DEVELOPMENT CONSENT AUTHORITY
LITCHFIELD DIVISION
NORTHERN TERRITORY PLANNING SCHEME

AGENDA ITEM: 3 MEETING DATE: 14/08/2020 FILE: PA2020/0189

APPLICATION: Home based business with an area of 280m\(^2\)
APPLICANT/CONTACT: Northern Planning Consultants Pty Ltd – Brad Cunnington
LAND OWNER: Phillipos Hadjiyriacнос
LOCATION: Lot 110 (115) Standley Road, Howard Springs, Hundred of Bagot (Bookmark A)
ZONE: Zone RL (Rural Living)
AREA: 2.18ha

1. PROPOSAL

A development application has been made for home occupation and home based contracting with a combined area of 280m\(^2\). Home occupation and home based contracting have been replaced by a singular definition of **home based business** under the Northern Territory Planning Scheme 2020 (NTPS 2020).

**home based business** means use of a dwelling or the site of a dwelling by a person who resides in the dwelling for a business activity which is subordinate to the primary residential use including:

- a) **family day care for no more than 7 children**;
- b) **storage of materials and vehicles**;
- c) **carrying out of an occupation or profession**; and
- d) **provision of temporary accommodation on a commercial basis within the dwelling**.

The application is at Bookmark B. The applicant provided supplementary information in response to the submissions on the application (Bookmark B1).

2. REASON FOR APPLICATION AND LEVEL OF ASSESSMENT

Assessment at the level of **Merit Assessable** and consent is required as home based business is permitted in Zone RL but it does not comply with the relevant development requirements set out in Part 5 of the NTPS 2020.

<table>
<thead>
<tr>
<th>Zoning table assessment category</th>
<th>Part 3 Overlay applies?</th>
<th>Consent required by virtue of Overlay Requirements</th>
<th>Part 5 – General and Specific Development Requirements</th>
<th>Level of Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zone RL (Rural Living) Permitted</td>
<td>Yes</td>
<td>No</td>
<td>Does not comply 5.4.10.1 (5)(a) 5.4.10.1 (5)(b)</td>
<td>Merit Assessable</td>
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<tr>
<td></td>
<td>CNV - Clearing of Native Vegetation</td>
<td>The site is cleared</td>
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</table>
In considering an application for consent for a use or development that has become Merit Assessable under Clause 1.8(1)(b)(ii)(2) (i.e. by virtue that it is a permitted use that as it does not comply with the relevant development requirements set out in Part 5 of the NTPS 2020), 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.

3. ASSESSMENT SYNOPSIS

This report concludes that the Authority should refuse to consent to the application. However, the Authority may accept an undertaking from the landowner to allow for the use to scale back and to use the land in accordance with home based business within a reasonable period.

4. BACKGROUND

The Lot 110 (115) Stanley Road, Hundred of Bagot (the land) is 2.18ha and is currently developed with a single dwelling, a large shed and several outbuildings, including chicken coops, greenhouses and small sheds. The large shed, and the area surrounding the shed, is used by the landowner, Mr Phillipos Hadjikyriacou, for his welding and steel fabrication business, which produces steel products, frames, trusses, trailers, etc, for the construction and automotive industries.

The Hadjikyriacou family acquired the land in 1982 and the following planning history applies to the land:

- On 29 March 1994, development permit DV5280 was issued for the purpose of a storage shed. A variation to clause 22.1 (Setbacks in the RL1 Zone) of the Litchfield Area Plan 1992 was granted. The setback of the shed to the western boundary is 6m, which is adjacent to the neighbour’s driveway, providing access to a rear battle-axe lot. The Industry use subject to this application is conducted from this shed.

- On 24 August 1998, development permit DP98/0402 was issued for the purpose of rural industry (mango packing).

- On 16 July 1999, a variation permit DP98/0402A was issued for the construction of an awning to the existing shed.

In 2010, Mr Phillipos Hadjikyriacou acquired the land as the sole landowner. Aerial imagery shows that the mango trees on the land had been removed by 2012. It is understood that he started operating his business from the land around that time.

On 26 November 2019, Northern Planning Consultants Pty Ltd lodged an application for an exceptional development permit to develop the land for Industry (Welding). On 20 February 2020, the Minister decided to refuse to grant the permit without exhibition.

The current development application is not a duplicate of the exceptional development permit application; it is a scaled back version.

5. PUBLIC EXHIBITION

The application was advertised in the NT News on 19 June 2020 and placed on public exhibition for a period of two weeks. Two public submissions were received under section 49(1) of the Planning Act 1999.
6. **THIRD PARTY APPEAL RIGHTS**

Third party appeal rights exist under section 117 of the *Planning Act 1999* in respect to the development proposal as it is a type of development in a residential zone that does not comply with the planning control provisions relating to the development.

7. **MATTERS TO BE TAKEN INTO ACCOUNT**

When considering a development application the consent authority must apply the relevant considerations to only those components of the development that triggered the requirement for consent under the planning scheme.

In this instance, the requirement for consent is that it does not comply with the relevant development requirements set out in Part 5 of the NTPS 2020.

(a) *any planning scheme that applies to the land to which the application relates*

On 31 July 2020, the NTPS 2020 was adopted and came into force. Section 214 of the *Planning Act 1999* states that any application is to be determined in accordance with the planning scheme applicable at the time.

A technical assessment is at Bookmark C and Clause 5.4.10.1 is provided verbatim below for completeness.

5.4.10 Home Based Businesses

5.4.10.1 Home Based Business

**Purpose**

Ensure that a *home based business* facilitates small scale business activities, while remaining *ancillary* to the *dwelling* on the *site*, that are compatible with and conducted in a manner that:

(a) is appropriate to the *amenity* of the locality and the primary purpose of the zone in which the *home based business* is established;

(b) protects the *amenity* of adjoining premises;

(c) can be supported by the existing utilities infrastructure provided in the locality; and

(d) limits the traffic impacts to that which might reasonably be expected in the locality.

**Administration**

1. The consent authority may *consent* to a *home based business* that is not in accordance with sub-clauses 4 and 5 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and it is appropriate to the *site* having regard to such matters as its location, nature, scale and impact on surrounding *amenity*.

2. Notwithstanding sub-clause 1, the consent authority must not *consent* to a *home based business* (temporary visitor accommodation) where the combined total number of residents and guests exceeds twelve people.

3. More than one *home based business* may operate on a *site* provided that individually and collectively the *home based businesses* accord with sub-clauses 4 and 5, and provided that there will not be more than one *home based business* of each category operating on the *site*;

**Requirements**
4. A **home based business** will comply with the purpose of this clause if:
   (a) it is carried out by a person residing in the **dwelling**;
   (b) it operates in a manner that is **ancillary** to the use of the **dwelling** as a private residence at all times;
   (c) it is compatible with the character of the local area and does not unreasonably impact upon the **amenity** of adjoining or nearby residential uses;
   (d) no greater demand or load is imposed on the existing reticulated services than that which is ordinarily required in the locality;
   (e) if reticulated services are not available:
      i. development does not impose unsustainable demands on surface water and groundwater; and
      ii. the land is suitable for the on-site disposal of effluent in a manner that does not pollute ground or surface waters;
   (f) no more than 1 sign is erected on the **site** of a **home based business**, and is not more than 0.5m$^2$ in area; and
   (g) it demonstrates that the surrounding road network is capable of accommodating the additional traffic generated without adverse impacts.

5. The requirements applicable for each category of **home based business** are as follows:
   (a) family day care for no more than 7 children may be established where the operation and use of the **dwelling** is approved by Quality Education and Care NT (QECNT) under the National Quality Framework for early childhood education and care, and it is conducted in a way to minimise potential conflict with surrounding residential development;
   (b) the storage of materials and vehicles as part of a **home based business** is acceptable in Zones RL, R, H, A or FD where:
      i. the total area of the **site** that is used (including areas used temporarily) does not exceed 200m$^2$;
      ii. no goods or equipment are visible from outside the **site**; and
      iii. not more than three vehicles kept on the **site** are associated with the **home based business**;
      iv. it does not involve any materials or equipment that cause nuisance or emissions that adversely impact on the **amenity** of the locality;
   (c) the storage of materials and vehicles is acceptable in any other zone where:
      i. the total area of the **site** that is used (including areas used temporarily) does not exceed 30m$^2$;
      ii. no goods or equipment are visible from outside the **site**; and
      iii. not more than one vehicle kept on the **site** is associated with the **home based business**.
      iv. it does not involve any materials or equipment that cause nuisance or emissions that adversely impact on the **amenity** of the locality;
   (d) a **dwelling** may be used for the purpose of an occupation or profession where:
      i. the total of the **floor area** of the **dwelling** plus the other areas of the **site** that are used (including areas used temporarily) does not exceed 30m$^2$;
      ii. no more than 2 customers or clients are present at any one time;
      iii. it does not involve more than 1 person who is a non-resident of the **dwelling**;
      iv. it does not involve any materials, equipment or processes that cause nuisance or emissions that adversely impact on the **amenity** of the locality;
      v. a maximum of one vehicle associated with the occupation or profession is kept on the **site**;
      vi. the public display of goods from the premises does not occur outside of a building, and is not visible from the street or another public place;
vii. commercial deliveries or collections are limited to a vehicle no larger than a 
Light Rigid vehicle up to 8 tonnes, and no more than 2 deliveries or collections 
per day;
viii. loading or unloading activity is undertaken entirely within the site; and
ix. two car parking spaces are provided for each occupation or profession in 
accordance with Clause 5.2.4.3 (Parking Layout), in addition to the car 
parking spaces required for the dwelling;

(e) temporary visitor accommodation (bed and breakfast type accommodation) is 
acceptable where:
i. the number of guests at any time on the premises does not exceed 6
ii. the driveway to the accommodation does not gain access from a road that is 
in Zone M (Main Road) unless consent is obtained from the responsible 
authority;
iii. the premises to be used is not a dwelling-multiple or dwelling-group;
iv. it is located on a lot with an area of at least 600m2; and
v. one car parking space is provided for each guest room in accordance with 
Clause 5.2.4.3 (Parking Layout), in addition to the car parking spaces 
required for the dwelling.

Editor's Notes:
(1) Any part of a dwelling used for temporary visitor accommodation needs to meet 
the requirements of the National Construction Code as Class 1b.
(2) Office administration functions and activities that do not involve visits by 
customers or clients, deliveries or noise related activities may occur outside of the 
specified hours of operation.
(3) A “vehicle” is as defined by the Motor Vehicle Registry

On page 7 of the application, the applicant has addressed the equivalent clauses under the 
NTPS 2007 collectively, which aligns with the assessment of home based business under the 
NTPS 2020. In particular, the applicant provides:

- The proposed use, as amended from existing, increases the combined home 
  occupation and home based contracting area (collectively 230m²) to 280m², with at 
  least half of this space including activities undertaken within the site (i.e. the home 
  occupation component).

- The home occupation component, whilst comprising a business owned, managed and 
  operated by the residents of the single dwelling, does have on-site assistance from 
  employees living off-site. Whilst the property is provided with three phase power, this 
  is not unusual in the rural area, and the demand for power is consistent with rural 
  industry, ancillary rural living activities, and other home occupation and home based 
  contracting.

- The use generates only a very minor increased demand on water and sewerage 
  services (undertaken by an on-site septic tank) to cater for the drinking water and 
  ablution demands of up to two on-site employees (business hours only).

- Whilst three vehicles are allowable for home based contracting, two of the three 
  vehicles associated with the business use (tele-handler and small crane) operate as 
  part of the home occupation.

- Whilst the proponent has taken significant steps to improve the appearance of the site, 
  reduce the amount of material stored outside of the shed, and increase the 
  landscaping, goods and equipment will remain visible from outside the site, including:
o The shed frontage facing Stanley Road is open, thus the function of the shed is apparent from the street boundary;
o The straightening rack will be reduced in height, however will remain visible (albeit screened by vegetation) from the street;
o The three business vehicles will be discretely parked, albeit will remain visible; and
o A small amount of material, generally comprising prefabricated steel, will be visible from outside the site from time to time.

In summary, the home based business would be visible from outside the site, there would be three vehicles in total, four persons working on the land (including 2 non-residents) and the area used for home based business would be 280m².

The consent authority may consent to a home based business that is not in accordance with sub-clauses 4 and 5, identified above, only if it is satisfied it is consistent with the purpose of the home based business clause and the zone purpose and outcomes, and it is appropriate to the site having regard to such matters as its location, nature, scale and impact on surrounding amenity.

The purpose of Zone RL (Rural Living) is to provide for a range of rural lifestyle choices and rural activities, in areas where access to reticulated water and sewerage may not be available. Home based business is anticipated in the zone, provided it is ancillary to the primary use of dwellings-single within a rural lifestyle setting, and the home based business is of a scale, intensity and nature that is compatible with the character and amenity of the surrounding locality.

Similarly, the purpose of home based business is to ensure that a home based business facilitates small scale business activities, while remaining ancillary to the dwelling on the site, that are compatible with and conducted in a manner that is appropriate to the amenity of the locality and the primary purpose of the zone in which the home based business is established; protects the amenity of adjoining premises; can be supported by the existing utilities infrastructure provided in the locality; and limits the traffic impacts to that which might reasonably be expected in the locality.

It is considered that the home based business is ancillary to the primary use of the land and is supported by the existing infrastructure.

The principle matter for the consent authority to consider is whether the proposed home based business is an appropriate scale, intensity and nature that is compatible with the character and amenity of the surrounding locality. In this instance, it is recommended that home based business for welding and steel fabrication is not compatible and there is the potential to impact the amenity of the surrounds by way of noise. The activities proposed would include welding, cutting, pressing, steel fabricating and business administration. These activities are ordinarily associated with general industry activities, which would typically be located in a light or general industry zone. The RL zone allows for the conduct of a profession to be limited to 30m², which steel fabrication is unable to be limited to in this instance. The applicant has requested a significant variation to the area to undertake the profession. Similarly, these activities would occur in an open-sided shed and the immediate areas surrounding the shed, where the noise from the shed is unmitigated.

(e) any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application

Two public submissions were received during the exhibition period under section 49 of the Planning Act 1999 with respect to the proposal. The submissions are summarised as followed:
**Dennis and Cecily Bree (neighbour)** Book**mark D1**

- to object to the application to allow industrial use to continue at 115 Stanley road
- reside at 160 Barker Rd Howard Springs which backs on to the property in question
- request that the application be rejected, and the business be directed to re-locate to an appropriate premise as soon as possible.
- lived here since 1978 and have never been contacted by the Department or the owner regarding changed use of an agricultural packing shed on the property
- It seems to the submitter that an application to continue industrial use in a residential area should be handled directly by the department, by directing the owner to rectify the unlawful use, rather than put us all through this process which leads to tension between neighbours.
- The pro forma letters of support from some neighbours for the EDP appear to me to be time limited (“until the EDP process has been completed”) and would have thought should not have been used for this application unless refreshed by the signatories.
- The alterations suggested to existing operations simply reinforce that this is an industrial operation and therefore unlawful.
- The application says “the welding component departs somewhat from the primary intent for rural living.....” which is clearly true. It then goes on to equate fixing agricultural machinery with the existing business which is clearly untrue. An agricultural or horticultural use of 2 hectares would be, what is often referred to as, a hobby farm and the fixing of equipment might take up to a few hours a week, not six days a week.
- The application talks about two years and implies, but makes no commitment to, ending it in that period. The DCA should set a date.
- objection to this application is that it changes the amenity of the area and sets a precedent for others to follow. Like most others in the Howard Springs area, moved there for peace and quiet, not industrial noises six days a week.

**Gerry Wood MLA** Book**mark D2**

- it is not possible to support the application because it does not fit with the objectives of the RL zone
- the Minister has already rejected an application for an Exceptional Development Permit saying that the application was a departure from the current Northern Territory planning policy to support an Industry use in Zone RL
- As the local member, he also received complaints from two steel companies who complained about the unfairness of operating a steel business from a rural block when they operate from an industrial block
- the use should be considered general industry or light industry, which is prohibited in Zone RL
- acknowledgement that the business has been operating for some time and it would be unfair to close it down without time for the owner to find an alternative site
- support the business continuing to allow for 12 months
- this industry is not rural

(h) **the merits of the proposed development as demonstrated in the application**

The applicant has provided in the application that the ‘The proposal seeks to facilitate the continued operation of PH Welding, a local welding and fabrication business that provides employment to Northern Territory residents and contributes to the economy.’

(m) **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 proposal was circulated to the following service authorities and agencies for comment:

**Litchfield Council** Bookmark E1

Litchfield Council raised the following comments for consideration:
- supports the granting of a development permit
- the proposed use is a reduction of the activity currently carried out on the site and the application includes letters of support from all surrounding neighbours
- there are not expected to be any negative effects upon Council’s road as a result of the proposal and any potential stormwater impacts are expected to be able to be easily addressed.

**Power and Water – Power** Bookmark E2

- limited 3 phase power supply

**Power and Water – Water** Bookmark E3

- reticulated water and sewer services are currently unavailable in the area

**Department of Environment and Natural Resources** Bookmark E4

- the operation of a welding business is generally incompatible with the character of the RL zone
- it could result in noise, dust and odour impacts at nearby sensitive locations
- if approved, it should be time limited and be required to ensure that suitable land use outcomes are achieved at the premises
- The preferred outcome include
  - cessation of commercial welding activities
  - removal of all waste from the property for proper disposal/recycling
  - removal of all material and equipment associated with the business that is not permitted to be stored at the premises under the planning scheme

**(n) the potential impact on the existing and future amenity of the area in which the land is situated**

The applicant provided six letters of support from the immediate neighbours. The letters were a form letter and stated that the current use of the land does not impact the enjoyment of the rural area. The landowner has a good relationship with the immediate neighbours and is regular contact regarding the way in which the business is operated.

The home based business is welding and steel fabrication, which occurs in an open sided shed. The nature of the business is noise generating and noise mitigation measures have not been proposed.

**51(2) If a development proposal is required to be referred to the NT EPA under Part 4, Division 3 of the Environment Protection Act 2019, the consent authority must not make a decision under this Division in relation to a development application for the proposal unless:**

- **(a) the NT EPA has determined that an environmental impact assessment is not required under that Act for that proposal; or**
- **(b) if the NT EPA has determined that an environmental impact assessment is required – an environmental approval has been granted under that Act for the proposal and the decision is consistent with that approval; or**
The Environment Protection Act 2019 otherwise permits the making of the decisions by virtue that referral is not required.

8. RECOMMENDATION

That, pursuant to section 53(c) of the Planning Act 1999, the Development Consent Authority refuse to consent to the application to develop Lot 110 (115) Standley Road, Howard Springs, Hundred of Bagot for the purpose of Home based business with an area of 280m$^2$ for the following reasons:

9. REASONS FOR THE RECOMMENDATION

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 2020 (NTPS 2020) applies to the land to which the application relates.

   An application was made for home based business for the storage of materials and vehicles and the carrying out of an occupation or profession. The application proposed a welding and steel fabrication business to operate on the land. The business is owned and operated by the landowner and would be operated over a combined area of 280m$^2$. The application sought variations to the development requirement under Part 5 of the NTPS 2020, primarily that the home based business would be visible from outside the site, there would be three vehicles in total, four persons working on the land (including 2 non-residents) and the area used for home based business would be 280m$^2$.

   The purpose of Zone RL (Rural Living) is to provide for a range of rural lifestyle choices and rural activities, in areas where access to reticulated water and sewerage may not be available. Home based business is anticipated in the zone, provided it is ancillary to the primary use of dwellings-single within a rural lifestyle setting, and the home based business is of a scale, intensity and nature that is compatible with the character and amenity of the surrounding locality.

   Similarly, the purpose of home based business is to ensure that a home based a home based business facilitates small scale business activities, while remaining ancillary to the dwelling on the site, that are compatible with and conducted in a manner that is appropriate to the amenity of the locality and the primary purpose of the zone in which the home based business is established; protects the amenity of adjoining premises; can be supported by the existing utilities infrastructure provided in the locality; and limits the traffic impacts to that which might reasonably be expected in the locality.

   The Authority considered that home based business for welding and steel fabrication is not compatible with the zone purpose and there is the potential to impact the amenity of the surrounds by way of noise. The activities proposed would include welding, cutting, pressing, steel fabricating and business administration. These activities are ordinarily associated with general industry activities, which would typically be located in a light or general industry zone. The RL zone allows for the conduct of a profession to be limited to 30m$^2$, which steel fabrication is unable to be limited to in this instance. The applicant requested a significant variation to the area to undertake these activities.
Similarly, these activities would occur in an open-sided shed and areas surrounding the shed, where the noise would be unmitigated. The Authority acknowledged that the landowner has a good relationship with his immediate neighbours, as evidenced by the letters of support provided in the application, and takes measures to consult with them on matters that relate to the operation of the business. However, the nature of the activities that would occur on the land are noise generating and sufficient measures have not been proposed to mitigate the potential impact of these activities on amenity.

2. Pursuant to section 51(e) of the Planning Act 1999, the consent authority must take into consideration any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application.

Two public submissions were received during the exhibition period under section 49 of the Planning Act 1999 with respect to the proposal. One submission was from an immediate neighbour objecting to the application and the other from the local members Gerry Wood MLA, also objecting to the application. Both submitters likened the proposal to an industrial use that should be located on an appropriate premises. The immediate neighbour also objected citing the changes to the amenity of the area and the precedent for others to follow.

The Authority considered the submissions made under section 49 of the Planning Act 1999 in making this determination.

3. 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 nature of the activities that would occur on the land are noise generating and sufficient measures have not been proposed to mitigate the potential impact of these activities on amenity.

AUTHORISED:

................................................
RURAL PLANNER
DEVELOPMENT ASSESSMENT SERVICES
1. **Introduction**

This report accompanies an application for Development Permit for the purpose of *Home Occupation* and *Home Based Contracting*, comprising a welding business within the existing premises at 115 Stanley Road, Howard Springs. The premises have been utilised by PH Welding for several years, owned and operated by Phillipos Hadjikyriacou. Phillipos and his family are also resident in the existing *single dwelling* located on the same property. PH Welding are a small, local welding company who originally occupied the pre-existing shed (originally constructed and utilised as a mango packing shed) within the parameters of *home-based contracting* and *home occupation* such that the use was permitted, however subsequently expanded beyond the definition of *home-based contracting* to currently comprise a form of *industry*. This application seeks approval for a reduced operation (relative to that currently occurring and that applied for within the recent Exceptional Development Permit application PA2019/0455) to enable consideration as *Home Occupation* and *Home Based Contracting*, for a limited period of 2 years. The limited period enables the proponent sufficient time to continue operations (albeit in a modified manner) whilst making alternative arrangements for the relocation, or otherwise modification of the business.

The subject land is in Zone RL (Rural Living), with Clause 5.19 of the Northern Territory Planning Scheme identifying the use and development of land for either *Home Occupation* or *Home Based Contracting* as Permitted, however the proposal seeks variations to both Clause 7.10.7 and 7.10.8, thus a development permit is required pursuant to Section 44(a) of the Northern Territory Planning Act. This application addresses the relevant components of Section 46(3) of the Act. This report (and application) is to be read in conjunction with the following attachments:

- **Attachment A**: Site Master Plan and Building Details
- **Attachment B**: Neighbour Support
- **Attachment C**: Title Documents

1.1 **Background**

In March 1994 the Northern Territory Planning Authority issued an approval (DV5280) to enable the development of a storage shed with a footprint of 22 metres by 10 metres, with 4 metre verandas on each side increasing the overall dimensions to 22 metres by 18 metres. In August 1998 the Planning Authority approved the use of the shed for the purpose of a mango packing shed, with an extension to the veranda towards the Stanley Road frontage. In mid-2019 the Development Consent Authority (DCA) initiated proceedings against the landowner in relation to the alleged unlawful use of part of the property for the purpose of *industry*.

In response to correspondence from the DCA, Northern Planning Consultants prepared and lodged an application for Exceptional Development Permit (EDP – PA2019/0455) for the purpose of *industry* (in order to enable the continuation of the use as existing at the time).
The EDP application included the neighbour support letters (provided in Attachment B hereto). By correspondence 20 February 2020, the Minister for Infrastructure, Planning and Logistics refused the application for EDP (without undertaking public consultation) given the “...departure from current Northern Territory planning policy to support an Industry use in Zone RL.” This application seeks approval for a modified version of the use as Home Occupation and Home Based Contracting, with the modifications and aforementioned time limit addressing the Minister’s concerns.

2. Subject Land

![Figure 1: Lot 110 Hundred of Bagot (115 Stanley Road, Howard Springs)](image)

**Address:** Lot 110 Hundred of Bagot (115 Stanley Road, Howard Springs)

**Title Reference and Land Tenure:** CUFT 751 674 Estate in Fee Simple (Freehold)

**Landowner:** Phillipos Hadjikyriacou

**Land Area:** 2 hectares 1,800m²

**Easements:** None Identified

**Zone:** RL (Rural Living)

The subject land comprises a single 2.18 hectare allotment adjacent the northern side of Stanley Road, in the locality of Howard Springs. Built form comprises a large single storey shed near the western side boundary, currently occupied by the PH Welding component, and a single storey dwelling towards the centre of the site. There are two vehicle access driveways from Stanley Road, with the central driveway providing access to the dwelling, and the western driveway providing access to the shed. The rear portion of the site includes several outbuildings associated with the rural living component, including chicken coops, greenhouses and small sheds.
The PH Welding component is limited to the existing shed and area immediately surrounding the shed, and includes a truck, tele-handlers / forklifts, commercial vehicles, metal materials and scrap, and a straightening rack in front of the shed. The remainder of the site has, for some time, been utilised for scrap storage by the dwelling occupants. The current landowner has commenced the removal of much of the scrap material off-site, with the view of ensuring the appearance of the site (including aspects not associated with the PH Welding use subject of this application) is improved and made consistent with the rural living surroundings. Part of the application includes modifications to the way in which the welding business operates within the site, including the storage of vehicles and materials, removing (or at the very least reducing) the appearance of non-residential components to the adjoining properties and the public realm. The landowner has also commenced revegetation of the area between the existing buildings and the Stanley Road boundary, significantly improving the appearance of the site and screening the existing buildings / use. Planting includes Indian Mast and Frangipani trees. A single bore is in the south-eastern corner of the allotment. Image 1 shows the subject land from Stanley Road.

Image 1: Subject Land from Stanley Road

3. Locality

Figure 1 in section 2 of this report identifies the site and its surrounding locality. The subject land is situated in the predominantly rural living locality of Howard Springs, with allotments in the broader locality typical of the 2 hectare lots that generally dominate rural living areas. Land use is typical of rural living localities, with the majority of allotments containing single dwellings, along with ancillary, complimentary and associated uses including horticulture, agriculture, rural industry, home based contracting and independent living. The majority of allotments are at least partially cleared of native vegetation, with some completely cleared. The Howard Springs centre is approximately 1.66km north-west of the site, including commercial and community facilities, and a school.
4. **Proposed Development**

The application seeks approval for the use of part of the land as the premises for PH Welding. PH Welding undertake welding and steel fabrication to produce steel products, frames, trusses, trailers and similar materials used in the construction and automotive industries, and subsequent installation on site (i.e. on the site for which the article is being manufactured). Activities conducted on site primarily consist of welding, as well as cutting, pressing, fabricating and business administration. No smelting or galvanising is undertaken within the subject land. PH Welding operates with a maximum of four staff at any one time (currently three), including two residents within the existing dwelling (therefore a maximum of two workers not residents in the associated dwelling). Vehicles currently comprise private motor vehicles, a utility, a semi-trailer and three forklifts / telehandlers. The proposed modifications to the existing business seek to reduce vehicles to private vehicles, one semi-trailer, one telehandler and one crane.

The extent of the business use is limited to the western portion of the lot, with access exclusively via the western driveway. The central, front, rear and eastern areas of the site will remain for the rural living component. The western driveway provides access to a compacted vehicle manoeuvring area to the front of the shed, with driveway leading to the rear of the shed. The existing driveway areas consist of compacted gravel with dust control measures applied where necessary.

The alterations to the nature of existing operations, undertaken in response to the Minister’s decision in relation to PA2019/0455, to enable an application as home based contracting and home occupation, and to minimise any visual and amenity impact on the public realm and surrounding allotments, comprise:

- Reducing the extent of internal area utilised for PH Welding to the western portion of the existing shed, with all remaining machinery to be relocated into this area (which also includes the office and ablutions);
- Restricting all welding and fabricating activities to within the existing shed;
- Reducing the height of the straightening rack to 2.5 metres;
- Reducing the number of vehicles associated with the business operations to one semi-trailer, one telehandler and one crane, with the identification of specific parking areas for these vehicles and the designation of no parking areas;
- Removing all scrap metal associated with the business off-site and relocating any storage material to the rear of the shed; and
- The inclusion of additional screen landscaping between the shed / straightening rack and Stanley Road, as well as along the residential driveway. Much of this planting has been undertaken.

PH Welding operations will be undertaken during business hours only, in accordance with the Northern Territory Environment Protection Authority’s Noise Guidelines, and the proponent will continue to actively consult with neighbouring properties to ensure works do not disrupt the amenity of residents by way of noise, vehicle movements or any other emissions. The amended site layout and business use areas are identified in the master plan in Attachment A.
5. Section 46(3)(a) - NT Planning Scheme

The relevant provisions of the Northern Territory Planning Scheme (the Scheme) are referred to below.

Nature of Development

The application seeks approval for the use of the land as home occupation and home based contracting in accordance with the definitions in Clause 3 of the Northern Territory Planning Scheme. The nature of the use involves both on-site and off-site activities, thus effectively combines the on-site activities of home occupation with the off-site activities of home based contracting. PH Welding is wholly owned and operated by Phillipos Hadjikyriacou, also the landowner and resident within the associated single dwelling, thus is operated/carry on by a person resident in the dwelling situated on the same site. Cause 3.0 of the Planning Scheme defines home based contracting and home occupation as:

"home based contracting" means the storage on the site of a dwelling of materials and/or vehicles associated with a business operated by a person resident in the dwelling, but which business does not operate on the site of the dwelling;

"home occupation" means an occupation or profession which is carried on in a dwelling or on the site of a dwelling by a person resident in the dwelling and may include the caring for up to five children including children who reside in the dwelling;

Zone RL

The RL Zone objectives within Clause 5.19 of the Northern Territory Planning Scheme seek to provide for low-density rural living and a range of rural land uses including agriculture and horticulture. Further, the objectives provide if lots are unsewered, provision for the disposal of effluent must be made on-site so that the effluent does not pollute ground or surface waters.

The proposed PH welding component departs somewhat from the primary intent for rural living and uses associated with the rural area. Notwithstanding, the revised nature of the use and the associated built form (ie welding and metal fabrication in a large shed) are not far removed from uses associated with the rural area, including rural industry and ancillary functions of agriculture or horticulture (such as machinery maintenance). Accordingly, whilst deviating from the primary intent for development in Zone RL, the proposal is facilitated by the ability for home occupation and home based contracting to nonetheless be undertaken, and the nature of the proposed use must be taken in context with uses possible, and already occurring, in Zone RL.

The use comprises a minor increase in the load on on-site effluent treatment systems relative to a single dwelling, however is well within the operational capacity of the existing septic system. The use does not include the storage or use of hazardous materials or chemicals, thus does not increase the risk of pollution to ground and surface waters.
Clause 7.10.7 and 7.10.8 – Home Based Contracting and Home Occupation

Clause 7.10.7 relates to home occupation, and provides:

1. **The purpose of this clause is to ensure that home occupations are established and operated in a manner that does not detract from the residential amenity of the locality.**

2. A **dwelling** may be used for the purpose of a **home occupation** where:
   
   (a) the occupation or profession is carried out only by persons residing in the **dwelling**;
   
   (b) the total of the **floor area** of the **dwelling** plus the other areas of the **site** that are used for the **home occupation** (including areas used temporarily) does not exceed 30m²;
   
   (c) no greater demand or load is imposed on the services provided by a public utility organisation than that which is ordinarily required in the locality;
   
   (d) no sign is displayed, other than a **business sign** that is not more than 0.5m² in area;
   
   (e) no goods or equipment are visible from outside the **site**; and
   
   (f) not more than one vehicle kept on the **site** is used for the purpose of the **home occupation**.

3. The consent authority may approve an application for a **home occupation** that is not in accordance with sub-clause 2 only if it is satisfied the proposed **home occupation** is appropriate to the **site** having regard to the potential impact of the **home occupation** on the residential amenity of adjoining and nearby property.

Similarly, **Clause 7.10.8** relates to home based contracting and, as relevant to home based contracting in Zone RL, provides:

1. **The purpose of this clause is to ensure that home based contracting is established and operated in a manner that does not detract from the amenity of the locality.**

2. A **site** of a **dwelling** may be used for the purpose of **home based contracting**:

   (a) in Zones RL, R, H, A or FD where:

   i. the total area of the **site** that is used for the **home based contracting** (including areas used temporarily) does not exceed 200m²;

   ii. no greater demand or load is imposed on the services provided by a public utility organisation than that which is ordinarily required in the locality;

   iii. no sign is displayed, other than a **business sign** that is not more than 0.5m² in area;

   iv. no goods or equipment are visible from outside the **site**; and
v. not more than three vehicles kept on the site are used for the purpose of the home based contracting; or

3. The consent authority may approve an application for a home based contracting that is not in accordance with sub-clause 2 only if it is satisfied the proposed home based contracting is appropriate to the site having regard to the potential impact of the home based contracting on the residential amenity of adjoining and nearby property.

Given the proposal comprises both home occupation and home based contracting forming a single use, and the similarities between Clause 7.10.7 and 7.10.8, the above requirements are considered together.

The proposed use, as amended from existing, increases the combined home occupation and home based contracting area (collectively 230m²) to 280m², with at least half of this space including activities undertaken within the site (ie the home occupation component), thus an increase on the maximum 30m². Furthermore, the home occupation component, whilst comprising a business owned, managed and operated by the residents of the single dwelling, does have on-site assistance from employees living off-site. Whilst the property is provided with three phase power, this is not unusual in the rural area, and the demand for power is consistent with rural industry, ancillary rural living activities, and other home occupation and home based contracting. The use generates only a very minor increased demand on water and sewerage services (undertaken by an on-site septic tank) to cater for the drinking water and ablation demands of up to two on-site employees (business hours only). No business sign exceeds 0.5m², however whilst three vehicles are allowable for home based contracting, two of the three vehicles associated with the business use (tele-handler and small crane) operate as part of the home occupation. Finally, whilst the proponent has taken significant steps to improve the appearance of the site, reduce the amount of material stored outside of the shed, and increase the landscaping, goods and equipment will remain visible from outside the site, including:

- The shed frontage facing Stanley Road is open, thus the function of the shed is apparent from the street boundary;
- The straightening rack will be reduced in height, however will remain visible (albeit screened by vegetation) from the street;
- The three business vehicles will be discretely parked, albeit will remain visible; and
- A small amount of material, generally comprising prefabricated steel, will be visible from outside the site from time to time.

Subclause 3 in both Clauses 7.10.7 and 7.10.8 provides discretion for the consent authority to approve a variation to the above requirements “...only if it is satisfied the proposed home based contracting is appropriate to the site having regard to the potential impact of the home based contracting / occupation on the residential amenity of adjoining and nearby property.” Coupled with Subclause 1 in both Clauses 7.10.7 and 7.10.8, it is apparent that the fundamental (indeed only) purpose of the above provisions is the protection of amenity.
Evident from the neighbour submissions in Attachment B, the proponent has gone to considerable lengths to ensure neighbouring properties are not adversely impacted, with neighbours confirming the activities do not impact negatively on the enjoyment of surrounding land and the rural area in general. As such, it would be reasonable to conclude that the nature and operation of the use is being carried out in such a way to ensure it’s not adversely affecting the amenity of the locality, and in accordance with the definition of amenity in Clause 3.0 of the Scheme, ensures the locality remains pleasant, harmonious and enjoyable. Whilst the attached confirms the appropriate integration of the PH Welding component within the existing locality, the consideration of Clause 7.10.7 and 7.10.8 must also include future amenity and amenity reasonably anticipated. Whilst there is no reason to suspect the continued (modified) operation of PH Welding will alter amenity levels in the future, a development permit limited to a period of 2 years will ensure the protection of amenity levels into the future.

Clause 10.2 – Clearing of Native Vegetation

Clause 10.2 relates to the clearing of native vegetation, and stipulates that the clearing of more than 1 hectare in aggregate of land requires consent. The site has long been cleared of native vegetation, and the proposal recognises the replanting undertaken by the proponent. Accordingly further consideration of Clause 10.2 is not required.

6. Strategic Planning

6.1 Darwin Regional Land Use Plan

Clause 2.7 of the NT Planning Scheme provides requirements regarding reference to policy documents in development applications. Clause 2.7 provides:

1. The interpretation of this Planning Scheme and the determinations of a consent authority must have regard to the policies and planning concepts expressed in those documents appearing in Part 8 or Schedule 2 and ensure that a use or development or proposed use or development is consistent with them.

2. Where there is an inconsistency between any applicable policy and this Planning Scheme, the provisions of the Planning Scheme will prevail

Schedule 2 of the Planning Scheme refers to fourteen policy documents, including, as relevant to the current proposal, the Darwin Regional Land Use Plan. The Darwin Regional Land Use Plan was prepared by the NT Planning Commission and incorporated into Schedule 2 of the Planning Scheme in 2015. The plan provides a vision, goals and intended outcomes for development of the Darwin Region, identifies regional opportunities and the intention for development into the medium and long term. The Land Use Structure on Page 13 of the Plan identifies the subject land as Rural Lifestyle. Page 19 of the Regional Land Use Plan deals with the use and development of rural lifestyle areas, and provides three key objectives:

- Identify opportunities for rural lifestyle development to meet market demand.
- Encourage opportunities for a choice of lifestyle in terms of lot size and access to services.
- Provide appropriate buffers between different residential localities to maintain and enhance the amenity of established areas and protect the natural environment.
Further commentary regarding rural lifestyle area focuses on the retention of rural living land despite anticipated urban development within the Litchfield Council area (for example Weddell), and the retention and protection of the positive character and amenity traits of rural lifestyle areas. Based on the distribution of uses within the land use structure plan, the determination of rural lifestyle areas is clearly dominated by land in Zones R and RL, and consequently lots of 8 and 2 hectares.

Whilst the Planning Scheme clearly facilitates home occupation and home based contracting as part of Zone RL, the development and use of land for rural lifestyle purposes is taken to include all anticipated outcomes (per, in this case, Clause 5.19). Any departure of a use when considered in isolation must be taken in context with the retained rural living component of the site (clearly consistent with the intended development outcomes for rural lifestyle areas) and the emphasis the proponent has placed, for a considerable amount of time, on protecting the amenity values of rural lifestyle activity on surrounding land (evident by the submissions in Attachment B). As such, there is a clear intention to retain and protect the positive character and amenity traits of rural lifestyle areas. The adherence of the proposed development to this objective is a result of the proponents efforts over a number of years to ensure the operations of PH Welding do not adversely affect the amenity of surrounding land, and provides a clear point of difference demonstrating the uniqueness of the site and the operations of PH Welding.

### 6.2 Litchfield Subregional Land Use Plan

The Litchfield Subregional Land Use Plan (LSRLUP) was released in 2016 and provides a more detailed level of planning (furthering the Darwin Regional Land Use Plan) as well as land use concept plans to guide the development of area plans (namely for the identified rural activity centres). The LSRLUP furthers the identification of rural lifestyle areas from the Regional land Use Plan as “rural area”, and includes Statements of Policy, which provide the following for land identified as Rural Area:

- **Continue to support the subdivision of suitable land outside rural activity centres into 2 ha lots in Zone RL (Rural Living) and into 8 ha lots in Zone R (Rural);**
- **Require reliable water supply adequate for residential use;**
- **Require stormwater drainage for new residential development to not adversely impact on the receiving environment; and**
- **Require residential subdivision to provide roads and infrastructure to the requirements of the responsible authorities.**

The wording of the Subregional Plan seeks to ensure the established residential amenity of the rural area is preserved, with the provision of adequate buffers to mitigate impacts on sensitive land uses (Statement of Policy 10). As with the consideration of similar objectives in the Regional Land Use Plan, the primary focus is on the preservation of rural amenity, and avoidance of land use impacts from incompatible uses. Again, the specific nature of the use, the established operation over several years, and the ongoing effort by the proponent to ensure the amenity of surrounding properties is adequately considered, appropriately responds to the fundamental objectives of the Subregional Land Use Plan.
7. **Section 46(3)(b) – Interim Development Control Order**

The land is not affected by an Interim Development Control Order.

8. **Section 46(3)(c) – Environmental Assessment Act**

The operation of PH Welding does not generate or discharge listed wastes and is unlikely to require further assessment or licencing under the Environmental Assessment Act or the Waste Management and Pollution Control Act. Any further considerations under this legislation will be advised by the EPA in response to the public exhibition period.

9. **Section 46(3)(d) – Merits of Proposed Development**

The proposal seeks to facilitate the continued operation of PH Welding, a local welding and fabrication business that provides employment to Northern Territory residents and contributes to the economy.

10. **Section 46(3)(e) – Subject Land, Suitability of Development and effect on other land**

Sections 2 and 3 of this report detail the subject land and its locality. The suitability of the subject land to accommodate the proposed development has been demonstrated over a number of years through the proponents ongoing effort to ensure operations do not adversely affect the amenity of their neighbours, with modifications proposed as part of this application to improve the suitability of the use within the site and the appearance of the site to both adjoining properties and the public realm. The subject land is not constrained by wet season inundation or other factors that limit the capability of the land in accommodating the use.

11. **Section 46(3)(f) – Public Facilities and Open Space**

Public facilities and open space are not located near the subject land. An application for home occupation and home based contracting on land which includes a single dwelling does not require further consideration of public facilities and open space.

12. **Section 46(3)(g) – Public Utilities and Infrastructure**

Direct power supply is currently provided from Stanley Road, and provides sufficient power for the existing use. Any infrastructure upgrades will be advised by PWC in response to the referral process. Wastewater is limited to the staff ablution facilities, which is processed through the existing septic system, with sufficient capacity to deal with the slight increase in load. Solid waste is generally limited to scrap metal and other materials and will be recycled offsite.

13. **Section 46(3)(h) – Impact on Amenity**

The attached submissions from neighbouring properties clearly demonstrate the emphasis the proponent has placed on maintaining amenity for neighbouring properties over several years. The modifications proposed as part of the application, including reducing and relocating any material and vehicles associated with PH Welding operations, will improve amenity levels for surrounding properties as well as the appearance of the site to the public realm along Stanley Road.
The primary reason for restricting the extent of home occupation and home based contracting in rural living and rural residential zones is to avoid any incompatibility (in terms of amenity) of non-residential uses with low-density residential development, being the primary purpose of Zone RL. This application enables the approval of a specific use for a limited period of time, which has been demonstrated to operate in a manner that is not incompatible with the surrounding area, and thus warrants specific consideration.

14. Section 46(3)(j) – Benefit/Detriment to Public Interest

Public interest is likely limited to enabling an existing small business to keep operating, with corresponding benefits to employment and the Northern Territory economy. Ensuring existing amenity is protected will avoid any detrimental impacts on public interest.

15. Section 46(3)(k) – Compliance with the Building Act

No subdivision is proposed, thus a statement in accordance with section 46(3)(k) is not required.

16. Section 46(3)(l) – Development of Scheme Land

The application does not comprise the subdivision of land under a unit titles scheme. Accordingly Section 46(3)(l) is not relevant.

17. Beneficial Uses under the Water Act

The site is located within the Darwin Harbour (natural waterways) Beneficial Use Area, which describe the following Beneficial Uses:

1. The protection of environment, cultural (aesthetic, recreational and cultural), and aquaculture to be beneficial uses that apply to the area of water known as Darwin Harbour being all saline waters south of the line drawn from Charles Point to Gunn Point and bounded by the upper limit of the high water mark of tidal waterways, including all named and unnamed inlets and creeks.

2. The protection of environment, cultural (aesthetic, recreational and cultural), agriculture and rural stock and domestic to be the beneficial uses of water that apply to all natural waterways in the Darwin Harbour catchment, including all named and unnamed springs, creeks, rivers, lakes, lagoons, swamps or marshes.

In addition, the site is in the Darwin Rural Area Water Control District, which provides the following beneficial use:

Declared beneficial uses of all surface water from all waterways located in the Darwin Rural Water Control District (the District) and all groundwater located in the District, to be agriculture; aquaculture; public water supply; environment; cultural; industry; rural stock and domestic; mining activity; and petroleum activity.

In practice, the use utilises very little water, within the parameters of that utilised for a rural living allotment with a single dwelling. Accordingly, the use is consistent with the identified beneficial uses for the Darwin Rural Area and will not compromise beneficial uses for the Darwin Harbour (Natural Waterways).
18. Conclusion

This application seeks approval for the ongoing operation of the PH Welding metal welding and fabrication business, situated on the same site as the proponent’s family home. The business has operated for several years with the proponent placing an emphasis on ensuring operations are undertaken with the utmost respect for neighbouring properties and in a manner that ensures rural amenity is maintained. The proponent proposes to alter the layout of operations from that existing to improve the appearance of the site from neighbouring properties and the public realm.

Whilst the proposal seeks a number of variations to the relevant requirements for home occupation and home based contracting, there are critical factors that must be considered in the determination of the application:

- That lot 110 is still used in accordance with Zone RL through the ongoing use of the existing single dwelling as the family home of the proponent. The PH Welding premises is not leased to a third-party tenant, and employees are strictly limited;

- That the proponent has, for several years, actively sought to ensure the operation of the PH Welding component is undertaken in a manner that ensures the amenity of surrounding land is maintained. The protection of amenity is the critical consideration for home occupation and home based contracting in residential / rural living areas, and as such the proven consideration by the proponent supports the proposed variations; and

- Issuing a development permit for a temporary period only will enable the continued operation of PH Welding only, and will not facilitate other operators, further development or expansion of the existing use, or sub-letting part of the premises. Furthermore, this application is based on the specific circumstances surrounding the PH Welding premises and the operations therein and will not create or add to any precedent for development / land use elsewhere in the rural area.

Accordingly, it is the applicant’s opinion that the proposal appropriately considers the relevant provisions of the Planning Scheme and warrants a development permit for a temporary period.

Brad Cunnington
Northern Planning Consultants Pty Ltd

10 June 2020
Truck Parking
Vehicle Maneuvring only - No parking

Metal Straightening rack - no storage

Landscaping Driveway
Existing Residence
Existing Shed

Rural Living

Home Based contracting within existing shed. 280m²

Height to be reduced to 2.5m
Extra landscaping - Indian Mast Trees

Mobile: 0427 796 140
Email: brad.cunnington@northernplanning.net
www.facebook.com/northernplanning

115 Stanley Road, HOWARD SPRINGS Hundred of Bagot
Rural Living

- Truck Parking
- Vehicle Maneuvering only - No parking
- Metal Straightening rack - no storage
- Landscaping Driveway
- Existing Residence
- Existing Shed
- Dashed lines denote extent of shed awnings
- Home Based contracting within existing shed. Approx 250m²
- Height to be reduced to 2.5m
- Extra landscaping - Indian Mast Trees

Mobile: 0427 796 140
Email: brad.cunnington@northernplanning.net
www.facebook.com/northernplanning

Master Plan
115 Stanley Road
115 Stanley Road, HOWARD SPRINGS Hundred of Bagot

115 Stanley Road
Howeound of Bagot

115 Stanley Road,
Litchfield Council,
7 Bees Creek Road,
Freds Pass NT 0836

To Whom it may concern,

Please accept this letter as our approval of the ongoing activities by PH Welding Pty Ltd within our neighbourhood of Stanley Road, Howard Springs, NT 0835.

The activities of PH Welding Pty Ltd do not impact negatively on us, our enjoyment of the rural areas or our property.

Phillipos and his family have been resident within our street for a number of decades and have always been good neighbours, who we have a good relationship with.

Phillipos Hadjiyriacou has spoken to us regarding the matter of applying for an (exceptional development permit) EDP for his business activities, and we are happy for them to continue as they are until the EDP process has been completed.

Yours Sincerely

[Signature]

Harry W Smith
109 Stanley Rd
Howard Springs
11/1/2019
Litchfield Council,
7 Bees Creek Road,
Freds Pass NT 0836

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Yours Sincerely

Valerie Fedor

[Signature]

11/11/19

Lot 104 Stanley Rd
Litchfield Council,
7 Bees Creek Road,
Freds Pass NT 0836

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10/7/19
Litchfield Council,
7 Bees Creek Road,
Freds Pass NT 0836

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Yours Sincerely

H. Hoops

16/105 Stanley Rd
H/SQS
Litchfield Council,
7 Bees Creek Road,
Freds Pass NT 0836

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Yours Sincerely,

[Signature]

Clenis Luke
125 Stanley Road
0401117039
glenis.luke@yahoo.com.au
Litchfield Council,
7 Bees Creek Road,
Freds Pass NT 0836

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Yours Sincerely

Phillipa Coyne
120 Stanley Road
0429 635 488
Hi Sonia and Alana

Further to our meeting earlier this week, I provide the following response to the submissions received. I have also amended the site master plan to reflect the full extent of the existing shed. There is no change to the intended land use areas or other details.

Litchfield Council, PWC Water and PWC Power

I note no concerns have been raised about the proposal by the above agencies. The condition requirements from Council and PWC Power are relatively standard, and the proponent has no concern with these conditions being reflected in any resultant development permit.

DENR

The DENR submission notes that a welding business is generally incompatible with Zone RL, due to potential noise, dust and odour impacts. The submission suggests that any operation of the welding business should be limited to a defined period, and that the proposal ensure suitable land use outcomes are achieved. Based on the wording of the submission, it is assumed that the listed outcomes refer to the end-time of the proposal, and as such the submission does not appear to object to the proposal. The proponent acknowledges their general environmental duties identified in the submission.

Public Submissions – Gerry Wood and Dennis and Cecily Bree

The submission from Dennis and Cecily Bree suggests the application should be rejected, and the business directed to relocate to an appropriate premises as soon as possible. The objection appears to be based solely on the land use compliance with Zone RL and the Department’s handling of the matter, and does not identify any land use or amenity impacts experienced by the submitted. Evident from the cadastral layout, the submitter is some distance from the land use (ie the extent of the land use subject of this application within the subject land). My client has confirmed that if there are any specific amenity impacts the submitter has experienced, they will seek to rectify the situation immediately. Per the application, the proponent is clearly seeking a time-limited approval, and would expect any permit to reflect this. The letters of neighbour support submitted with the application reflect the impacted neighbours willingness to support the proponent. Whilst it is a matter for the DCA as to what weight they afford these letters as part of the DA consideration, the proponent is happy to seek updated letters if required. Please advise accordingly. Finally, the submitter has erroneously interpreted NPC’s initial report (ie the reference to rural industry, agriculture or horticulture having impacts similar to the proposed use) as being limited to a hobby farm only. Land uses possible in Zone RL, including rural industry (which is not an activity ancillary to horticulture / agriculture on the same land) extend far beyond the ancillary components of a hobby farm.

In relation to the submission from Gerry Wood, the land use considerations and assessment against the relevant provisions of Zone RL are considered in the original application. I note the submission offers support for an approval limited to 12 months. The current application seeks approval for 2 years, however ultimately the decision will be at
the DCA’s discretion. The acknowledgement that “I have also received complaints from two steel companies who complained about the unfairness of operating a steel business from a rural block when they operate from an industrial block” refers to matters of commercial competition, and are not relevant in this case. Anyone is entitled to lodge a development application and seek approval for a land use, and is entitled to procedural fairness to have that matter considered in accordance with the relevant legislation.

Please don’t hesitate to contact me for any further clarification on this matter.  

Regrets  

Brad

Brad Cunnington

M: 0427 796 140 E: Brad.Cunnington@NorthernPlanning.net
A: Darwin Corporate Park, Unit 6, T212, 631 Stuart Highway, Berrimah P: PO Box 36004 WINNELLIE NT 0821

NORTHERN PLANNING CONSULTANTS
www.facebook.com/northernplanning
TECHNICAL ASSESSMENT OF PROPOSED DEVELOPMENT AGAINST RELEVANT PROVISIONS OF THE NORTHERN TERRITORY PLANNING SCHEME

Application No: PA2020/0189
Lot number: Lot 110 (115) Stanley Road Howard Springs
Town/Hundred: Hundred of Bagot
Zone: RL (Rural Living)
Site Area: 2.18ha
Proposal: Home based contracting and home occupation with a combined total area of 280m2

- Clause 2.7 Reference to Policy
  - Litchfield Sub Regional Land Use Plan 2016
- Clause 5.19 Zone RL (Rural Living)
- Clause 7.10.7 Home Occupation
- Clause 7.10.8 Home Based Contracting

Date Assessment finalised: 29/06/2020
Plans used for assessment: Master Plan 115 Stanley Road prepared by NPC

This is a technical assessment of the proposal against the requirements of the Northern Territory Planning Scheme and is no indication of whether or not approval will be given by the Development Consent Authority. It is noted that clause 2.5 (Exercise of Discretion by the Consent Authority) allows the Development Consent Authority discretion to vary standards only where special circumstances justify the giving of consent or impose a condition requiring a higher standard if it considers it necessary to do so.
2.7 Reference to policy

Clause 2.7 (Reference to Policy) of the NTPS states that the interpretation of the Planning Scheme and the determinations of a consent authority must have regard to the policies and planning concepts expressed in those documents appearing in Part 8 or Schedule 2 and ensure that a use or development or proposed use or development is consistent with them. Schedule 2 of the Planning Scheme makes reference to eleven policy documents. The following documents are relevant to the subject lot.

The Litchfield Subregional Land Use Plan (LSLUP) 2016

The land is identified within the "rural area" of the LSLUP, which statement of policy is:

The LSLUP does not identify the site or the immediate locality for change from the existing rural lifestyle lots.

5.19 Zone RL (Rural Living)

1. 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.

2. If lots are unsewered, provision for the disposal of effluent must be made on-site so that the effluent does not pollute ground or surface waters.

The application proposes ‘home occupation’ and ‘home based contracting’ with a combined total area of 280m². Both are permitted uses in the zone, however the application seeks to vary the clause provisions.

SUBJECT TO ASSESSMENT
### 7.10.7 Home Occupation

1. The purpose of this clause is to ensure that home occupations are established and operated in a manner that does not detract from the residential amenity of the locality.

<table>
<thead>
<tr>
<th></th>
<th>The large shed, and the area surrounding the shed, used by the landowner as a welding and steel fabrication business, which produces steel products, frames, trusses, trailers, etc, for the construction and automotive industries.</th>
</tr>
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<tbody>
<tr>
<td>AT THE DISCRETION OF THE AUTHORITY</td>
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</table>

2. A dwelling may be used for the purpose of a home occupation where:

|   | A maximum four staff at any one time (two residents and two workers not associated with the residence). |
|   | The application does not propose any use of the existing residential dwelling. |
|   | Proposes a total area of 280m² within the existing shed. Plans indicate areas surrounding the shed are also to be used. |
|   | No reticulated services are available. Application states minor increase on demand for the on-site septic system to cater for two onsite employees during business hours. |
|   | No proposed signage |
|   | The application states: - the shed fronting Stanley Road is open and apparent from the street; - the straightening rack will be reduced in height but remain visible - three business vehicle will remain visible - prefabricated steel/materials will be visible from time to time |
|   | Application states a reduction in vehicles to private vehicles (no numbers provided), one semi-trailer, one tele-handler and one crane. The application asserts two of the three vehicles associated with the business (tele handler and small crane) operate as part of the home occupation. |
| DOES NOT COMPLY | Plans do not indicate bore or septic locations |

3. The consent authority may approve an application for a home occupation that is not in accordance with sub-clause 2 only if it is satisfied the proposed home occupation is appropriate for the site having regard to the potential impact of the home occupation on the residential amenity of adjoining and nearby property.

**AT THE DISCRETION OF THE AUTHORITY**
## 7.10.8 Home Based Contracting

1. The purpose of this clause is to ensure that home based contracting is established and operated in a manner that does not detract from the amenity of the locality.

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<tbody>
<tr>
<td>1.</td>
<td>The large shed, and the area surrounding the shed, used by the landowner as a welding and steel fabrication business, which produces steel products, frames, trusses, trailers, etc, for the construction and automotive industries.</td>
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2. A site of a dwelling may be used for the purpose of home based contracting:

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<th>DOES NOT COMPLY</th>
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<td>(a) in Zones RL, R, H, A or FD where:</td>
<td></td>
<td>No detailed plans of shed provided.</td>
</tr>
<tr>
<td>i. the total area of the site that is used for the home based contracting (including areas used temporarily) does not exceed 200m²;</td>
<td>Proposes a total area of 280m² within the existing shed. Plans indicate areas surrounding the shed are also to be used.</td>
<td></td>
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<tr>
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<th>PWC/DENR? Plans do not indicate bore or septic locations</th>
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<tr>
<td>ii. no greater demand or load is imposed on the services provided by a public utility organisation than that which is ordinarily required in the locality;</td>
<td>No reticulated services are available. Application states minor increase on demand for the on-site septic system to cater for two onsite employees during business hours. Power demand is consistent with rural industry or rural living activities.</td>
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<tr>
<td>iii. no sign is displayed, other than a business sign that is not more than 0.5m² in area;</td>
<td>No proposed signage</td>
<td></td>
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<tr>
<td>iv. no goods or equipment are visible from outside the site; and</td>
<td>The application states: - the shed fronting Stanley Road is open and apparent from the street; - the straightening rack will be reduced in height but remain visible - three business vehicle will remain visible - prefabricated steel/materials will be visible from time to time</td>
<td></td>
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<th>COULD COMPLY</th>
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<tr>
<td>v. not more than three vehicles kept on the site are used for the purpose of the home based contracting;</td>
<td>The application states a reduction in vehicles to private vehicles (no numbers provided), one semi-trailer, one tele-handler and one crane. The application asserts two of the three vehicles associated with the business (tele handler and small crane) operate as part of the home occupation.</td>
<td>Vehicle numbers to be clarified</td>
</tr>
</tbody>
</table>

3. The consent authority may approve an application for a home occupation that is not in accordance with sub-clause 2 only if it is satisfied the proposed home occupation is appropriate for the site having regard to the potential impact of the home occupation on the residential amenity of adjoining and nearby property.

AT THE DISCRETION OF THE AUTHORITY
Chair
Development Consent Authority

We wish to object to the application to allow industrial use to continue at 115 Stanley road.
We reside at 160 Barker Rd Howard Springs which backs on to the property in question.
We request that the application be rejected, and the business be directed to re-locate to an appropriate premise as soon as possible.
I offer the following points:

1. I have lived here since 1978 and have never been contacted by the Department or the owner regarding changed use of an agricultural packing shed on the property.

2. It seems to me that an application to continue industrial use in a residential area should be handled directly by the department, by directing the owner to rectify the unlawful use, rather than put us all through this process which leads to tension between neighbours.

3. The pro forma letters of support from some neighbours for the EDP appear to me to be time limited (“until the EDP process has been completed”) and I would have thought should not have been used for this application unless refreshed by the signatories.

4. The alterations suggested to existing operations simply reinforce that this is an industrial operation and therefore unlawful.

5. The application says “the welding component departs somewhat from the primary intent for rural living....” which is clearly true. It then goes on to equate fixing agricultural machinery with the existing business which is clearly untrue. An agricultural or horticultural use of 2 hectares would be, what is often referred to as, a hobby farm and the fixing of equipment might take up to a few hours a week, not six days a week.

6. The application talks about two years and implies, but makes no commitment to, ending it in that period. The DCA should set a date. (I would have thought that now is a good time to find an industrial premise for purchase or rent).

Our objection to this application is that it changes the amenity of the area and sets a precedent for others to follow.

Like most others in the Howard Springs area, we moved there for peace and quiet, not industrial noises six days a week.

Regards
Dennis and Cecily Bree
1 July 2020

Chairman
Development Assessment Services
Department of Infrastructure, Planning and Logistics
GPO Box 1680
DARWIN NT 0801

Re: Lot 110, 115 Stanley Road, Home based contracting business and home occupation

It is not possible to support this application because it doesn’t fit with the objectives of the RL zone which are to provide for low-density rural living and a range of rural land uses including agriculture and horticulture. The Minister has already rejected an application for an Exceptional Development Application saying that the application was a departure from current Northern Territory planning policy to support an Industry use in Zone RL. I have also received complaints from two steel companies who complained about the unfairness of operating a steel business from a rural block when they operate from an industrial block.

Unfortunately as mentioned by NPC in their submission:

*PH Welding undertake welding and steel fabrication to produce steel products, frames, trusses, trailers and similar materials used in the construction and automotive industries, and subsequent installation on site (ie on the site for which the article is being manufactured). Activities conducted on site primarily consist of welding, as well as cutting, pressing, fabricating and business administration.*

That by definition is either general industry or light industry which is prohibited in the RL zone.

It is difficult when you read below a portion of the NPC submission that this business can fit into the category of *home occupation and home based contracting*. It is stretching the definition a long way.
The proposed PH welding component departs somewhat from the primary intent for rural living and uses associated with the rural area. Notwithstanding, the revised nature of the use and the associated built form (i.e. welding and metal fabrication in a large shed) are not far removed from uses associated with the rural area, including rural industry and ancillary functions of agriculture or horticulture (such as machinery maintenance). Accordingly, whilst deviating from the primary intent for development in Zone RL, the proposal is facilitated by the ability for home occupation and home based contracting to nonetheless be undertaken, and the nature of the proposed use must be taken in context with uses possible, and already occurring, in Zone RL.

I realise that the business has been operating for some time and it would be unfair to close it down without time for the owner to look for an alternative site.

I would support the business continuing and having time to move but that should be up to 12 months.

I know the family well, they have lived in the rural area for a long time and they are hardworking but if the rural area is to stay rural, the rural zones need to stay rural and this industry is not rural.

Yours sincerely

Gerry Wood MLA
RE: Letter of Comment Development Application

PA2020/0189
Lot 98 (115) Stanley Road, Howard Springs, Hundred of Bagot
Home Based Contracting and Home Occupation with a Combined Total Area of 280m²

Thank you for the Development Application referred to this office on 19/06/2020, concerning the above. This letter may be tabled at Litchfield Council’s next Council Meeting. Should this letter be varied or not endorsed by Council, you will be advised accordingly.

The following issues are raised for consideration by the Authority:

Council supports the granting of a Development Permit for the following reasons:

a) The proposed use is a reduction of the activity currently carried out on the site and the application includes letters of support from all surrounding neighbours that the current use does not affect the amenity of the area.

b) There are not expected to be any negative effects upon Council’s road as a result of the proposal and any potential stormwater impacts are expected to be able to be easily addressed.

Should the application be approved, the Council requests the following condition(s) be included as Condition(s) Precedent in any Development Permit issued by the consent authority:

a) 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.

Should the application be approved, the following condition(s) pursuant to the Planning Act and Council’s responsibility under the Local Government Act are also recommended for inclusion in any Development Permit issued by the consent authority:

a) The kerb crossovers and/or driveways to the site are to meet the technical standards of Litchfield Council. The owner shall remove disused crossovers; provide footpaths/cycleways, as required by Litchfield Council; collect stormwater and discharge it to the drainage network; and undertake reinstatement works; all to the
technical requirements and satisfaction of the Director Infrastructure and Operations, Litchfield Council, at no cost to Litchfield Council.

b) Any developments on or adjacent to any easements on site in favour of Council shall be carried out to the requirements and satisfaction of the Director Infrastructure and Operations, Litchfield Council.

Should the application be approved, the following notes are recommended for inclusion in any Development Permit issued by the consent authority:

a) Litchfield Council’s current Fees and Charges may apply to the above conditions. Additional information can be found at www.litchfield.nt.gov.au.

b) A Works Permit is required from Litchfield Council before commencement of any work within the road reserve, which would include creation of any driveway crossover connecting to Litchfield Council’s road network.

c) Notwithstanding any approved plans, signs within Litchfield Council’s municipal boundaries are subject to approval under Clause 6.7 of the NT Planning Scheme.

If you require any further discussion in relation to this application, please contact Litchfield Council’s Planning and Development division on 08 8983 0600 and you will be directed to the appropriate officer to address your query.

Yours faithfully

Rodney Jessup
Project Engineer
Sonia Barnes  
Development Assessment Services  
Development Consent Authority  
GPO Box 1680  
Darwin NT 0801  

Dear Sonia  

Re: Lot 110 Stanley Road Howard Springs Hundred of Bagot  

In response to your letter of the above proposal for the purpose of home based contracting and home occupation with a combined total area of 280m², Power and Water advises the following with reference to electricity enquiries:

1. This property is currently provided with limited capacity of 3-phase power supply from the overhead low voltage reticulation. Any new development that requires additional power supply will be subject to assessment by Power and Water in accordance with the current Networks Capital Contributions Policy (NCCP).

2. The Proponent (PH Welding) shall engage a licensed electrician to submit any additional power demand calculation of the proposed development to Power and Water for assessment on applicable power servicing upgrade requirements.

3. PH Welding’s licensed electrician shall upgrade customer’s associated internal electricity reticulation for the proposed development in accordance with Power and Water’s current Installation Rules, Service Rules and Metering Manual.

If you have any further queries, please contact Andrew Venhuizen, Senior Customer Connections Officer on 8924 5700.

Yours sincerely  

Thanh Tang  
Manager Distribution Development  
22 June 2020
Dear Sonia,

RE: PA2020/0189 - Lot 0110 Hundred of Bagot (115) Stanley Road Howard Springs - Home based contracting and home occupation

In response to your letter of the above proposal for development application purpose, Power and Water Corporation advises the following with reference to water and sewer enquiries:

1. Reticulated water and sewer services are currently unavailable in the area. The developer must contact relevant authorities to discuss servicing requirements for the proposed development.

2. Power and Water have no objections or requirements for the proposed Home based contracting and home occupation provided the above requirements are met at no cost to Power and Water.

If you have any further queries, please contact the undersigned on 89245174, or email waterdevelopment@powerwater.com.au

Yours sincerely

Lindy Eres

Lindy Eres

Services Development

23rd June 2020

cc: Bradley Cunnington

email: Brad.Cunnington@northernplanning.net
Ms Sonia Barnes
Department of Infrastructure, Planning and Logistics
GPO Box 1680
Darwin NT 0801

Dear Ms Barnes

Re: PA2020/0189 - Lot 110 Hundred of Bagot, Home based contracting and home occupation with a combined total area of 280m²

The Department of Environment and Natural Resources (DENR) has assessed the information contained in the above application and provides the following comments:

Environment Division
Environmental Operations Branch
The proponent seeks to continue the current land use for commercial metal fabrication activities, for two years following any approval of their application. The proponent indicates that they may seek to continue a modified form of the current land use thereafter, through a separate development application.

The continued operation of a welding business is generally incompatible with the character of the RL zone, and could result in noise, dust, and odour impacts at nearby sensitive locations.

Any operation of the welding business should be limited to a defined period, and be required to ensure that suitable land use outcomes are achieved at the premises. The preferred outcomes include the:
- cessation of commercial welding activities;
- removal of all waste from the property, for proper disposal/recycling; and
- removal of all material and equipment associated with the business that is not permitted to be stored at the premises under the Planning Scheme.

The Environment Division requests the inclusion of the following Note in any development permit to be issued for the above application, and that Note should reference the Schedule of Environmental Considerations attached to this letter.

Note
There are statutory obligations under the Waste Management and Pollution Control Act 1998 (the Act), that require all persons to take all measures that are reasonable and practicable to prevent or minimise pollution or environmental harm and reduce the amount of waste.
The proponent is required to comply at all times with the Act, including the General Environmental Duty under section 12 of the Act.

Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority website at https://ntepa.nt.gov.au/waste-pollution/guidelines/guidelines.

The proponent is advised to take notice of the attached Schedule of Environmental Considerations. The Act, administered by the Northern Territory Environment Protection Authority, is separate to and not reduced or affected in any way by other legislation administered by other departments or authorities.

Any queries in relation to this matter should be directed to Michael Browne, Planning Team Leader, on (08) 8924 4149 or by email via: eia.ntepa@nt.gov.au.

Should you have any further queries regarding these comments, please contact Maria Wauchope by email maria.wauchope@nt.gov.au or phone (08) 8999 3692.

Yours sincerely

[Signature]

Luís Da Rocha
Executive Director, Rangelands

/ July 2020
Attachment

Schedule of Environmental Considerations

PA2020/0189 – Home based contracting (welding) and home occupation with a combined total area of 280m²
Lot 110 Hundred of Bagot -
115 Stanley Rd, Howard Springs

Guidelines

Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority (NT EPA) website at: https://ntepa.nt.gov.au/waste-pollution/guidelines/guidelines.

Noise and vibration
The proponent must ensure emissions of noise and vibration from the premises are not detrimental to the amenity of an area or the enjoyment of an area by persons who occupy that area.

Burning of waste
The proponent must ensure that waste is not burnt at the premises.

Providing services for the
Northern Territory Environment Protection Authority