



## **DEVELOPMENT CONSENT AUTHORITY**

### **PALMERSTON DIVISION**

### **MINUTES**

**MEETING No. 217 – WEDNESDAY 20 FEBRUARY 2019**

**BOULEVARD ROOM  
QUEST PALMERSTON  
18 THE BOULEVARD  
PALMERSTON**

**MEMBERS PRESENT:** Suzanne Philip (Chair), Steve Ward, Sarah Henderson and Athina Pascoe-Bell

**APOLOGIES:** Ben Giesecke

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), Ann-Marie Dooley and Sonia Barnes (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Rebecca de Vries

**Meeting opened at 10.30 am and closed at 11.40 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                    POSTPONED**

**ITEM 2                    SUBDIVISION TO CREATE TWO LOTS  
PA2018/0233            LOT 6957 (23) SURCINGLE DRIVE, TOWN OF PALMERSTON  
APPLICANT              U-PLANET INVESTMENTS**

Mrs Hanna Steevens (Elton Consulting), Mr Matthew Lassemillante and Mr Jeremy Lassemillante (landowners) and Mr Ryan Cross (Senior Engineer – Tonkin Consulting) attended on behalf of the applicant.

**RESOLVED**              That, pursuant to section 53(c) of the *Planning Act*, the Development Consent  
**02/19**                      Authority refuse to consent to the application to develop Lot 6957 (23) Surcingle Drive, Town of Palmerston, for the purpose of a subdivision to create two 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 any planning scheme that applies to the land to which the application relates.

The Northern Territory Planning Scheme (NTPS) applies to the land. Lot 6957 (23) Surcingle Drive, Town of Palmerston is located in Zone RR (Rural Residential). The application proposes to subdivide Lot 6957 into two lots, proposed Lot 1 having a total area of 4425m<sup>2</sup> and proposed Lot 2 having a total area of 4265m<sup>2</sup>.

The proposal does not comply with Clause 11.1.1 (Minimum Lot Sizes and Requirements) of the NTPS, which specifies a minimum lot size of 0.4ha (all unconstrained land) for lots in Zone RR (Rural Residential). Although both proposed lots exceed the minimum lot size specified, proposed Lot 1 does not contain a minimum of 4000m<sup>2</sup> (0.4ha) of land all unconstrained. While it has a total area of 4425m<sup>2</sup>; only 3510m<sup>2</sup> is unconstrained.

Clause 4.1(a) of the NTPS identifies that administration of the scheme is to contribute to a built, rural or natural environment supporting a diverse lifestyle and promoting safe communities.

The authority approved a subdivision to create 77 lots in June 1998 through DP98/0248 citing that the large lot subdivision represents a reasonable use of the land subject to satisfaction of the stated conditions. Condition 8 of DP98/0248 stated “As the Weddell arterial corridor may in the future create a major noise source feature, titles to individual lots in close proximity to the corridor shall be noted to advise minimum setback provisions from the boundary of the corridor (see clause 11)”.

Condition 11 of DP98/0248 required the registration of caution notices on affected titles to address the issues of biting insects, proximity to the future arterial transport road corridor and the siting of residential buildings in accordance with the provision of Section 19A of the *Real Property Act*.

As only 2 stages of DP98/0248B were completed, when the permit expired in October 2002, the authority approved an application for the remainder of the development. DP03/0481 was issued in December 2003 for the purpose of a subdivision to create 56 lots. The authority notes that this is the development approval that subsequently created Section 6957 and acknowledges that DP03/0481 did not include the requirement to register caution notices on the lots which were affected by biting insects and or adjacent to the future road corridor as the legislative requirements had changed.

The use of caution notices under current legislation, the *Land Title Act 2000*, specifies land characteristics limited to flooding, unexploded ordinance or the presence of rubbish or landfill sites. In light of the advice from the Department of Health, the uncertainty surrounding future buffers and the limited ambit of caution notices, such notices are not considered to address the issues in relation to biting insects raised by this application.

The original lot layout and density for Marlow Lagoon, as approved by DP98/0248 and DP03/04841, provided larger lots that allowed residential development to be setback from the proposed Weddell Arterial Road, the railway corridor and provide a buffer to biting midge prone areas close to the mangroves. Larger lots were required on the western part of the subdivision in recognition of the constraints associated with the proximity to biting insect breeding areas.

The authority concludes that Lot 6957 as it exists, has been developed appropriately in accordance with the larger lot size as approved for the subdivision for Marlow Lagoon in 1998 and 2003 and intensification of residential development in this locality would increase the number of residents potentially subject to detrimental health outcomes associated with the proximity to biting insect breeding areas.

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 Land Suitability Assessment (LSA) by EcOz confirmed a seasonally waterlogged drainage area mapped as part of land unit 6b affecting the southern boundary of Lot 6957. It indicated that the area shows sign of poorly drained soils, which are likely to be saturated and/or inundated for a number of months each wet season. The LSA further categorised the area of constrained land unit 6b into 'S3 marginally suitable' area of 0.15ha and 'S4 not suitable' area of 0.03ha, totalling 0.18ha of constrained land.

The LSA noted that the southern area of land unit 6b is considered not suitable for development due to poor drainage, and potential for wet season inundation however summarised that the property could be

considered suitable for the proposed subdivision, subject to the implementation of some additional management measures including upgrades to the access track into lot B to ensure all weather access into the property.

The Department of Environment and Natural Resources (DENR) concurred with the LSA in that there is land constrained by drainage accounting for 0.18ha of the property and it occurs across both the proposed lots and that the driveway also contains seasonally waterlogged soils. It noted the minimum lot size for rural residential zoned land is 0.4ha of which all must be unconstrained and the proposed subdivision does not meet the requirements of Clause 11.1.1 of the planning scheme.

The report prepared by Tonkin Consulting provided two potential engineering solutions to address the access through the constrained land being the diversion of stormwater to the drainage easement on the adjoining property or by directing drainage to the Surcingle Drive road frontage (to City of Palmerston's infrastructure).

City of Palmerston (Council) stated that it was not able to support a solution that would divert stormwater into the adjoining property to the south given that owners consent from the neighbouring property did not form part of this application. Council comment's indicated that the alternative proposal to discharge stormwater the length of the driveway to the road frontage would require significant site and culvert works that would result in disruption to Surcingle Drive given that the open swale drain is on the eastern side of the road. Although the report prepared by Tonkin Consulting identified two solutions, a detailed Stormwater Management Plan was not submitted to Council consideration. In the absence of a detailed Stormwater Management Plan and engineered access design, Council advised the proposed subdivision will potentially affect the natural drainage of the site and impact on properties to the south.

The Department of Health advised that the site is highly affected by pest biting midges originating from the nearby extensive mangrove system to the southwest. The original lot layout and density for Marlow Lagoon was deemed appropriate for the biting midge prone area which provided large lots closest to the mangroves (2ha), transitioning to 1ha lots and then 4000m<sup>2</sup> further distance from the mangroves.

Due to the identified land suitability issues, the land is not considered capable of supporting the proposed subdivision.

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 merits put forward by the applicant in the application and at the DCA meeting have been considered, however the authority deems that there is no merit in increasing the density of a site that is located in close proximity to the proposed Weddell Arterial Road, the railway corridor and is subject to seasonal waterlogging. In addition, the proposal will create an additional lot that does not meet the minimum 4000m<sup>2</sup> (0.4ha) of unconstrained land as required by the Clause 11.1.1 (Minimum Lot Sizes and Requirements).

Furthermore, any intensification of residential development in this locality would increase the number of residents potentially subject to detrimental health outcomes associated with the proximity to biting insect breeding areas.

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.

In accordance with Section 51(a) of the *Planning Act* and in accordance with the requirements of Section 2.6 (Subdivision of land) of the Northern Territory Planning Scheme, land may be subdivided or consolidated only with consent and subject to the relevant provisions of Part 5 of the Scheme.

In September 1995, an application to create 81 lots was refused due to severe land constraints of the parent parcel including biting insects, unsuitable soils, proximity to the rail line and the future alignment of the Weddell Arterial. Lot 6957 (23) Surcingle Drive, Town of Palmerston was created as a result of Development Permit DP03/0481 which was issued in December 2003 for the purpose of 59 lots. The subdivision provided larger lots in response to the land constraints associated with the parent parcel. The larger lots enabled residential development to be setback from the proposed Weddell Arterial Road, the railway corridor and provided a buffer to biting midge prone areas close to the mangroves.

Clause 4.1(f) of the Northern Territory Planning Scheme states that the administration of the scheme is to ensure development does not unreasonably intrude on or compromise the privacy of adjoining residential uses and ensures its own amenity is not compromised in the future. As such, the location of the proposed rear lot, and any future residential dwelling within 30m of the future Weddell Arterial corridor, will result in severe amenity impacts of existing and future residents and is not consistent with the layout and intent of the parent parcel subdivision.

The Authority in particular notes the Department of Health's comments which state that Marlow Lagoon is an area highly affected by pest biting midges, hence the rural residential nature of the suburb. Whilst the discussion that the arterial road and nearby light industry zoned land provides a biting insect buffer is valid, this would only be the case if development of these two areas has occurred, or will occur in the near to medium term future. Therefore in the absence of any near to medium term plans to reclaim nearby mangroves as part of the arterial road works and build an industrial buffer, subdivision in Marlow Lagoon is not supported.

The Authority additionally notes the Council's concerns regarding stormwater drainage and the potential impact on the natural drainage of the immediate and surrounding area and that detailed stormwater management design details was not been provided in order for Council to accurately assess the potential impacts.

In light of the comments received from the Department of Health and Council, the current lot arrangements are considered to be the most appropriate for this area and as such further subdivision is not supported.

**ACTION:** Notice of Refusal

**ITEM 3  
PA2016/0581  
APPLICANT**

**EXTENSION OF TIME DP16/0582  
LOT 11212 (15) FREEMAN STREET, TOWN OF PALMERSTON  
ONE PLANNING CONSULT**

The applicant sent their apologies.

**RESOLVED  
03/19**

That, pursuant to section 59(3)(b) of the *Planning Act*, the Development Consent Authority refuse the application to extend the base period of DP16/0582 for an additional period of 2 years for the following reasons:

#### **REASONS FOR THE DECISION**

1. Pursuant to section 59(4) of the *Planning Act*, if the Authority makes a determination under subsection (3) other than in accordance with an application, it must give to the applicant a statement of its reasons.

#### **STATEMENT OF REASONS**

While the base period of the permit has not been previously extended, the reasons given relate solely to the state of the current real estate market.

The introduction of Planning Scheme Amendment (PSA) No. 483 removed the provisions which made 'multiple dwellings' a discretionary use in Zone SD (Single Dwelling Residential).

As a result of the PSA, the development no longer complies with the provisions of the following clauses as there is no performance criteria to enable the assessment of 'multiple dwellings' in Zone SD:

- Clause 6.5.1 (Parking Requirements);
- Clause 7.1 (Residential Density and Height Limitations);
- Clause 7.3 (Building Setbacks of Residential Buildings);
- Clause 7.3.2 (Distance between Residential Buildings on One Site);
- Clause 7.5 (Private Open Space);
- Clause 7.7 (Landscaping for Multiple Dwellings, Hostels and Supporting Accommodation); and
- Clause 7.8 (Building Design for Multiple Dwellings, Hostels and Supporting Accommodation).

In addition, the following clauses have been omitted from the NTPS and prevent the assessment of 'multiple dwellings' in Zone SD:

- Clause 6.4.2 (Plot Ratios and Site Coverage); and
- Clause 7.2 (Street Accessibility for Multiple Dwellings in Zone SD).

Given that 'multiple dwellings' is now a prohibited use in Zone SD and that substantial works have not commenced on site, the application for an extension to the permit period is not supported.

**ACTION:** Notice of Refusal

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

**SUZANNE PHILIP**

**Chair**

27 February 2019