



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 361 – FRIDAY 21 AUGUST 2020

**VEDA ROOM
MANTRA PANDANUS
43 KNUCKEY STREET
DARWIN CITY**

MEMBERS PRESENT: Suzanne Philip (Chair), Mark Blackburn, Marion Guppy, Simon Niblock and Peter Pangquee

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Dawn Parkes and Amit Magotra (Development Assessment Services)

COUNCIL REPRESENTATIVE: Apology

Meeting opened at 10.00 am and closed at 11.00 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

PA2020/0197 UNIT TITLE SCHEMES SUBDIVISION TO CREATE FIVE UNITS AND COMMON PROPERTY

LOT 1131 (14) FRANCIS STREET, MILLNER, TOWN OF NIGHTCLIFF

APPLICANT/S Northern Aboriginal Cultural & Educational Assoc. Ltd

Mr Samir Raut (Northern Aboriginal Cultural & Educational Assoc. Ltd) and Jai Singh (Landowner) attended.

**RESOLVED
146/20**

That, pursuant to section 46(4)(b) of *the Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 1131 (14) Francis Street, Town of Nightcliff for the purpose of a unit title schemes subdivision to create five units and common property, to require the applicant to provide the following additional information that the authority considers necessary in order to enable the proper consideration of the application:

1. Advice from a suitably qualified professional that addresses the effect of the proposed subdivision on the protection of the existing use rights that apply to the existing development pursuant to section 34 of the *Planning Act 1999*.

REASONS FOR THE DECISION

1. Pursuant to section 51(a) of the *Planning Act 1999* (the Act), the consent authority must take into consideration the planning scheme that applies to the land to which the application relates.

The application proposes a Unit Title Schemes (UTS) subdivision of an existing development comprising of 4 x 2 bedroom dwellings in a 2 storey building (on the eastern side of the site) and a 1 x 2 bedroom dwelling in a single storey building (on the western side of the site) to create five units and common property. The proposed subdivision is 'merit assessable' under the NTPS 2020 and is subject to the requirements of Clause 6.6.1 (Subdivision for the Purpose of a Unit Title Scheme).

The administration of Clause 6.6.1 requires that:

1. *A lawfully established development on a lot may be subdivided to create a unit title scheme only if the development has been upgraded to meet the development requirements within Part 5 of the planning scheme that apply to the development of the land.*

If it is not possible to meet the requirements the consent authority must be satisfied that the proposed upgrading is the only practicable design solution.

The Authority considers that determination of the proposed application requires firstly, the consideration of whether or not the building was lawfully constructed in 1969, and secondly if it was lawfully constructed, whether or not existing use rights of the existing development is protected under section 34 of the Act.

In relation to the first matter, Lot 1131 is zoned LR (Low Density Residential), and “dwelling-multiple” is a prohibited use in Zone LR under the NTPS 2020. According to the history of the existing development provided in the applicant’s statement of effect and based on the assessment in the DAS report, the Authority is satisfied that the existing development was lawfully constructed in 1969. As there is no evidence before the Authority that the existing use has discontinued for a continuous period of not less than 12 months, the Authority considers that existing use rights under section 34 of the Act apply to the existing development.

While the Authority is satisfied that existing use rights apply to the existing development, in this particular case there are two threshold questions before the Authority to be determined in considering whether the protection afforded by Part 4 of the *Planning Act 1999* extends to the proposed unit title subdivision. Firstly, Part 4 protects only the continuation of the existing use. The question is whether the proposed UTS subdivision is “really and substantially” a use for the same purpose as the existing use of a detached dwelling and flats which is protected by Part 4. Secondly, would granting approval to subdivide the existing development to create five units and common property constitute an intensification of the use pursuant to section 34(2)(b) of the Act.

Section 34 (Existing use protected) states that:

- (2) *A person may continue an existing use only if:*
- (b) *the intensity of the use is not greater than the intensity of the use immediately before the commencement of the conflicting provision.”*

The Authority considers that the application does not currently address these threshold questions.

The Authority noted that the existing development comprises of 4 flats and a detached dwelling under single ownership (one title), and that the proposed subdivision would allow for five separate owners (five unit titles).

The Authority also noted that to comply with the requirements of the *Building Act 1993*, the applicant is required to demolish part of the existing single storey building. The proposed demolition, as well as other rectification works required under the *Building Act 1993*, results in changes to the built form of the existing development. The Authority considers that the application does not currently explain what implications these changes to the built form may have in relation to the protection of the existing use rights that apply to the existing development pursuant to section 34 of the Act.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Deferral

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

SUZANNE PHILIP

Chair

27 August 2020