



DEVELOPMENT CONSENT AUTHORITY

TENNANT CREEK DIVISION

MINUTES

MEETING No. 55 – MONDAY 16 DECEMBER 2019

**CONFERENCE ROOM
DEPARTMENT OF INFRASTRUCTURE, PLANNING & LOGISTICS
33 LEICHHARDT STREET
TENNANT CREEK**

MEMBERS PRESENT: Suzanne Philip, Kris Civitarese, Narelle Bremner, Len Holbrok

OFFICERS PRESENT: Peter Somerville

Meeting opened at 10:30 am and closed at 1:00pm

THE MINUTES 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 24 X 1 BEDROOM SUPPORTING ACCOMMODATION UNITS WITH ADMINISTRATION AND CLINICAL TREATMENT FACILITY (ALCOHOL AND DRUG REHABILITATION CENTRE) AND CARETAKERS'S RESIDENCE IN SINGLE STOREY BUILDINGS

PA2019/0434 LOT 1593, 17 FAZALDEEN ROAD, TOWN OF TENNANT CREEK

APPLICANT DEPARTMENT OF INFRASTRUCTURE, PLANNING AND LOGISTICS (FOR DEPARTMENT OF HEALTH AND BARKLY REGION ALCOHOL & DRUG ABUSE ADVISORY GROUP (BRADAAG))

The potential for a perceived conflict of interest, pursuant to section 97(1) of the *Planning Act 1999*, for Mr Siddhant Vashist, a member of the Development Consent Authority was identified and Mr Vashist absented herself from the meeting for the deliberation of this item.

Allison Paull (for DIPL) and Pauline Reynolds (for Barkly Region Alcohol & Drug Abuse, Advisory Group) attended the meeting and spoke further to the application.

Pauline Reynolds tabled a graph of the sobering up figures for the past 3 years, an independent study done by Price Waterhouse Coopers Indigenous Consulting Pty Ltd showing the Tennant Creek sobering up Shelter is the only one in the NT where clients present voluntarily and an email from Anyinginyi Health Aboriginal Corporation advising next full community meeting to be encouraged as an Aboriginal only meeting.

Members of the public who spoke further to the application were Elliot McAdam (by phone), Steve Moore (CEO Barkly Regional Council), Kim Braham (for PATA Native Title Group), Georgina Bracken, Barbara Shaw (CEO Anyinginyi Health Aboriginal Corporation), Sid Vashist, Tony Miles, Dean Gooda (Anyinginyi Health Aboriginal Corporation), Steven Edgington (Mayor of Tennant Creek), Jimmy Frank, Ross Williams and Patricia Franks.

RESOLVED That, the Development Consent Authority, pursuant to section 53(c) of the
0005/19 *Planning Act 1999*, refuse to consent to the proposed development to develop Lot 1593, 17 Fazaldeen Road, Town of Tennant Creek for the purpose of 24 x 1 bedroom supporting accommodation units with administration and clinical treatment facility (alcohol and drug rehabilitation centre) and caretaker's residence in single storey buildings, for the following reasons:

1. Pursuant to section 51(a) of the *Planning Act 1999*, in considering a development application, the Development Consent Authority must take into account any planning scheme that applies to the land to which the application relates.
 - (a) Under clause 5.19 (Zone RL – Rural Living) the primary purpose of the zone is to “provide for low-density rural living and a range of rural land uses including agriculture and horticulture.” The consent authority did not accept that the proposed development, comprising elements of supporting accommodation, a clinical treatment facility, a three bedroom single dwelling and a caretaker's residence, satisfied the purpose of the zone, particularly given that a sizeable portion of the two hectare Lot was not available for development due to its status as a sacred site. The proposed development which may accommodate over 50 clients/residents together with staff, visiting family and daily traffic, was not considered consistent with low-density rural living in this location

given the size of the site and nature of adjoining and adjacent development.

- (b) The Authority considered the definitions of “dwelling and “single dwelling” provided by the NT Planning Scheme. A single dwelling is constituted by one self-contained residence. While a single dwelling may consist of more than one unit, it must be self-contained. Considering those definitions, there were up to four (4) buildings that could be classify as dwellings due to their degree of independence (kitchen/dining, bathrooms and laundry). These included the existing dwelling, proposed caretaker’s residence and two proposed ‘Transitional Centres’. The density proscribed by the NT Planning Scheme for Zone RL (Rural Living) is a limit of one (1) “single dwelling” (and an “independent unit”) which, under clause 7.1, the consent authority does not have the power to vary. The dwelling limit proscribed by clause 7.1 indicates the type of density expected on a RL Lot and, even if the supporting accommodation element of the Application is treated as a separate use on the Lot outside the dwelling requirements, approval of such use is discretionary. The Authority considered that the supporting accommodation as proposed is simply too dense for the Lot, given its size and other restrictions, and would not exercise its discretion to approve the supporting accommodation use on this Lot. The inclusion of the clinical treatment facility further exacerbated the density issue and the Authority also noted there were a number of other non-compliances with the NT Planning Scheme including building setbacks and car parking issues which may also indicate that the proposal was overly dense and not appropriate for the site.
- (c) The Authority considered the nature of the clinical treatment facility element of the Application, which the Applicant sought to have classified as an ‘undefined’ use, thus making it a discretionary use in the RL zone. The Authority noted that the proposed use bore a number of similarities to the land use definitions under clause 3 of the NT Planning Scheme for “hospital” and/or “medical clinic”. These uses are prohibited in Zone RL (Rural Living). The Authority also noted the evidence from the Applicant and Pauline Reynolds in relation to the proposed operation of the facility and the provision of medical treatment offsite. As the Authority considered the Application for Lot 1593 failed to meet other criteria under the *Planning Act 1999* and NTPS, it did not make a determination as to the classification of the clinical treatment facility.
2. Pursuant to section 51(e) of the *Planning Act 1999*, in considering a development application, the Development Consent Authority must take into account any submissions made under s49, and any evidence or information received under section 50, in relation to the development application. Over 176 submissions, including letters, form letters and petitions were received in relation to the proposed development.

Six submissions were in favour of the Application, stressing the good work undertaken by BRADAAG, the need for a facility in the nature of that contained in the Application, the ability to “free up” public housing if the Application was granted and the problems with other potential sites.

The submissions in opposition to the Application raised issues related to:

- (a) Potential definition of “hospital” and “medical clinic”, both prohibited in Zone RL;

- (b) The proposed development comprised a number of dwellings in excess of that permitted in the zone noting that multiple dwellings is a prohibited use in Zone RL;
- (c) The development is considered too dense in terms of the number of people (clients) expected to either reside on the site or are present receiving treatment. This is considered contrary to the primary purpose of Zone RL which to provide for low density rural living.
- (d) The size of the site, together with the physical and cultural restrictions placed on development, makes it unsuitable for the intensity and extent of the physical development proposed; and
- (e) There is inadequate infrastructure to support the nature of the proposed development including road network, pedestrian access and lack of connection to reticulated sewer given the potential servicing the needs of number of people proposed.

A number of the submitters attended the meeting and spoke further to their submissions. The Authority noted all of those comments, which ranged from details about the excellent work that BRADAGG performs in the region to cultural sensitivities which may impinge on the subject site including those arising from sacred site issues and the position of the Lot in relation to the cemetery. While a number of issues raised did not have planning implications, the underlying theme of many of the submissions was that the site was too small to contain the proposed use. The Authority considered in detail all submissions, both written and oral, in reaching its decision.

3. Pursuant to section 51(h) of the Planning Act 1999, in considering development application, the Development Consent Authority must take into account the merits of the proposed development. The consent authority acknowledges the beneficial work undertaken by the Barkly Region Alcohol and Drug Abuse Advisory Group (BRADAAG), noting that the current sites used are located in a number of locations dispersed throughout the town and which reportedly have not raised any complaints or issues with residents. The proposed development represents an opportunity to concentrate this dispersed effort onto one site, however, the potential impact of this particular application on this particular site is considered contrary to the purpose of Zone RL (Rural Living).
4. Pursuant to section 51(j) of the Planning Act 1999, in considering a development application, the Development Consent Authority must take into account 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 reasonably level and not identified as being liable to inundation in a 1% AEP Defined Flood Event. The surrounding area has been developed for rural living purposes for over 30 years and is not connected to reticulated sewer. However given the potential number of occupants on the site and the fact that a significant portion is constrained by the sacred site, the land is not considered capable of supporting the proposed development without undue adverse effects on the site and on adjoining land.
5. Pursuant to section 51(m) of the *Planning Act 1999*, in considering a development application, the Development Consent Authority must take into account 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 size of the development, intended to accommodate over 50 clients/residents is considered too intensive for the site given the comments provided by service authorities in respect to road and pedestrian access, vehicle traffic and effluent disposal.

6. Pursuant to section 51(n) of the *Planning Act 1999*, in considering a development application, the Development Consent Authority must take into account the potential impact on the existing and future amenity of the area in which the land is situated. The proposed development and use is considered inconsistent with the zoning purpose in terms of providing for low-density rural living and the extent of the layout and design was not considered appropriate for the site and immediate locality.
7. Pursuant to section 51(r) of the *Planning Act 1999*, in considering a development application, the Development Consent Authority must take into account 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*. The subject site is not a declared heritage site however the application included a certificate (C2019/080) issued by the Aboriginal Areas Protection Authority (AAPA) which identified sacred sites restrictions that apply to the site. The extent of the restricted works area raised concerns in regard the area of land available for active and passive recreation activities, particularly given the potential number of clients/residents who may come to be living on the site, as well as space for any future expansion.
8. Pursuant to section 51(t) of the *Planning Act 1999*, in considering a development application, the Development Consent Authority must take into account any other matters it thinks fit. The consent authority noted the extent of public interest in the matter with a significant number of submissions and comments made at the hearing conducted on 16 December 2019, which identified inadequate public consultation on the proposed development and site selection. The consent authority acknowledged that the development application process required under the *Planning Act 1999* does not necessarily encompass the consideration of alternative sites, nor does assessment of the application include consideration of the relative merits of different approaches to therapeutic treatments for alcohol and drug abuse.

ACTION: DAS TO PREPARE NOTICE OF REFUSAL

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

SUZANNE PHILIP

Chair

19 December 2019