authority must be satisfied that the proposed independent unit is appropriate to the site having regard to the potential impact of the independent unit on the amenity of adjoining and nearby properties.

While there is a requirement of special circumstances in Part 1, clause 2.5.4 of the Scheme, clause 2.5.3 makes it clear that the correct test in considering an application to vary the floor area requirement for an independent unit is that provided by the specific terms of Part 4, clause 7.10.4. In this case, given that the floor area is increased by only 20%, the Applicant's explanation that the block work construction added significantly to the increase in size, the internal areas being very close to the 80m requirement, the sizeable setbacks and the size of the block, being 2ha, the authority was satisfied that the proposed independent unit was appropriate to the site. Further, the consent authority is required to assess the application before them. If a future illegal extension is made to the unit, it would be a matter for enforcement. It is not relevant to the application as submitted.

**ACTION**

Notice of Consent and Development Permit

**ITEM 6**

**PA2018/0296**

**APPLICANT**

INDEPENDENT UNIT EXCEEDING 50M²

SECTION 5922 (17) STAINES COURT, HUNDRED OF BAGOT

STEPHANIE DARLINGTON

Stephanie Darlington (applicant) and Maria Tutt (owner) attended

**RESOLVED**

156/18

That, pursuant to section 53(c) of the Planning Act, the Development Consent Authority refuse to consent to the application to develop Section 5922 (17) Staines Court, Hundred of Bagot for the purpose of an Independent unit exceeding 50m² for the following reasons:

**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 primary purpose of Zone RR (Rural Residential) is to provide for rural residential use. Clause 7.10.4 (Independent Units) of the Northern Territory Planning Scheme makes provision for an independent unit in Zone RR (Rural Residential) where the unit remains ancillary to the single dwelling on site and does not exceed 50m² in floor area. The
applicant proposes an additional dwelling with a floor area of 96.5m², which is significantly in excess of the provision. Whilst the proposal meets all other requirements of the clause 7.10.4, the floor area is a critical aspect that assists to determine if the dwelling can be considered as ancillary.

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

Litchfield Council lodged an objection to the application stating that the intent of an independent unit clause is not to create multifamily blocks. Council asserted that Zone RR (Rural Residential) is for rural residential purposes not multiple dwellings. Its understanding is that the intent of the clause is to support a small independent unit not multiple dwellings.

3. 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.

Litchfield Council was concerned that the application is an over development that will have a negative impact on rural amenity. The site is located in a court that currently provides access to 8 lots. An increase in the number of dwellings would lead to an increase in traffic movement. Higher dwelling density would change the character of the area. The Litchfield Subregional Land Use Plan identifies other areas for increased density within and adjacent to the rural activity centres.

4. The authority noted that the requirement for approval of a variation to floor area is, as set out in Part 4, clause 7.10.4, paragraph 5 of the Northern Territory Planning Scheme – the authority must be satisfied that the proposed independent unit is appropriate to the site having regard to the potential impact of the independent unit on the amenity of adjoining and nearby properties. Given that the variation to floor area is a further 46.5 square meters over the prescribed 50 square meters, an increase of 93%, the authority could not be satisfied that the unit as proposed was appropriate to the site.

ACTION: Notice of Refusal

<table>
<thead>
<tr>
<th>ITEM 7</th>
<th>SUBDIVISION TO CREATE TWO LOTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>PA2018/0305</td>
<td>LOT 15 (345) WHITWOOD ROAD, HUNDRED OF BAGOT</td>
</tr>
<tr>
<td>APPLICANT</td>
<td>GERARD AND ALANA ROSSE</td>
</tr>
</tbody>
</table>

Gerard Rosse (owner) attended

Tabled planned documents from Gerard

Pursuant to section 97(1) of the Planning Act, Mr Robert (Bob) Shewring, a member of the Litchfield Division of the, Development Consent Authority declared a conflict of interest and was not present during or took part in the deliberation or decision of the Division in relation to the item.
That, pursuant to section 46(4)(b) of the Planning Act, the Development Consent Authority defer the application to develop Lot 00015 (345) Whitewood Rd, Hundred of Bagot for the purpose of subdivision to create 2 lots for the following reasons:

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 application to subdivide the subject site in Zone RL (Rural Living) to create 2 x 1 hectare lots does not comply with the intent of the Litchfield Subregional Land Use Plan 2016 policy statement pertaining to the ‘Rural Area’ which states that, lots in Zone RL (Rural Living) would have a minimum lot size of 2ha.

Clause 11.1.1 of the Northern Territory Planning Scheme (the Scheme) establishes the minimum lot sizes in Zone RL (Rural Living) to be a minimum of 2ha. Whilst the subject site is at the boundary of the Howard Springs Rural Activity Centre, Clause 14.7.3 contains a Locality Plan that determines the extent of a transition zone. The transition refers to land in Zone RR (Rural Residential) providing a buffer to land in Zone RL (Rural Living). Clause14.7.3 does not facilitate the subdivision of land in Zone RL to lots that are less than 2ha. The subject land is not located within the designated ‘Zone of Transition’ for the Howard Springs Activity Centre.

It is established that the minimum lot size of land in Zone RL (Rural Living) is 2ha.

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.

The submitter raised their concerns that the proposal for subdivision did not comply with the minimum lot size requirements of the Scheme, being 2ha in Zone RL (Rural Living).

It was considered that as the subdivision proposal does not address the Scheme or the recently introduced Planning Principles and Area Plan for the Howard Springs Rural Activity Centre, approval would undermine the integrity of the planning system and provide an impetus for ad hoc development of non-compliant lots in the rural area.

Litchfield Council lodged an objection under section 49 of the Planning Act also citing non-compliance with the Scheme.

3. Pursuant to section 51(h) of the Planning Act, the consent authority must take into consideration the merits of the proposed development as demonstrated in the application.

The applicant asserted 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 ‘as the crow flies’ from the Activity Centre and directly opposite sporting fields, the community hall and skate park. Reticulated water is available and utilised by the existing dwelling. The land is unconstrained.

The authority noted that a subdivision from 2ha to 1ha, while retaining the RL zoning, would provide the opportunity for future land owners to make application to establish uses that are prohibited on lots of 1ha in Zone RR (Rural Residential) being; animal boarding, child care centre, horticulture, intensive animal husbandry, rural industry, stables, veterinary clinic. A subdivision in the absence of a rezoning from RL (Rural Living) to RR (Rural Residential), creates a conflict of expectation between the uses that may be undertaken on land in Zone RL but that are not appropriate substantially smaller lots.

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.

As noted by Litchfield Council and in the public submission, the proposal does not comply with the Scheme and could, if approved, increase the likelihood of further applications to subdivide land in Zone RL (Rural Living) to smaller lot sizes in an ad hoc manner. Increasing density in an unplanned way would have far reaching effects, possibly leading to a diminution in ‘rural lifestyle’, increased impact on the environment, productivity and substantially undermine the strategic planning framework for the rural area.

5. In order for the authority to consent to a development of land that does not meet the standards set out in Parts 4 or 5 of the Scheme, Part 1, clause 2.5.4, provides that the authority must be satisfied that special circumstances justify consent. In White & Ors v Development Consent Authority & Tomazos Property Pty Ltd ATF Tomazos Property Discretionary Trust [2015] NTCAT 010 Bruxner P considered that the meaning of Special Circumstances is well understood and refers to Kelly J in Phelps v Development Consent Authority [2009] NTSC 54. Kelly J relevantly noted:

- that ‘special circumstances’ are circumstances that are ‘unusual, exceptional, out of the ordinary and not to be expected’;
- that an holistic approach to the question is necessary, with each case to be considered on its merits, and with the decision maker alert to the fact that circumstances which by themselves might not be ‘special’ can, in combination with other circumstances, create a situation which overall gives rise to ‘special circumstances’;
- that there is also the need to determine, in an ordinary common-sense manner, whether there are circumstances which either individually or collectively can be considered to be ‘special circumstances’ justifying consent.
- Bruxner J further considered that: the need for an holistic approach to the application of clause 2.5 applies not only to the identification of circumstances said to constitute ‘special circumstances’ but also to the respects in which a proposed development does not comply with the NTIPS. In other words, it is important to avoid an approach to clause 2.5 that involves piecemeal consideration of non-complying aspects of a development against particular ‘special
circumstances’. Although there will often be circumstances that are especially relevant to particular instances of non-compliance, the ultimate question must always be whether, in all the circumstances, there are special circumstances justifying the giving of consent to a development proposal that does not meet the requirements of Parts 4 and 5 of the Northern Territory Planning Scheme.

The consent authority carefully considered the matters raised by the Applicant in relation to Special Circumstances including the following:

- access to reticulated water;
- adjacent to existing 1ha lots in Zone RL;
- within 350m from the Howard Springs Commercial centre;
- across the road from existing 1 acre lots;
- opposite an active community and recreation precinct;
- a corner lot that results in two lot shape and sizes that are best practice and consistent with good subdivision lot design (no battle axe lots);
- a corner lot that results in lot orientation towards the activity centre and active recreation precinct to improve passive surveillance;
- a resulting lot orientation that protects the amenity of 2ha RL lots;
- identified as suitable subdivision outcome in the Area Plan for transition of development for Rural Activity Centres.

The consent authority did not consider that the matters relied upon as ‘special circumstances’ amounted to circumstances that were ‘unusual, exceptional, out of the ordinary and not to be expected’; either by themselves or in combination with other circumstances, so as to create a situation which overall gave rise to ‘special circumstances’. While the matters relied upon may be relevant to an application to rezone the land, they did not justify a variation of such an extent to minimum lot sizes in land presently zoned RL.

**ACTION:** Notice of Deferral

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

Suzanne Philip  
2018.09.21  
12:30:06  
+09:30’

SUZANNE PHILIP  
Chair  
21 SEPTEMBER 2018