



## **DEVELOPMENT CONSENT AUTHORITY**

### **LITCHFIELD DIVISION**

### **MINUTES**

**MEETING No. 270 – FRIDAY 15 JULY 2022**

**HOWARD HALL  
325 WHITEWOOD ROAD  
HOWARD SPRINGS**

**MEMBERS PRESENT:** Suzanne Philip (Chair), Keith Aitken, Adam Twomey, Emma Sharp and Doug Barden

**APOLOGIES:** Rachael Wright

**LEAVE OF ABSENCE:** Nil

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), George Maly, Sonia Barnes and Julie Hillier (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Jaimie O'Connor and via videolink and telephone link Mark Hogan (Masterplan)

**Meeting opened at 11.30 am and closed at 1.55 pm**

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

**ITEM 1**                    **PRIVATE AIRSTRIP**  
**PA2022/0146**        **LOT 34 (600) STRANGWAYS ROAD, HUMPTY DOO, HUNDRED OF**  
**STRANGWAYS**  
**APPLICANT**        Tatam Planning Co

Doug Barden and Emma Sharp are community members of the Development Consent Authority and the Mayor and Councillor respectively, for Litchfield Council. Litchfield Council is a submitter to this application under Section 49 of the *Planning Act 1999*.

The Chair noted that section 98A of the *Planning Act 1999*- Independence of Community Members – contemplates that Community Members, while acting independently, may take account of opinion of a local government council in relation to a development application. No parties present raised any concerns with Mr Barden or Ms Sharp considering the application. Pursuant to section 97 of the *Planning Act 1999*, the Chair determined that Mr Barden’s and Ms Sharp’s interest or relationship was not significant or relevant, and both were permitted to form part of the quorum and participate in determination of this item.

Applicant - Cat Tatam (Tatam Planning Co) attended.

Submitters:- Leeanne Shannon, Suzanne Horner, Trevor Hopps, Erin Hopps and Litchfield Council represented by Jaimie O’Connor and via videolink and phonelink Mark Hogan (Masterplan) attended.

Submitter:- Alan Hoffman sent his apologies.

**RESOLVED**            That, pursuant to section 53(a) of the *Planning Act 1999*, the Development Consent  
**61/22**                    Authority consent to the application to develop Section 34 (600) Strangways Road,  
Hundred of Strangways for the purpose of a private airstrip, subject to the following  
conditions:

**GENERAL CONDITIONS**

1.    The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
  
2.    A maximum of two (2) fixed wing light aircraft may be kept on site, piloted and operated from the site. The aircraft must be registered with Recreational Aviation Australia (RAA), and must fit within the Light Sports aircraft (LSA) or Ultra Light Aircraft (ULA) classifications.

3. Appropriate facilities are provided for the storage and handling of fuel, including:
  - (a) locating fuel storage units on hard stand, sealed areas; and
  - (b) providing appropriate firefighting equipment and spill management kits within close proximity of the storage area.
4. The private airstrip must not be used for commercial purposes and no more than 3 flights per week are permitted.
5. The private airstrip must only operate during day light hours and flights do not take place before 7am or after sunset on a weekday or before 8am or after sunset on a weekend.
6. Take off shall be permitted as per the 'Southern Preferred Approach' plan endorsed as forming part of this permit.
7. No further development associated with aviation activities is to be undertaken on the subject site, without further consent.
8. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost Litchfield Council, to the satisfaction of the consent authority.
9. The use approved by this permit shall cease four (4) years from the date this permit was issued.

#### NOTES

1. Aviation Operators should comply with the standard procedures for operating into non towered locations described in Civil Aviation Advisory Publication CAAP 166-01 v4.2 'Operations in the vicinity of non-controlled aerodromes' <https://www.casa.gov.au/airspace/standard-page/operations-non-controlled-aerodromes>
2. The proponent must comply with Air Traffic Control flight pattern procedures within the RAAF Darwin airspace. The proponent is to liaise with The Royal Australian Air Force (RAAF) in relation to airspace issues. The RAAF point of contact in relation to this matter is can be emailed at [452SQNDAR.FLTCDR@defence.gov.au](mailto:452SQNDAR.FLTCDR@defence.gov.au)
3. A "Permit to Work Within a Road Reserve" may be required from Litchfield Council before commencement of any work within the road reserve.
4. 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. There is also a requirement to obtain an authorisation prior to conducting any of the activities listed in Schedule 2 of the Act. Guidelines to

assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority website at <http://ntepa.ntg.gov.au/waste-pollution/guidelines/guidelines>

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. The Environment Operations Branch of the Environment Division may take enforcement action or issue statutory instruments should there be non-compliance with the Act.

## REASONS FOR THE DECISION

1. Pursuant to section 51(1)(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 NT Planning Scheme 2020 applies to the land and the use of the subject site, as a private airstrip is an 'undefined use' and requires consent under Clause 1.8 (When development consent is required).

An undefined use is *Impact Assessable* under Clause 1.8(1)(c), therefore the strategic framework (Part 2 of the Scheme, Litchfield Subregional Land Use Plan, which is the most relevant to this application) needs to be considered as well as the purpose and outcomes of Zone RL (Rural Living).

The use of the land as a private airstrip by the resident is not considered to conflict with the primary use of the land for rural living purposes, nor impact on the land capability of site and will not prejudice the future use or development of the land in accordance with the regional and subregional land use policies.

The subject site is located within Zone RL (Rural Living) the purpose of which 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*'.

Zone outcome sub-clause 11 states:

*Development that is not defined in Schedule 2 (Definitions) may occur only when assessment has determined that the development is appropriate in the zone, having regard to the purpose and outcomes of this zone and such matters as the location, nature, scale and intensity of the development.*

An assessment of the application has determined that the use of a private airstrip as a recreational pursuit is compatible with purpose of the zone, which is to provide a range of rural lifestyle choices and rural activities. The existing residential use of the site will be maintained and the use of airstrip is considered ancillary where it is undertaken on a recreational basis only.

The approval has been granted subject to specific conditions limiting the number of aircraft and those aircraft must be registered with Recreational Aviation Australia (RAA), and must fit within the Light Sports aircraft (LSA) or Ultra Light Aircraft (ULA) classifications.

Conditions limiting the number of flights permitted per week, and the restrictive periods of operation will ensure that any unforeseeable impacts on the surrounding land uses can be minimised and evaluated over time.

2. Pursuant to section 51(1)(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. Public submissions received in relation to the proposed development raise concerns that the proposed use may impact on adjoining landowners either through noise or by a perception of overlooking.

The application has demonstrated it has taken all reasonable measures to minimise impacts on the surrounding locality by locating the airstrip away from residential development, providing additional landscaped buffers to property boundaries, limiting the number of flights, take-off and landing approaches to the south over uninhabited land and to avoid impacts on neighbouring properties, and assessment and consideration of the known noise impacts.

The use of the airstrip for a maximum of three flights per week during daylight hours is unlikely to significantly impact on adjoining land through noise or overlooking, given the potential for the land to be used for other rural activities with similar noise outputs.

The conditions imposed on the permit are intended to restrict the use of the airstrip to the current landowner, limited to daylight hours and a limited number of flights to minimise the impacts on the locality.

A condition restricting the duration of the approval to four (4) years will require the applicant to request the condition be removed if they wish to continue operation in the future. In determining such a proposal in the future, the Development Consent Authority will have the opportunity to consider whether an actual impact on the amenity has occurred and whether any changes to the land use pattern in the locality have taken place over the four-year period.

3. Pursuant to section 51(1)(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 (2) and one public submission was received under Section 49(3) of the *Planning Act 1999* with respect to the proposal. The submitters raised concerns that the use of the airstrip will intensify, as there is no regulation or an oversight of this activity on this site, that noise will negatively impact on the rural quality of life and disturb livestock and that the use of the airstrip will lead to a loss of privacy for residents in surrounding properties.

Conditions of approval limiting the use of the airstrip to a 4 year period have been included in the permit to provide the submitters with an opportunity to observe the suitability of the site for the proposed use in the longer term and the Authority with an opportunity to consider any changes to the land use pattern in the locality over time.

**FOR: 5**                      **AGAINST: 0**                      **ABSTAIN: 0**

**ACTION:**                      Notice of Determination

**ITEM 2**                      **SUBDIVISION TO CREATE EIGHT LOTS**  
**PA2022/0043**              **SECTION 4857 (160) MORGAN ROAD, VIRGINIA, HUNDRED OF BAGOT**  
**APPLICANT**              **Cunnington Rosse Town Planning and Consulting**

Doug Barden a Community Member of the Litchfield Division of the Development Consent Authority advised the meeting that he has had a lot to do with waterless land and according to section 97(1)(b) of the *Planning Act 1999* he could have a perceived conflict of interest.

The Chair determined this did not fall under section 97(1)(b) of the *Planning Act 1999*.

Applicant - Cunnington Rosse Town Planning and Consulting represented by Gerard Rosse and Brad Cunnington attended.

Submitter Gerry Wood attended with Imelda Wood.

**RESOLVED**  
**62/22**

That, the Development Consent Authority vary the requirements of Clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(b) of the *Planning Act 1999*, alter the proposed development and consent to the proposed development as altered to develop Section 4857 (160) Morgan Road, Virginia, Hundred of Bagot for the purpose of subdivision to create five lots (four lots and a balance parcel), 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 must be generally in

accordance with the plans submitted with the application but modified to show:

- (a) consolidation of proposed Lots 5 to 8 (inclusive) to form part of a remnant parcel;
  - (b) removal of proposed access to/from Radford Road;
  - (c) unconstrained access to all lots; and
  - (d) any changes in lot configuration required for servicing and access, as determined by Power and Water Corporation and Litchfield Council.
2. Prior to the endorsement of plans and prior to commencement of works (including site preparation), the applicant shall provide written advice from Power and Water Corporation that will confirm that proposed lot boundaries for Lots 3 and 4 will not preclude, or impose a significant and additional cost, for the provision of standard water connections to those lots.
  3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the developer is to prepare and provide a site and soil evaluation report as required by clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land) of the NTPS2020, confirming that each lot will include the identified minimum of 1 ha of unconstrained land for an onsite – wastewater management, as required in the NT Land Suitability Guidelines.
  4. 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 shall be submitted to and approved by the Litchfield Council, City of Palmerston and Land Development Unit, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority. The plan shall include details of proposed site levels relative to stormwater drain connection point/s and other related infrastructure. The plan must demonstrate that the 1ha of unconstrained land identified in the land suitability assessment prepared by Tropics Consulting Group in conjunction with VPS Land Assessment dated January 2022, is not affected by localised stormwater flooding.
  5. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the developer is to prepare a Fire Access Management Plan detailing the provisions for fire access trails and fire breaks for the endorsed subdivision. The plan shall take into consideration the location of seepage zones, where these are following drainage lines, to ensure that no clearing for firebreaks or otherwise, occurs within that part of the land. The Plan is to be submitted to and approved by the consent authority on the advice of the NT Fire and Rescue Services, and an endorsed copy of the Plan will form part of this permit.
  6. Prior to works commencing, a Weed Management Plan (WMP) is to be submitted to and approved by the consent authority on the advice of the Department of Environment, Parks and Water Security. The WMP must be developed and implemented so as to meet the minimum requirements declared under the *Weeds Management Act 2001* and the minimum gamba grass management requirements for the proposed parcel sizes in the Class B Zone area as described in the Weed Management Plan for Gamba Grass 2020-2030.

The WMP should include vehicle and equipment hygiene controls in line with the key principles for weed spread prevention as outlined in the Weed Management Branch document 'Preventing weed spread is everybody's business'. The WMP should detail methods, treatments and timing for effective gamba grass management on the site during the development, so that gamba grass is satisfactorily managed at completion of works for all proposed or existing lots. Information and documents on weed management is available at [www.nt.gov.au/weeds](http://www.nt.gov.au/weeds). The WMP should be emailed to [DevelopmentAssessment.DEPWS@nt.gov.au](mailto:DevelopmentAssessment.DEPWS@nt.gov.au) for assessment.

## GENERAL CONDITIONS

7. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
8. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to Litchfield Council, City of Palmerston and Land Development Unit, Department of Infrastructure, Planning and Logistics to the satisfaction of the consent authority.
9. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of Litchfield Council, to the satisfaction of the consent authority.
10. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
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, electricity and telecommunication networks to each lot shown on the endorsed plan (other than the remnant parcel) in accordance with the authorities' requirements and relevant legislation at the time. Please refer to Notations on this permit numbered 2, 4 and 5 for further information.
13. Before issue of titles, firebreaks along boundaries or at appropriate locations shall be provided in accordance with the approved Fire Access Management Plan, to the satisfaction of the consent authority on advice from the Northern Territory Fire and Rescue Services.
14. Appropriate erosion and sediment control measures must be effectively implemented throughout the construction phase of the development (including clearing and early works) and all disturbed soil surfaces must be satisfactorily stabilised against erosion at completion of works, to the satisfaction of the consent authority. Information resources are available on the IECA website [www.austieca.com.au](http://www.austieca.com.au) and the Department of Environment, Parks and Water



Security ESCP Standard Requirements 2019 and Land Management Factsheets available at <https://nt.gov.au/environment/soil-land-vegetation>.

15. All works relating to this permit are to be undertaken in accordance with the approved Weed Management Plan (WMP) to the requirements of the consent authority on the advice of the Department of Environment, Parks and Water Security.
16. Before the use commences the owner must, in accordance with Part 6 of the *Planning Act 1999*, pay a monetary contribution to the Litchfield Council for the upgrade of local infrastructure, in accordance with its Development Contribution Plan.

## NOTES

1. This permit will expire if one of the following circumstances applies:
  - a) the development is not started within two years of the date of this permit; or
  - b) the development is not completed within *four* years of the date of this permit. The consent authority may extend the periods referred to if a request is made in writing before the permit expires.
2. The Power and Water Corporation advises that the Water and Sewer Services Development Section ([waterdevelopment@powerwater.com.au](mailto:waterdevelopment@powerwater.com.au)) and Power Network Engineering Section ([powerdevelopment@powerwater.com.au](mailto:powerdevelopment@powerwater.com.au)) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
3. A "Works Permit" may be required from Litchfield Council before commencement of any work within the road reserve, which would include creation of any driveway crossover connecting to Council's road network.
4. All developers, including owner-builders, are required to comply with Commonwealth telecommunications requirements. Under Commonwealth law, developers are generally required to provide fibre-ready pit and pipe in their developments at their expense. Developers may be able to access an exemption from these arrangements in some circumstances. For more information visit [www.infrastructure.gov.au/tind](http://www.infrastructure.gov.au/tind)
5. 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>

6. For the purposes of best practice land management and environmental protection it is recommended that a Type 1 Erosion and Sediment Control Plan (ESCP) be developed in accordance with the Department of Environment, Parks and Water Security ESCP Standard Requirements 2019 available at <https://nt.gov.au/environment/soil-land-vegetation>. The ESCP should be prepared prior to commencement of works and implemented during the construction phase (including clearing and early works); and all disturbed soil surfaces should be satisfactorily stabilised against erosion at completion of works.
7. There are statutory obligations under the *Weeds Management Act 2001* to take all practical measures to manage weeds on the property. For advice on weed management, please contact the Department of Environment, Parks and Water Security.
8. The Aboriginal Areas Protection Authority recommends that the permit holder obtain an Authority Certificate to indemnify against prosecution under the *Northern Territory Aboriginal Sacred Sites Act 1989*. For advice on how to obtain a certificate, please contact the Aboriginal Areas Protection Authority.
9. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* 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](mailto:info@ntbuild.com.au)) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
10. The development must comply with the technical standards of the Northern Territory Subdivision Development Guidelines for the construction of public infrastructure as part of subdivision works to the requirements of the relevant local and service authorities. Prior to any works commencing, it is encouraged that you engage early with the relevant authorities to confirm their requirements, and any variations that may be sought to the Subdivision Development Guidelines, to ensure the works are completed to the relevant authorities' requirements. The Northern Territory Subdivision Development Guidelines can be found at: <https://www.ntlis.nt.gov.au/sdg-online/>
11. 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. There is also a requirement to obtain an authorisation prior to conducting any of the activities listed in Schedule 2 of the Act. Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority website at <http://ntepa.ntg.gov.au/waste-pollution/guidelines/guidelines>.

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legislation administered by other Departments or Authorities. The Environment Operations Branch of the Environment Division may take enforcement action or issue statutory instruments should there be non-compliance with the Act.

12. Crown Land Estate (CLE), Department of Infrastructure, Planning and Logistics, advised that an acquisition of a 10m wide sewerage easement is proposed through Section 4857 Hundred of Bagot for the construction of strategic infrastructure to service Coolalinga and the developer is to contact the CLE on telephone 8999 6008 regarding the Territory's interest in the land.

## REASONS FOR THE DECISION

1. Pursuant to section 51(1)(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 NT Planning Scheme 2020 applies to the land and subdivision requires consent under Clause 1.8 (When development consent is required). A subdivision is identified as *Impact Assessable* under Clause 1.8(1)(c)(ii), and therefore the strategic framework (Litchfield Subregional Land Use Plan 2016), Clause 4.7 – Zone RL (Rural Living), Clause 4.30 – Zone PM (Proposed Main Road), Clause 6.3.2 (Lot Size and Configuration for Subdivision in Zones RL, R and H, and Unzoned Land), Clause 6.3.3 (Site Characteristics for Subdivision for Lots of 1ha or Greater in Zones RR, RL, R and H, and Unzoned Land), Clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land) and Clause 6.3.5 (Mineral resources and subdivision in zone RL) have been considered in the determination of the proposal.

The original proposal complied with the relevant requirements of the Planning Scheme except for Clause 6.3.2 (Lot Size and Configuration for Subdivision in Zones RL, R and H, and Unzoned Land), Clause 6.3.3 (Site Characteristics for Subdivision for Lots of 1ha or Greater in Zones RR, RL, R and H, and Unzoned Land) and 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land). In order to achieve better compliance with the Scheme requirements, at the Meeting the Applicant requested that the application be amended to reduce the number of lots to 5 by consolidating proposed lots 5, 6, 7 and 8 to form a balance parcel.

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NT Planning Scheme 2020, the consent authority may consent to a proposed development which is not in accordance with a requirement set out in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:
  - (a) The purpose and administration clauses of the requirement; and
  - (b) The considerations listed under Clause 1.10(3) or 1.10(4).

**Clause 6.3.2 (Lot Size and Configuration for Subdivision in Zones RL, R and H, and Unzoned Land)**

Subclause 7 of Clause 6.3.2 (Lot Size and Configuration for Subdivision in Zones RL, R and H, and Unzoned Land) requires that each lot is to have a minimum of 1ha of unconstrained land and access to that land from a public road is to be similarly unconstrained. The original proposal did not comply because the access to three lots from Morgan Road is shown as being partly constrained. Compliance with subclause 7 is strict, the Authority having no power to consent to a proposal that does not comply with it.

Sub-clause 12 of Clause 6.3.2 (Lot Size and Configuration for Subdivision in Zones RL, R and H, and Unzoned Land) requires that lot boundaries are to be located above (up-slope from) seepage zones where seepage is following drainage lines. The original application did not comply with this provision, because the proposed lot boundaries cross land that is seasonally inundated by the headwaters of Brooking Creek.

The purpose of Clause 6.3.2 (Lot Size and Configuration for Subdivision in Zones RL, R and H, and Unzoned Land) is to ensure subdivisions of rural and unzoned land:

- a) have lots that are of a size and configuration suited for the intended purpose;
- b) have lots that are of a size consistent with the topographical constraints of the land (that may dictate that lots are of an area in excess of the specified minimum); and
- c) do not impose unsustainable demands on groundwater or unreasonably degrade the environment.

At the meeting, the applicant proposed to remove Lots 6, 7 and 8, which addressed the non-compliance of these lots with Subclause 6.3.2(7) of the NT Planning Scheme. The Authority further resolved to impose a condition precedent requiring an amended plan showing a revised lot layout, an unconstrained access to each lot and removal of driveways from Radford Road to ensure the amended plans will continue to comply with Clause 6.3.2 (Lot Size and Configuration for Subdivision in Zones RL, R and H, and Unzoned Land) of the Scheme.

*Bushfire Management Act 2016* requires each lot to provide a firebreak for firefighting purposes. The Authority raised concerns over the potential risk of placing the boundaries within seasonally inundated areas as the provision of firebreaks across this land could lead to potential erosion, weed introduction and other forms of degradation. Recognising the Authority's concerns over placement of boundaries across wetlands the applicant agreed to a condition requiring firebreaks be placed in alternative locations, away from sensitive areas. Condition precedent 5 will ensure that firebreaks can be provided in alternative locations to avoid land clearing within drainage lines, to the requirements of NT Fire and Rescue Services.

**Clause 6.3.3 (Site Characteristics for Subdivision for Lots of 1ha or Greater in Zones RR, RL, R and H, and Unzoned Land)**

Sub-clause 6 and 7 of Clause 6.3.3 (Site Characteristics for Subdivision for Lots of 1ha or Greater in Zones RR, RL, R and H, and Unzoned Land) seek to ensure the environmental values of land within a “Priority Environmental Management Area” (PEM), as identified in the Litchfield Subregional Land Use Plan 2016 (LSLUP2016), are not adversely affected by subdivision works.

Sub-clause 8 of Clause 6.3.3 (Site Characteristics for Subdivision for Lots of 1ha or Greater in Zones RR, RL, R and H, and Unzoned Land) also requires that subdivision design of rural and unzoned land retain and protect significant natural and cultural features and minimise alteration or disturbance to natural drainage systems including drainage areas, recognisable watercourses.

Assessment of the application identified that the proposed subdivision does not comply with subclauses 6, 7 and 8 of Clause 6.3.3, because the boundaries traverse land identified as “drainage” and “riparian vegetation” within the PEM nominated area of the site. The placement of boundaries within these areas is not considered appropriate due to the potential impacts of subdivision and firebreak clearing works on the environmental values and significant natural features of Brooking Creek.

The purpose of Clause 6.3.3 (Site Characteristics for Subdivision for Lots of 1ha or Greater in Zones RR, RL, R and H, and Unzoned Land) is to ensure subdivision of land in Zones RR, RL, R and H, and unzoned land, responds to the physical characteristics of the land.

The Department of Environment, Parks and Water Security (DEPWS) advised that appropriate erosion and sediment control measures must be effectively implemented throughout the construction phase of the development (including clearing and early works) and all disturbed soil surfaces must be satisfactorily stabilised against erosion at completion of works.

The Authority considered that the purpose of Clause 6.3.3 (Site Characteristics for Subdivision for Lots of 1ha or Greater in Zones RR, RL, R and H, and Unzoned Land) can also be met through the inclusion of condition precedent 5 which ensures that consideration is given to an alternative firebreak alignment, which avoids clearing within seepage zones (where these follow drainage lines), to the requirements of NT Fire and Rescue Services. The Authority also resolved to include a general condition 15 on any permits granted, which requires the implementation of appropriate erosion and sediment control measures, to address DEPWS requirements.

### **Clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land)**

Sub-clause 3 of Clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land) requires that, where practical, a rural subdivision provide for connection to reticulated services. The applicant proposed to consolidate proposed Lots 5 to 8 to form part of a remnant parcel, which would be retained for future subdivision. In consequence, the applicant did not wish to provide water supply services to the balance parcel and therefore, in the absence of connection to the available reticulated services the balance parcel does not comply with this development requirement.

Sub-clause 4 of Clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land) requires that where no reticulated sewerage is available, a site and soil evaluation report must be completed by an appropriately qualified site-and-soil evaluator demonstrating that onsite wastewater management systems can be installed on each lot in accordance with the requirements of the Code of Practice for Wastewater Management. The application does not comply because it did not include a site and soil evaluation report in accordance with the Clause.

Sub-clause 5 of Clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land) requires that where no reticulated water is available, the application is to demonstrate that an adequate supply of groundwater is available for domestic purposes. This development requirement is not applicable, as reticulated water supply services are available in the area.

Sub-clause 6(f) of Clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land) requires that a direct access to each lot be provided for in rural subdivisions and to avoid battle-axe strips where possible. Where the provision of battle-axe access is possible, they should not be less than 10m wide and more than 250m long. The application does not comply with this requirement because it includes a battle-axe access that has a length of 258m.

The purpose of the Clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land) is to ensure that subdivision of land in Zones RL, R and unzoned land, seeks to integrate infrastructure with community services and facilities to minimise adverse effect on the environment.

In relation to sub-clause 3, the consent authority accepts the Applicant's undertaking that the balance parcel will remain undeveloped and without the provision of services required for all other lots at this stage.

In relation to the proposal's noncompliance with sub-clause 4, the applicant noted that the development requirement for a site and soil evaluation report was not in place at the time the application was lodged, however Authority considered that in the absence of reticulated

sewerage, a condition precedent requiring the applicant to demonstrate the suitability of each lot to accommodate on-site wastewater management within the identified area of unconstrained land is appropriate in addressing the requirements of Clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land).

The Authority considered that there was compliance with sub-clause 5. The Authority noted the advice from the Department of Environment, Parks and Water Security that there is not adequate groundwater to support the proposed subdivision, however, the sub-clause is specific and clear in its requirements-

3. *Where no reticulated water is available, demonstrate that an adequate supply of groundwater is available for domestic purposes.*

Clause 1.7 of the NTPS 2020 provides rules as to the weight to be given to various elements of the Scheme and when other elements such as the Strategic Framework or zone purposes and outcomes will prevail over the specific requirements in Parts 5 and 6. However, Clause 1.7 is specifically limited to situations –

*'Where there is inconsistency between Parts within this Planning Scheme'*

The Authority did not consider there was any inconsistency established, such that the other provisions referred to in Clause 1.7 were relevant and would prevail over the specific requirements of Clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land). Sub-clauses 3 and 5 make it clear that if reticulated water is available in a RL zone, the developer is to provide a connection to it and that, in such a case, there is no need to demonstrate an adequate supply of groundwater. There was clear evidence before the Authority that reticulated water services are available in the area and the application proposes that a connection will be provided to each lot. In order for a connection to each Lot to occur, Power and Water Corporation requires the developer to engage a hydraulic consultant to confirm feasibility of providing water connections to the proposed Lots 3, 4 and 5. Condition precedent 1 and 2 are included to address this requirement.

In relation to the proposal's noncompliance with sub-clause 6, a variation to this subclause for the retention of a 258m rather than 250m long battle-axe access is considered appropriate, as the corridor allows for access to unconstrained portions of the balance parcel created by this subdivision and can be retained as such and for this purpose. Furthermore, the proposed variation increases the length of the battle-axe by only 3% of that permitted by the Scheme.

4. Pursuant to section 51(1)(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

The Authority considered the submission received from Gerry Wood, of Howard Springs, raising concern about the subdivision because of the pressure on the aquifer as a result of additional bores. Department of Environment, Parks and Water Security confirmed that the subdivision will lead to an increase in the number of landholder rights to access groundwater for rural stock and domestic purposes under section 14 of the *Water Act 1992* and that this means that there is not adequate groundwater to support the proposed subdivision.

The Authority considered these concerns and objections relating to the potential for future owners exercising their legal rights under the *Water Act 1992* by accessing groundwater resources that are currently below their sustainable levels. Section 14 of the *Water Act 1992* and its relevance to the Planning Act and Scheme was considered by NTCAT in *Jagdpanzer Pty Ltd & Ors. v Development Consent Authority* (12<sup>th</sup> March 2019). Section 14 section gives or affirms the water rights of the owner or occupier: “14 Subject to sections 70 and 99, the owner or occupier of land may take ground water from beneath the land for:

- (a) the use of the owner or occupier or the owner's or occupier's family and employees, for domestic purposes;
- (b) drinking water for grazing stock on the land; or
- (c) irrigating a garden, not exceeding 0.5 ha, which is part of the land and used solely in connection with a dwelling.”

NTCAT found that Section 14 provides inalienable rights where the future owners of the subdivided lots will have the freedom to install bores and extract water for domestic use, grazing stock and for irrigating large gardens. The case involved an application to subdivide R (Rural) zoned property at Berry Springs into 7 lots, relying on rainwater tanks. Unlike the present application, no reticulated water was available. The decision specifically notes - “There is no reticulated water provided to the properties in Berry Springs, and presumably all properties rely on bore water.”

NTCAT considered that the range of potential permitted uses available in the zone which included agriculture and horticulture and ultimately concluded that mandating the use of large rainwater tanks may reduce the additional demand on the groundwater but is likely that the owners, when faced with declining levels in their rainwater tanks during the Dry, will turn to the “unlimited” and free groundwater. Noting that the former Clause 4.1 (b) of the NTPS requires “the administration” of the scheme to “contribute to the sustainable use and development of land and water resources... and minimise degradation of the environment or overcommitment of water resources”, NTCAT concluded that the proposed subdivision would be likely to add demand on the already overcommitted water resource and the “rainwater tanks are a novel, commendable, and possibly workable proposal for domestic households but would probably be unsuitable for some of the other permitted uses.”

In noting the concerns raised by the submitter, the applicant provided evidence from Power and Water Corporation that a significant number



of properties on Morgan Road are already serviced by reticulated water supply and that these services can be provided to the boundary of each lot. The applicant also provided evidence that the number of bores in this locality is low, suggesting that the risk to groundwater resources is relatively minimal.

The Authority noted the NTPS 2020 draws a clear distinction in Clause 6.2.4 between subdivision requirements for RL zoned land where reticulated water is available and where it is not. Further there are substantive differences between the current proposal and that considered in *Jagdpanzer Pty Ltd & Ors. v Development Consent Authority*, in particular the availability of reticulated water and the zoning. In the present case the RL zoning restricts the permitted uses to those of a largely residential nature. Uses such as horticulture, intensive animal husbandry, and agriculture are all impact assessable and would require the Authority's consent. In consideration of this information and the NT Planning Scheme 2020 requirements under sub-clause 5 of Clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land) and in the absence of further evidence of the risk posed to the environment, the Authority took the view that creation of a further five (four and balance parcel) allotments in this locality is consistent with the intent and provisions of the NT Planning Scheme 2020.

5. Pursuant to section 51(1) (j) of the *Planning Act 1999*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development.

The application included a land suitability assessment to review drainage, the potential for on-site water management, erosion risk, soil salinity, acid sulphate soils and risk of flooding in accordance with the NT Land Suitability Guidelines.

The Department of Environment, Parks and Water Security were satisfied that proposed lots 1 to 5 contained in excess of one hectare of unconstrained land with unconstrained access to Morgan Road.

Conditions imposed on the development permit will ensure all engineering works associated with the subdivision will be designed, approved and constructed to the technical standards of the relevant service authority without adversely impacting on the access to each parcel and to the surrounding land or existing infrastructure.

6. Pursuant to section 51(1)(m) of the *Planning Act 1999*, 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 relevant service authorities and requirements have been addressed through conditions and/or notations on the permit.

Power and Water Corporation has confirmed that reticulated power and water services are available in the area and the developer's intention is to connect to these services. An approval is granted subject to standard and specific conditions, which will ensure that all standard and specific requirements of this service authority are met.

The applicant acknowledged the lack of reticulated sewerage in the area and provided an assessment of the suitability of each lot to accommodate on-site effluent disposal systems. Condition of approval no 3. is included to ensure that any new on-site wastewater system proposed to be installed can comply with the Code of Practice for Wastewater Management.

7. Pursuant to section 51(1)(j) of the *Planning Act 1999*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development;

The Department of Environment, Parks and Water Security (DEPWS) advised that the site contains a "Priority Environmental Management Area" (PEM), as identified in the Litchfield Subregional Land Use Plan 2016 (LSLUP2016). DEPWS advised that a protected species *Stylidium* potentially inhabits the area. Impacts to *Stylidium* habitat (drainage lines and their fringe areas within PEM) can be avoided by retaining vegetation where boundaries intersect seasonally inundated land (wetlands).

The potential impact on the vulnerable Howard River Toadlet (which also potentially inhabits the area) could be minimised by limiting clearing activities when working in drainage areas. The Authority considered that the risk to the threatened species that are potentially present on the land can be minimised through an appropriate firebreak alignment which avoids clearing within seepage zones where following drainage lines, to the requirements of NT Fire and Rescue Services.

8. Pursuant to Section 51(1)(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 Authority noted the comments from the Department of Environment, Parks and Water Security that there is not adequate groundwater to support the proposed subdivision and the concerns of the submitter, Mr Wood. The Authority, however, considered that the availability of reticulated water, the requirement to connect to it and the limitations on permitted uses within the RL zone mitigated the potential impact on existing and future amenity.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Notice of Consent and Development Permit

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

**SUZANNE PHILIP**  
Chair

29 July 2022