



DEVELOPMENT CONSENT AUTHORITY

KATHERINE DIVISION

MINUTES

MEETING No. 165 – WEDNESDAY 2 MAY 2018

**DIPL CONFERENCE ROOM
1ST FLOOR GOVERNMENT CENTRE
5 FIRST STREET
KATHERINE**

MEMBERS PRESENT Suzanne Philip (Chair), Allan Domaschencz and Fay Miller,
Alan Sprigg (videoconference)

APOLOGIES: Nil

OFFICERS PRESENT: Ann-Marie Dooley and Julie Bennett (Development Assessment
Services)

COUNCIL REPRESENTATIVE: Jamie Craven

Meeting opened at 10.00 am and closed at 10.40 am

THE MINUTES RECORD OF THE EVIDENTIARY STAGE AND THE DELIBERATIVE STAGE ARE RECORDED SEPARATELY. THESE MINUTES RECORD THE DELIBERATIVE STAGE. THE TWO STAGES ARE GENERALLY HELD AT DIFFERENT TIMES DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.

ITEM 1 **SUBDIVISION TO CREATE 40 LOTS IN FOUR STAGES**
PA2016/0339 **NT PORTION 5692 (1661) STUART HIGHWAY, LANSDOWNE**
APPLICANT **PATRICK FORDHAM**

Mr Patrick Fordham (landowner) attended.

RESOLVED That, pursuant to section 53(a) of the *Planning Act*, the Development Consent
22/18 Authority consent to the application to develop NT Portion 5692 (1661) Stuart
Highway, Lansdowne for the purpose of a subdivision to create 40 lots in four
stages, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and two copies must be provided. The plans must be generally in accordance with *the* plans submitted with the application but modified to show:
 - (a) the removal of the proposed 'fire access trail/ 20m wide access easement' to the north of proposed lot C41 in stage 2C;
 - (b) clarification regarding the service authority intended to be responsible for the proposed 'drainage easements'
 - (c) any changes to the proposal that that result from works required by condition precedent 2.
2. Prior to the endorsement of plans, a Stormwater Management Strategy for the whole subdivision shall be submitted to the requirements of the Transport and Civil Services Division, Department of Infrastructure Planning and Logistics, to the satisfaction of the consent authority. The Stormwater Management Strategy shall include an assessment of the potential increased stormwater run-off based on the full development potential of the proposed subdivisional area, and impact on existing downstream stormwater drainage systems. It shall demonstrate that drainage from the subdivision will not be detrimental to the drainage, flood immunity or safety of the Stuart Highway road reserve. The Developer shall be responsible for the enlargement of existing external drainage system(s) and / or appropriate protection works to cater for the increased and / or concentrated run-off from the subject land.
3. Prior to the commencement of works, design documents must be submitted to the Director Corridor Management, Transport and Civil Services Division for Road Agency Approval for any works (including the provision or connection of services and any swept path diagrams) within, or impacting upon the Stuart Highway road reserve (including for the subdivision access road intersection with Stuart Highway). All works shall be designed, supervised and certified on completion by a practicing and registered Civil Engineer, and shall be in accordance with the standards and specifications

of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, the satisfaction of the consent authority.

4. Prior to commencement of any works, a Construction Traffic Management Plan (detailing all appropriate site management measures, including construction access, proposed haulage routes, vehicle types, protection of existing assets, protection of public access and a risk assessment) shall be submitted to the requirements of Department of Transport, to the satisfaction of the consent authority.
5. Prior to the commencement of works, an Erosion and Sediment Control Plan (ESCP) is to be submitted to and approved by the consent authority on the advice of the Department of Environment and Natural Resources (DENR). The ESCP must be developed by a Certified Professional in Erosion and Sediment Control (CPESC) and in accordance with the Key Principals of erosion and sediment control as specified in the IECA Best Practice Erosion and Sediment Control Guidelines 2008. The ESCP should detail methods and treatments for minimising erosion and sediment loss from the site during the construction phase and that all disturbed soil surfaces must be satisfactorily stabilised against erosion at completion of works. Information regarding erosion and sediment control and ESCP content is available at www.austieca.com.au and the NTP website: <https://nt.gov.au/environment/soil-land-vegetation>. The ESCP should be emailed for assessment to: DevelopmentAssessment.DENR@nt.gov.au

GENERAL CONDITIONS

6. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
7. Development must proceed in the order of stages shown on the endorsed plans, unless otherwise agreed by the consent authority.
8. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to the Transport and Civil Services Division, Department of Infrastructure and Planning and/or Katherine Town Council (as the case may be) to the satisfaction of the consent authority.
9. No polluted and/or sediment laden run-off is to be discharged directly or indirectly into the Transport and Civil Services Division, Department of Infrastructure and Planning and/or Katherine Town Council (as the case may be) drains or to any watercourse, to the satisfaction of the consent authority.
10. All works relating to this permit are to be undertaken in accordance with the approved Erosion and Sediment Control Plan (ESCP) to the requirements of the Consent Authority on the advice of the Department of Environment and Natural Resources (DENR).
11. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or site is to be created on the plan of subdivision submitted for approval by the Surveyor General.
12. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage and

electricity facilities and telecommunication networks to shown on the endorsed plan in accordance with the authorities requirements and relevant legislation at the time.

13. Before the issue of titles, firebreaks along boundaries or at appropriate locations shall be provided to the satisfaction of the consent authority on advice from the Bushfires NT division of the Department of Environment and Natural Resources, to the satisfaction of the consent authority.
14. Before issue of titles and pursuant to section 34 of the *Land Title Act*, a Caution Notice shall be lodged with the Registrar General on each newly created parcel to include the following advice on all proposed lots affected by sinkholes as indicated on the endorsed drawings. The Caution Notice is to state that: "This lot may contain either open or closed sinkholes that may impact the development potential of the land. Any development should take into account the need to retain vegetation buffers in accordance with the Land Clearing Guidelines. It is recommended that a suitably qualified geo technician be engaged to ensure that the development being proposed does not impact on sinkholes". Evidence of lodgement shall be provided to the satisfaction of the consent authority.
15. Before issue of titles and pursuant to section 34 of the *Land Title Act*, a Caution Notice shall be lodged with the Registrar General on each newly created parcel to include the following advice. The Caution Notice is to state that: "All lots are to install an alternative wastewater treatment system in accordance with the 'NT Code of Practice for Small on site Sewerage and Sullage Treatment systems and the Disposal or Reuse of Sewerage Effluent or relevant legislation at the time'. Evidence of lodgement shall be provided to the satisfaction of the consent authority.
16. Before the issue of titles and pursuant to section 34 of the *Land Title Act*, a Caution Notice shall be lodged with the Registrar General on each newly created 'battle-axe' parcel indicated on the endorsed drawings which states the following: "The internal electrical installation to ensure that voltage drop would not exceed the acceptable limit is expensive (tens of thousands of dollars more compared to a standard lot) to prospective lot owner". Evidence of lodgement on the parent parcel shall be provided to the satisfaction of the consent authority.
17. All proposed roads to be created on the plan of subdivision submitted for approval by the Surveyor General must be dedicated to the relevant Northern Territory or local government authority.
18. Engineering design and specifications for the proposed and affected roads, street lighting, stormwater drainage, site earthworks, vehicular access, pedestrian/ cycle corridors and street scaping are to be to the technical requirements of the Transport Civil Services Division of the Department of Infrastructure, Planning and Logistics and/or Katherine Town Council (as the case may be) to the satisfaction of the consent authority and all approved works constructed at the owner's expense.
19. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of Katherine Town Council, to the satisfaction of the consent authority.

20. Where unfenced, the Stuart Highway Road frontage is to be appropriately fenced in accordance with the Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics' standards and requirements to the satisfaction to the consent authority.
21. Should the proponent seek to alter the approved development in such a way that may affect groundwater availability or if an extension of time application is lodged in relation to this permit, comments from the Department of Environment and Natural Resources in relation to groundwater availability will be sought.

NOTES:

1. The Power and Water Corporation advise that the Remote Operations, Remote Development team, remotedevelopment@powerwater.com.au should be contacted via email a minimum of 2 to 3 months prior to expected construction works commencing to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. The Aboriginal Areas Protection Authority recommends that the permit holder obtain an Authority Certificate to indemnify against prosecution under the *Aboriginal Sacred Sites Act*. For advice on how to obtain a certificate please contact the Aboriginal Areas Protection Authority.
3. A permit to burn is required from the local Volunteer Fire Brigade, prior to the ignition of any felled vegetation on the property. Fire prevention measures are to be implemented in accordance with the requirements of the *Bushfires Act*.
4. There are statutory obligations under the *Weeds Management Act* to take all practical measures to manage weeds on the property. For advice on weed management please contact the Department of Environment and Natural Resources.
5. All new roads, including alterations and extensions to existing roads, are required to be named under the *Place Names Act*. You should immediately make application to the Place Names Committee to commence the road naming process. Contact the Place Names Unit on 8995 5333 or place.names@nt.gov.au. Further information can be found at www.placenames.nt.gov.au
6. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
7. If you choose NBN to service your development, you will need to enter into a development agreement with NBN. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered NBN will be in contact to discuss the specific requirements for the development. NBN requires you to apply at least 3 months before any civil works commence. All

telecommunications infrastructure should be built to NBN guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/builders-designers.html>

8. The Northern Territory Environment Protection Authority advises that construction work should be conducted in accordance with the Authority's Noise Guidelines for Development Sites in the Northern Territory. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.
9. The permit holder is advised that the proposal may have assessment implications under the *Waste Management and Pollution Control Act*. More information can be found on the Northern Territory Environment Protection Authority website at: <https://ntepa.nt.gov.au/waste-pollution>. The applicant is encouraged to contact the NT EPA on (08) 8924 4218 or ntepa@nt.gov.au.
10. The permit holder is advised that it is an offence to disturb or destroy prescribed archaeological places without consent under the *Heritage Act*. Should any heritage or archaeological material be discovered during the clearing operation, cease operation and please phone Heritage Branch of the Department of Tourism and Culture.

REASONS FOR THE DECISION

1. Pursuant to section 51(a) of the *Planning Act*, the consent authority must take into account any planning scheme that applies to the land to which the application relates.

The application for the subdivision of land within Zone R (Rural) and Zone RL (Rural Living) of the NT Planning Scheme to create 40 lots in four stages. The application is consistent with the purposes of both Zone R and Zone RL. The relevant provision of the NT Planning Scheme, including the objectives of the *Katherine Regional Land Use Plan* with regard to Rural Lifestyle Objectives, are considered to have been adequately considered.

Part 5 of the NT Planning Scheme requires the submission of a Land Suitability Assessment confirming that the site is suitable for the intended purpose. The applicant has provided a detailed 'Geotechnical Assessment of Sinkholes' by Cardno which also considers the previous Land Suitability Assessment conducted over the site. The report acknowledges the known constraints but concludes that the site is suitable for residential development. Notably, the Department of Environment and Natural Resources also confirmed that each lot provides 1ha of unconstrained land and that the revised subdivision of 40 lots, rather than 60, is unlikely to result in a significant impact in the environment.

For the reasons outlined above, it is considered that the proposal to create 40 lots in 4 stages can be developed in such a manner that does not conflict with the relevant clauses outlined in Part 5 of the NT Planning Scheme, provided that construction proceeds in accordance with the conditions on the permit.

2. Pursuant to section 51(m) of the *Planning Act*, the consent authority must take into consideration 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 application was circulated to the relevant service authorities for comment and the issues raised are capable of being addressed through the inclusion of conditions precedent, standard conditions and notes on the development permit.

Conditions precedent on the development permit include the requirement to submit a Construction Management Plan, a Stormwater Management Strategy, Erosion and Sediment Control Plan to the requirements of the relevant service authority. This will ensure that the infrastructure requirements are appropriately addressed.

The Department of Environment and Natural Resources (DENR) provided comments in relation to proposed roads and property boundaries intersecting sinkhole buffers and limestone outcrops. It is noted that Katherine Town Council will be the responsible authority for internal roads and it has not raised any concerns in relation to roads intersecting sinkhole buffers.

3. The authority expressed concerns that the application was circulated to the Department of Health for comment but that none were provided. It was noted that the approval granted through DP13/0334 included a condition requiring that a Caution Notice be registered on each newly created parcel to ensure alternative wastewater treatment systems be installed in accordance with the relevant requirements. Given the proposal's proximity to the land that DP13/0334 was issued over, the authority opted to include condition 15 on the permit to ensure that adequate wastewater treatments are installed.
4. The authority notes that the Power and Water Corporation provided comments, dated 21 March 2018, advising that the electrical servicing requirements for 'battle-axe' lots are expensive and that future landowners should be formally advised through the registration of a Caution Notice on the affected parcels. The authority opted to include condition 16 based on the comments provided by the Power and Water Corporation.
5. Pursuant to section 51(n) of the *Planning Act*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated.

Provided the development is undertaken in accordance with the recommended condition precedents and standard conditions, the amenity of the area is not expected to be jeopardised.

6. Pursuant to section 51(j) of the *Planning Act*, the 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 applicant has provided a detailed 'Geotechnical Assessment of Sinkholes' by Cardno which recommends buffers for both open and closed sinkholes. Notably, the report informs the proposed subdivision layout which includes 1ha of unconstrained land on each lot suitable for residential purposes. The report also considers land suitability with regard to wastewater treatment and includes nominal bore and septic locations with appropriate separation distances.

While the Department of Environment and Natural Resources (DENR) has raised concerns with the capability of the land, it has suggested in its comments that the matters can be adequately addressed through a combination of conditions and notes on any permit issued. Additional notes and conditions requiring Caution Notices to be registered on any new parcels have subsequently been included to ensure that future landowners are made aware of the constraints associated with sinkholes. This is consistent with the conditions included on DP13/0334 which approved the subdivision of land to create 8 lots directly adjacent the land.

Based on the information provided by the applicant, the land appears capable of supporting the proposed subdivision.

ACTION: Notice of Consent and Development Permit

ITEM 2 **ADDITIONS TO PROPOSED SERVICE STATION INCLUDING TRANSPORT**
PA2018/0143 **TERMINAL AND ANCILLARY FUEL DEPOT**
APPLICANT **NT PORTION 5437 (40) EMUNGALAN ROAD, EMUNGALAN**
 MASTERPLAN NT

Mr Jack Priestley (Masterplan NT) attended via videoconference. Ms Deborah Burrows (Puma Energy) attended in person.

23/18

RESOLVED
23/18

That, pursuant to section 53(c) of the *Planning Act*, the Development Consent Authority refuse to consent to the application to develop NT Portion 5437 (40) Emungalan Road, Emungalan for the purpose of additions to a proposed service station including transport terminal and ancillary fuel depot for the following reasons:

REASONS FOR THE DECISION

1. Pursuant to section 51(a) of the *Planning Act*, the consent authority must take into consideration the planning scheme that applies to the land to which the application relates.

On 20 March 2018 the Authority by DP18/0074 approved planning application, PA2018/0015, for the purpose of a service station for Puma Energy which included the development of two fuel bowsers with canopy to predominantly supply fuel to large commercial vehicles (includes 53.4 m A-triple road trains) 24 hours per day and excavation for the purpose of underground storage of three fuel tanks to be refilled from two fill points adjacent the bowsers. At the Hearing of the

Application on 7th March 2018 it was made clear to the Applicant that any approval for the service station in no way indicated approval for any further activities in relation to the balance of the site. The Minutes noted “This approval applies to the front of the site only and does not include the shed and office”.

Planning Application PA2018/0015 was amended prior to the Hearing of 7th March, having been originally submitted as an application for a service station and transport terminal. Following a request for information from Development Assessment Services to clarify the nature of the use, the applicant amended the proposal to remove reference to the use of the existing shed, and the associated fuel tanker loading point, an activity which was considered consistent with a fuel depot, a use prohibited in Zone LI (Light Industry) and, as such, could not be considered by the Development Consent Authority.

The present application reintroduced those uses previously removed from PA2018/0015 and sought further consent to use and develop the land for the purpose of a transport terminal and ancillary fuel depot in addition to the service station approved under DP18/0074. While the application acknowledged that use as a fuel depot is prohibited in Zone LI, it contended that such a use is ancillary to the approved use of the land as a service station and the further proposed use as a transport terminal. The Applicant relied on Clause 2.9.2 of the Planning Scheme which provides that *“Where the ancillary use or development of land would be prohibited if proposed as the primary use or development, the ancillary use or development is permitted only with consent.”*

The NT Planning Scheme defines “fuel depot” as *a depot for the storage or sale of solid, liquid or gaseous fuel, but does not include a service station.* The Applicant sought to characterise the Application as *“Additions to proposed service station including transport terminal and ancillary fuel depot”* and assess the development as having three separate elements, one of which was ancillary. However throughout the Application reference was made to the integrated nature of the activities. *“Given the mix of the uses on the site and the integration over the whole site, none of them stand alone or as independent functions.”*

The Authority considered in the first instance that the entirety of the functions, given the integrated nature stressed by the Applicant, must be viewed as a fuel depot. The Oxford Dictionary definition of a ‘depot’ is a “place for the storage of large quantities of equipment, food, or goods”. A second meaning is a “place where buses, trains, or other vehicles are housed and maintained and from which they are dispatched for service. In both meanings, the word ‘depot’ infers relatively large scale usage in terms of quantities of goods stored or the number and size of vehicles housed. Those definitions correlate with the primary activities proposed to be undertaken by the Applicant which involve bulk storage of large quantities of fuel and use of the site by Direct Haul, the in-house cartage division of Puma Energy, to transport primarily fuel, and other motor vehicle products such as lubricants. The proposed use included a sales manager as part of the operations which confirmed that the premises involve both storage and sale of fuel as did the approved use as a service station. The storage and sale of fuel does

not depend on or give support to a transport terminal, neither is it incidental nor a subsidiary activity, to a transport terminal but rather part of the operations of a fuel depot. The operation of a fuel depot necessarily involves frequent movement of fuel tankers which deliver to the site and distribute from the site to retail fuel outlets and commercial customers.

Further, as a fuel depot is prohibited in Zone LI, the applicant sought to characterise the fuel depot use as ancillary to the use of the land for a service station (discretionary use) and transport terminal (permitted use). By its nature an ancillary use must support and depend on a primary use. The application did not demonstrate a relationship between land uses that would satisfy this test, but rather included contrary statements, such as:

- the proposed use of the land is a mix of service station, transport terminal and fuel depot, and the uses are integrated over the whole site, such that none stand alone or are independent, and in its entirety the use is not specifically defined;
- the fuel storage on the site is one “component of the transport terminal operation”, with others including storage and distribution of a range of goods (primarily packages lubricants); and
- the components of the application includes a “transport terminal and the necessary storage of fuel”.

The corollary of this is that the proposal is not an addition to the approved service station as this is a use which is subsumed within the integrated nature of the fuel depot. The Authority concluded that it did not have the discretion to consent to the proposal as its entirety was considered to be a fuel depot which is listed as a prohibited use in the zoning table to Zone LI.

Further, the Authority considered, even if the three elements identified in the Application could be considered as separate uses, it would not consent to the fuel depot use. It noted that the approval of the service station by DP18/0074 was based on the clearly stated basis that it was an approval for that use only for retail fuel sales and excluded the use of the rear of the site including the existing buildings. Clause 5.11 (Zone LI (Light Industry)) states that the primary purpose of Zone LI is to provide for light industry uses or development activities that will not by the nature of their operations, detrimentally affect adjoining or nearby land. The expanded development and use contemplated by the present Application would generate an increased volume of daily heavy vehicle movements, including A-triple road trains, with potential to detrimentally affect adjoining or nearby land, and would therefore be inconsistent with the purpose of the zone. There was no evidence presented in the application to demonstrate anything to the contrary. The potential impact on adjoining and nearby land could include:

- impact on amenity resulting from the frequency of heavy vehicle movements which may range from 32 to 92 per week or 5 – 13 per day;
- the increased loads on public infrastructure, being Emungalan Road, which is:

- limited in road reserve width to approximately 30 m and pavement width of approximately 9 m; and
 - according to the Katherine Town Council, almost at capacity for all vehicle movements and needs upgrades to pavement and shoulders due to existing issues caused by the volume of heavy vehicle traffic already experienced.
2. Pursuant to section 51(n) of the *Planning Act*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated.

The Authority noted that, whilst there are no residential or commercial zones in close proximity which may include land uses sensitive to emissions of noise or odour, beyond the industrial area there are residents of rural lots requiring access through the industrial area. Any impact on traffic can have a broader consequence on the amenity of the area and the Authority considered the proposed development was likely to have a negative impact on the amenity of the area.

ACTION: Notice of Refusal

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

SUZANNE PHILIP
Chair

10 May 2018