



# DEVELOPMENT CONSENT AUTHORITY

## DARWIN DIVISION

### MINUTES

**MEETING NO. 431 – FRIDAY 18 OCTOBER 2024**

**AGORA ROOM  
HUDSON BERRIMAH  
4 BERRIMAH ROAD  
BERRIMAH**

**MEMBERS PRESENT:** Suzanne Philip (Chair), Marion Guppy, Mark Blackburn Mick Palmer and Peter Pangquee

**APOLOGIES:** None

**LEAVE OF ABSENCE:** None

**OFFICERS PRESENT:** Elya Sugg (Acting Secretary), Amit Magotra, Madison Harvey, Lingyi Kong (Development Assessment Services) and Jasmine Husson (Land Development Unit Item 3 only)

**COUNCIL REPRESENTATIVE:** Apology

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

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 TIME DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.

**ITEM 1**                    **MULTIPLE DWELLINGS (2 X 3 BEDROOM) IN A SINGLE STOREY**  
**PA2024/0245**           **BUILDING**  
**APPLICANT**           **LOT 11424 (17) MORRIS STREET, MUIRHEAD, TOWN OF NIGHTCLIFF**  
**ONE PLANNING CONSULT**

Applicant: Israel Kgosiemang (One Planning Consult) attended.

DAS tabled additional information from the applicant addressing the matters raised in the Development Assessment Services' report.

**RESOLVED**  
**69/24**

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 11424 (17) Morris Street, Muirhead, Town of Nightcliff for the purpose of multiple dwellings (2 x 3 bedroom) in a single storey building 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) Provide amended plans that respond to the requirements of Clause 7.5 (Private Open Space) of the Northern Territory Planning Scheme 2007 (NTPS 2007) for Unit 1, including a review of private open space to ensure the design complies with the minimum area requirements for Area A;
- 2) Further justification for any continued non-compliance should be provided and presented in the context of special circumstances (refer to Clause 2.5 of the NTPS 2007), which justify the giving of consent; and
- 3) Any amendments to the application that arise as a result of the above information request.

#### **REASONS FOR THE DECISION**

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 present application relates to Lot 11424 (the site) located in Zone SD23 (Specific Use Zone Darwin No. 23) of the Northern Territory Planning Scheme 2007 (NTPS 2007). The site is situated in Stage 4 of the Muirhead subdivision, approved by Development Permit DP13/0674, which identified the land for multiple dwellings and endorsed different setback requirements for the lot.

The application is to be determined under the NTPS 2007, because under Schedule 4: Specific Use Zones of the Northern Territory Planning Scheme 2020, it states that the Specific Use Zones listed in the Table to

## Darwin DCA Meeting No 431 – Friday 18 October 2024

the Schedule (of which SD23 is one) are subject to the relevant requirements contained in the NTPS 2007.

The application proposes the construction of two dwellings, each separated by a common wall. Each unit's layout is similar, comprising three bedrooms, including one with an ensuite, kitchen, living room, and a garage with two car spaces.

In considering the relevant development requirements under the NTPS 2007 for multiple-dwellings in Zone SD23, Clause 5.2.1 (General Height Control), Clause 5.2.4 (Car Parking), Clause 6.5.1 (Parking Requirements), Clause 7.1 (Residential Density and Height Limitations), Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures), Clause 7.5 (Private Open Space), Clause 7.6 (Communal Open Space), Clause 7.7 (Landscaping for Multiple Dwellings, Hostels and Supporting Accommodation), and Clause 7.8 (Building Design for Multiple Dwellings, Hostels and Supporting Accommodation), need to be considered.

The Authority notes the assessment of the Development Assessment Services (DAS), which concludes that the development complies with all relevant requirements except for Clause 7.5 (Private Open Space). This is discussed below.

### Clause 7.5 (Private Open Space)

The purpose of this clause is to extend the function of a dwelling and enhance the residential environment by ensuring that each dwelling has private open space that is:

- (a) of an adequate size to provide for domestic purposes;
- (b) appropriately sited to provide outlook for the dwelling;
- (c) open to the sky and sufficiently permeable to allow stormwater infiltration and lessen runoff from the site; and
- (d) inclusive of areas for landscaping and tree planting.

Sub-clause 2 provides -

Private open space for a single dwelling, multiple dwelling or independent unit should:

- a) satisfy the minimum area, dimensions and open to the sky requirements contained in the table to this clause;
- b) be directly accessible from the dwelling and enable an extension of the function of the dwelling;
- c) be located to provide views from the dwelling to open space and natural features of the site or locality, and to reduce overlooking from neighbouring open space and dwellings;
- d) ensure that at least half of the private open space is permeable to allow stormwater infiltration and lessen stormwater runoff from the site;
- e) include at least one area of at least 5m<sup>2</sup>, with no dimension less than 1.5m, for the deep soil planting of trees and vegetation for shade or screening; and
- f) allow for landscaping at the property frontage to complement the visual amenity of the streetscape.

## Darwin DCA Meeting No 431 – Friday 18 October 2024

The table to clause provides that multiple dwelling with direct ground level access are required to provide:

- Area A: 45m<sup>2</sup>, open vertically to the sky, with no dimension less than 1.5m; and
- Area B: 24m<sup>2</sup>, all or partly covered, with no dimension less than 4m. Any of area B that is vertically open to the sky may form part of area A.

For clarity:

*Area A is the minimum area, for each dwelling, that must be open vertically to the sky and have no dimension less than 1.5m. At least half of Area A must be permeable and may include the 5m<sup>2</sup> required for deep soil planting.*

*Area B is the minimum dimensioned space that extends the function of the dwelling and may be covered or open to the sky. Any part that is open to the sky may form part of Area A.*

The assessment has found that Unit 2 complies with the clause's requirements. However, a significant reduction in Area A (open to the sky) of private open space (POS) for Unit 1 is proposed as follows:

- 1) The proposed area of 'Area A' of Unit 1 is significantly reduced to 9.2m<sup>2</sup>, instead of the required 45m<sup>2</sup> under the table to the clause.
  - 2) Only 17.5% of the private open space is permeable in Unit 1, where more than 50% of the total private open space for a dwelling must be open to the sky and permeable to allow for planting of vegetation and stormwater infiltration under the table to the clause.
  - 3) The front area of Unit 1 (referred to as Areas A and B) has no direct access from the living area (such as a lounge, kitchen, bedroom, or study), where the private open space is to be directly accessible from the dwelling and enable an extension of the function of the dwelling under Clause 2(b).
2. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the Northern Territory Planning Scheme, the Authority may consent to a development that does not meet the standard set out in Parts 4 and 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

*The meaning of special circumstances for the purposes of Clause 2.5 are circumstances that are 'unusual, exceptional, out of the ordinary and not to be expected' (as per *Phelps v Development Consent Authority [2009] NTSC 54 Kelly J*). In considering whether there are special circumstances, the Authority must take a holistic approach, with each case to be considered on its merits. Circumstances which by themselves might not be 'special' can, in combination with other circumstances, create a situation which overall gives rise to 'special circumstances'. Equally, a holistic approach to the application of clause 2.5 also applies to the respects in which a proposed development does not comply with the NTPS.*

As special circumstances were not identified in considering the variation for the POS associated with Unit 1, the DAS's report recommended that the Authority defer the application and seek further information and/or

## Darwin DCA Meeting No 431 – Friday 18 October 2024

amended plans that respond to the requirements of Clause 7.5 (Private Open Space).

In response to the DAS's recommendation, additional information, including the landscape plan, was provided by the applicant, which was circulated to all the members of the Authority and also tabled by the DAS at the hearing.

Mr Israel Kgosiemang from One Planning Consult (applicant) attended the meeting and spoke further about the application, points of deferral in DAS's report and additional information tabled at the hearing. Mr Kgosiemang explained that the design is limited by the development envelope as endorsed in the Master Plan for Muirhead (DP13/0674), where a 6m setback is required along Bridge Street, while 4m is required along Morris Street. The required setbacks are substantially greater than what are typically required for multiple dwellings, thus resulting in non-compliance with the private open space for Unit 1. Mr Kgosiemang mentioned that the amended plans illustrate that although Unit 1 does not meet the minimum open area requirement, the area of private open space for Unit 2 has been amended to 160.1m<sup>2</sup>, which is significantly above the required 69m<sup>2</sup>. The combined open-to-sky area of Units 1 and Unit 2 exceeds the minimum requirement and is sufficiently permeable to allow stormwater infiltration and reduce runoff from the site. Furthermore, the layout provides a covered area in the front and rear of the dwelling as private open space, which is for a more practical use for future residents compared with the previous approval DP15/0448 issued in 2015 that located an outdoor dining area towards the front only.

Mr Kgosiemang contended that the strip-shaped landscaping area along the western side boundary of Unit 1 has a width of 0.7m. Although it does not meet the requirement of a minimum 1.5m width, it is still open to the sky, permeable to allow stormwater infiltration and lessen runoff from the site as required by Area A. Mr Kgosiemang told the Authority that additional landscaping has been provided along the boundaries and at the front of Unit 1 in the amended plans, covering 35.7% of the site area where only 30% is required and complies with the purpose of the clause. Mr Kgosiemang further stated that the subject site is situated near existing public open spaces provided for Muirhead residents, including a park at 48 Asche Street, approximately 180 meters away from the site. Future residents of Unit 1 are conveniently accessible to these parks and relevant infrastructures for outdoor activities.

The Authority notes the reasons provided in the applicant's Statement of Effect, as well as those voiced during the DCA meeting. Regarding the amended plans provided by the applicant, the Authority notes that the private open space for Unit 1 remains unchanged. Although the overall area of the private open space is sufficient, the requirements of each unit is supposed to be achieved, as the proposed units will have separate strata title, while residential environment of each unit should be taken into consideration.

## Darwin DCA Meeting No 431 – Friday 18 October 2024

Regarding the previous approval DP15/0448 issued in 2015, the area of private open space complied with the requirements of Clause 7.5 applicable at that time. As the requirements of Clause 7.5 have been amended, the application is required to comply with the current clauses, and therefore, the development permit DP15/0448 may not serve as a suitable reference. The Authority noted that the development approved under DP15/0448, if assessed against the current requirements does not comply with the requirement of Clause 7.5.

The Authority further notes that Unit 1 has 3 bedrooms and 2 bathrooms, which provides an indication of the number of potential occupants. The private open space area is not currently considered to be of adequate size to provide for domestic purposes without further justification or improvements to the design.

The Authority noted the applicant's comments but was not satisfied that the circumstances presented amounted to special circumstances as identified by *President Bruxner in Bradley v Development Consent Authority and Kalthmera Pty Ltd [2017] NTCAT 922*. Rather, the Authority concluded that the reasons for non-compliance largely revolved around making the layout attractive for the buyer or the user.

In exercising its discretion under Clause 2.5, the Authority considered that the various matters put in relation to the non-compliance do not amount to unusual, exceptional, out of the ordinary and not to be expected circumstances to justify the variation.

The Authority is satisfied with the DAS's recommendation and determined to defer the consideration of the application to provide the additional information mentioned in Reason 1 (above).

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:** Notice of Deferral

**ITEM 2  
PA2024/0223**

**HOME BASED BUSINESS (PHYSIOTHERAPY AND MEDICAL CONSULTING)  
OCCUPYING A SITE AREA EXCEEDING 30M2 WITH MORE THAN ONE  
PERSON NOT RESIDENT IN THE DWELLING**

**APPLICANT**

**LOT 3521 (73) LEE POINT ROAD, MOIL, TOWN OF NIGHTCLIFF  
PHILIP SUTHERLAND**

Applicant: Philip Sutherland attended.

Applicant tabled additional information/ response to the Development Assessment Services' report.

**RESOLVED  
70/24**

That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse to consent to the application to develop Lot 3521 (73) Lee Point Road, Moil, Town of Nightcliff for the purpose of home based business

## Darwin DCA Meeting No 431 – Friday 18 October 2024

(physiotherapy and medical consulting) occupying a site area exceeding 30m<sup>2</sup> with more than one person not resident in the dwelling.

### REASONS FOR 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 Northern Territory Planning Scheme 2020 (NTPS 2020) applies to the land. Lot 3521 (73) Lee Point Road, Town of Nightcliff (the site) is in Zone LR (Low Density Residential) of the NTPS 2020, the purpose of which is to provide predominantly for low rise urban residential development comprising individual houses and uses compatible with residential amenity, in locations where full reticulated services are available. The use of the site, as proposed in the application, for a medical clinic, is prohibited, unless such clinic amounts to a home based business as defined and regulated by the NTPS 2020. The zone outcomes provide home based businesses are to be conducted in a manner consistent with residential amenity.

The NTPS 2020 defines home-based business in Schedule 2 (Definitions) as meaning:

*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.*

While the use of the land for home based business is shown as permitted in the zoning table in Part 3 of the Scheme, to be so permitted, the table further indicates that it must meet the requirements of Clause 5.4.10 (Home Based Business). If it does not do so, it becomes *Merit Assessable* and requires consent under Clause 1.8 (When development consent is required). The application clearly fails to meet the requirements of Clause 5.4.10 on a number of grounds, including that the total floor area of the dwelling plus the other areas of the site that are used (including areas used temporarily) exceeds 30m<sup>2</sup> area requirements specified in sub-clause 5(d)(i) of Clause 5.4.10. Additionally, the business is not being operated by residents of the dwelling, as required by sub-clause 4(a) of Clause 5.4.10. As a result, the application has to be considered by the DCA.

The site is developed with a three-bedroom dwelling-single, with an open plan living/kitchen area and a medical consulting room approved under DP10/0417. The existing medical consulting room is located at the front of the dwelling and occupies an area of 26.25m<sup>2</sup>, comprising a clinic room (3.5m x 5m) and a waiting room (3.5m x 2.5m). The plans endorsed for DP10/0417 show three car parks at the front allocated for the medical consulting room use.

## Darwin DCA Meeting No 431 – Friday 18 October 2024

The application seeks approval to expand the existing home based business (medical consulting) by including an additional consulting room for general practitioner (GP) service and expanding the waiting area at the front. These changes will increase the home based business area by an additional 20.25m<sup>2</sup> (10.5m<sup>2</sup> for the new consulting room and 9.75m<sup>2</sup> for the expanded waiting area). Taking into account the area under existing home based business use, the total area of the dwelling proposed to be used for home based business is 46.50m<sup>2</sup>.

The application also seeks approval to operate the home based business by individuals who do not live on the property. According to the application, the owners of Lot 3521 recently purchased the adjacent property, Lot 3520, located at 3 Parer Drive, to accommodate their growing family. Currently, their two oldest children reside at Lot 3521, where the existing and proposed home based business is located, while the business owners and their two youngest children live at Lot 3520. As a result, both the existing and proposed home based businesses will be managed by individuals who do not reside in the dwelling at Lot 3521.

The Authority notes that the Development Assessment Services (DAS) report recommends deferring the application and seeking further information on:

- how the existing and proposed home based occupation (defined in the application) meets the definition of the Home Based Business provided under Schedule 2 (Definitions) of the NTPS2020; and
- Further information on the operations of the existing and proposed home based business, including staff numbers, the expected number of appointments/days, anticipate hours of operation and proposed controls to restrict only one occupation or profession operating from dwelling.

The Authority considered the application at its meeting on 18 October 2024. Mr Philip Sutherland (the applicant and existing business owner, also landowner of Lots 3520 and 3521) attended the meeting and spoke further about the application and requested the Authority to expedite the decision-making process. Mr Sutherland also tabled a response to the DAS's recommendation and provided the following information.

- A discussion on the definition of "home-based business" under NTPS2020, with reference to the Family Trust currently operating at 73 Lee Point Road, Moil; and
- An Operational Management Plan for the current and proposed home-based business.

Mr Sutherland provided an overview of the home based business currently operating at the site, as well as the nature of the proposed home based business. Mr Sutherland explained that he has successfully run the existing home based medical consulting room (physiotherapy clinic) for the past 13 years without receiving any complaints about disturbances or other issues during this time. Mr Sutherland told the Authority that he now seeks to expand the business by adding a medical consulting room for his wife, who is a general practitioner (GP) specialising in Restorative Reproductive Medicine, focusing on infertility diagnosis and treatment. Mr Sutherland added that his wife currently works for a private medical practice focused on occupational



## Darwin DCA Meeting No 431 – Friday 18 October 2024

medicine, but her passion lies in reproductive healthcare, which is not aligned with the nature of her current workplace. Mr Sutherland further added that her clients prefer a home based medical environment over commercial clinics due to the sensitive nature of their needs.

Speaking about the expansion of the existing business, Mr Sutherland told the Authority that the purpose is to integrate the reproductive health practice with the existing physiotherapy clinic to provide a more comprehensive home based health service. The clinic's current design, however, does not meet the required standards for GP practice, as it lacks the sterile conditions necessary for medical consultations. For instance, the physiotherapy room has carpeted floors, which are unsuitable for a medical environment where infection control is a priority. This has led to proposed changes to the existing clinic's setup, creating a separate, consulting room for medical consultations while maintaining the current physiotherapy space.

Mr Sutherland explained the proposed layout features two distinct rooms – one for physiotherapy and one for medical consultations. Despite the expansion, the applicant emphasised that the clinic would still operate as a home based business, serving a limited number of clients at any given time. The business would remain family-run, with a focus on providing specialised, community-based healthcare services to local clients.

Referring to the definitions provided in The NTPS 2020, Mr Sutherland argues that the NTPS 2020 defines home based businesses as being ancillary to residential purposes and operated by residents. However, it does not provide guidance on several key aspects, including:

- The definition of a "business operator."
- Whether a home-based business can have multiple service providers or employ non-residents as workers.
- Considerations related to the business structure (e.g., sole traders, partnerships, companies, or trusts) and whether these factors affect the primary residential purpose of the property or the intent of the business.

Mr Sutherland explained that their family consists of six members who currently reside across two adjacent properties. He clarified that the business at the subject site operates as a Family Trust with no planned changes to its structure. The trust employs four family members, including himself, his wife and two children, who are also the beneficiaries.

Mr Sutherland expressed disagreement with the DAS's assessment, which concluded that the application does not meet the definition of a home based business under NTPS 2020. He argued that two residents of the property are both employees and beneficiaries of the family trust business, making the application compliant. Furthermore, the application is transparent about the fact that the two additional employees and beneficiaries reside at the adjacent property.

Mr. Sutherland believes that the DAS's assessment regarding the application is misguided, particularly in relation to the interpretation of a home based business under the NTPS 2020 requirements. Mr Sutherland firmly contends

## Darwin DCA Meeting No 431 – Friday 18 October 2024

that the application in question meets the necessary criteria for a home based business and that the concerns raised in the assessment do not accurately reflect the nature or operation of the current business and proposed arrangement. According to Mr Sutherland, the businesses will continue to function as a single entity operating at the site, employing two health professionals: himself, a physiotherapist; and his wife, a general practitioner (GP).

Mr Sutherland also provided an overview of the operation of both businesses. Mr Sutherland told the Authority that the appointment diary for both health practitioners is divided into 15-minute slots, with the most common appointment durations being 30 minutes for GP services and 45 minutes for physiotherapists. Usual operating hours are from 9 a.m. to 4 p.m., with potential variance from 8a.m. to 6p.m., Monday to Friday. Only one practitioner will be active at a time, as the appointment diary for one is closed while the other conducts face-to-face consultations.

Mr Sutherland told the Authority that the primary point of contention in the DAS's assessment revolves around whether the business meets the definition of a home based business, as stipulated by NTPS 2020, which generally requires that such businesses be ancillary to residential use and operated by residents of the property. The assessment raised concerns regarding the employment structure, noting that some of the business's employees do not reside directly at the subject site but at an adjacent property. Mr. Sutherland disputes this interpretation, emphasising that while two family members reside in the adjoining property, they remain integral to the operations of the business and are both employees and beneficiaries of the family trust that operates the business.

Mr Sutherland argues that this distinction is more administrative than functional and should not undermine the classification of the business as home based. Mr Sutherland stresses that the trust structure ensures that all employees involved are not only workers but also direct beneficiaries of the business, reinforcing the familial and residential nature of the operation. The adjacent property, which is home to some of the family members, was purchased to accommodate the growing family's residential needs, and the two properties function cohesively as part of the family's living arrangement. Mr. Sutherland believes that the DAS's interpretation fails to account for the unique residential circumstances that underpin the operation of the business.

Additionally, Mr. Sutherland notes that the business does not operate like a high-traffic, commercial medical practice. The appointment schedule is carefully managed to ensure that only one practitioner is conducting face-to-face consultations at any given time, avoiding any potential for congestion or overuse of the property. Mr Sutherland further explained that his wife sees private GP clients on Mondays and Fridays, while he sees private physiotherapy clients on Tuesdays, Wednesdays, and Thursdays. On Mondays and Fridays, he handles out-of-clinic contract work, home visits, and practice management, while her wife works at a Private GP clinic on Tuesdays, Wednesdays, and Thursdays.

## Darwin DCA Meeting No 431 – Friday 18 October 2024

This scheduling is not only efficient but also ensures that the operation remains low-impact and consistent with the residential character of the area. By structuring the business in this manner, the family maintains the balance required by NTPS 2020 between residential use and business activities.

The Authority notes the above comments and further information tabled by the applicant. The Authority also notes that the determination of the present application required, firstly, consideration of the proposed use in the context of the home-based business definition and, secondly, the requirements of Clause 5.4.10.1 (Home Based Business) listed under Part 5 of the NTPS 2020.

### Definition of Home Based Business

Turning to the first matter, the relevant part of Schedule 2 (Definitions) of the NTPS2020, provides -

*“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; ((c) carrying out of an occupation or profession”* (underline emphasis added).

The Authority considers that the category of business activity relevant to this case is the carrying out of an occupation or profession (being either medical practitioner or physiotherapist) and the definition requires that the dwelling be used by a resident for the purpose of that occupation or profession. The clear evidence provided by the applicant was that neither he nor his wife, who are the persons carrying out the occupation or profession, will be resident at the dwelling. The term “resident” is not defined in the NTPS or *Planning Act 1999* and in such a case should be given its normal or everyday meaning. The Authority notes that the use is “**home** based business” and considers that to be resident, the person must be living in the dwelling as their home. The Authority further notes that a home based business is expected to be a secondary or ancillary activity to the primary residential use of the property by the resident. While the Authority noted the applicant’s assertion that the two older children who reside at 73 Lee Point Road perform some associated business tasks such as cleaning and book keeping, it considers that they are not carrying out the occupation or profession which is the subject of the home based business claim. The Authority does not consider that the business model specified in the application and further elucidated by the applicant at the hearing meets the definition of a home based business as the occupations or professions, medical practitioner and physiotherapist, are to be carried out by persons who are not resident in the home.

The Authority further noted the applicant's assertion that the two older children who reside in the property, are employees and beneficiaries of the Family Trust which conducts the business, and thus satisfy the NTPS 2020 definition of a home based business. However, the Authority considers that such assertion fundamentally misconstrues the nature of the home based business requirements. The requirement in this instance is that business activity of carrying out of an occupation or profession (being either medical practitioner or physiotherapist) is done by a resident of the dwelling. A trust is not a separate legal entity.

Whatever business structure the applicant adopts for their business convenience is not relevant to the simple requirement that the dwelling be used by a resident for the carrying out of the occupation or profession. The application does not disclose the key residential link between the persons who carry out the occupation or profession and the premises where the business is conducted.

The Authority noted that the NTPS 2020 guidelines place significant emphasis on maintaining the primacy of the residential use of a property. Home based businesses are meant to be small-scale operations that are secondary to the residential function of the property and are operated by those living at the residence. This ensures that the character of the residential area is maintained, and that any business activity does not unduly impact neighbours or the surrounding community.

*Requirements of Clause 5.4.10 (Home Based Businesses)*

Clause 5.4.10 makes it clear that the Authority has a discretion to consent to a home based business that is not in accordance with sub-clauses 4 and 5 if it is satisfied it is consistent with the purpose of the clause, 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. There is no such express discretion to waive compliance with subclause 3 which allows more than one home based business to 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.***

Although the term “category” is not clearly defined in the NTPS 2020, the Authority believes that the definition of home based business, referred to earlier, sets out the various categories referred to in subclause 3. This is reinforced by subclause 5 of Clause 5.4.10 which states that the “*requirements applicable for each category of home based business are as follows*”, and then lists various requirements for each of the types of home based business listed in the definition. On that basis, the relevant category is “occupation or profession”. The Authority considers that term “medical clinic”, as used in the NTPS 2020, is a type of use and not an occupation or profession. The relevant occupations or professions are a general practitioner (GP) specialising in Restorative Reproductive Medicine and a physiotherapist. As such, the Authority considers that this application is not for a single home based business of a medical clinic employing two practitioners, but is for two separate home based businesses encompassing the professions of a general practitioner (GP) specialising in Restorative Reproductive Medicine and, separately, a physiotherapist. Two such home based businesses of the same category are not permitted by the clause.

Further, the Authority notes that subclause 5(d) of Clause 5.4.10 (Home Based Business) under the NTPS 2020 outlines specific requirements that must be met to qualify as a home based business and that subclause 3 requires that if more than one home based business operates on the site. that individually and collectively the home based businesses must accord with

## Darwin DCA Meeting No 431 – Friday 18 October 2024

sub-clauses 4 and 5. The Authority carefully reviewed these requirements to determine whether the current application aligns with the regulations. In particular, the Authority notes the specific provisions of subclause 5(d) (i), (ii), (iii) and (ix) that are most relevant to the present application. These are as follows-

- 5(d)(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<sup>2</sup>;*
- 5(d)(ii): no more than 2 customers or clients are present at any one time;*
- 5(d)(iii): it does not involve more than 1 person who is a non-resident of the dwelling; and*
- 5(d)(ix): sufficient car parking for each occupation is provided for, on or off street, in a manner that does not unreasonably impact the safe operation of the local road network or the residential amenity of the locality.*

The Authority considered whether the proposal, which involves both medical and physiotherapy services, aligns with these requirements. The applicant emphasised that only one health professional would be conducting face-to-face consultations at any given time, and that the overlapping appointments would be avoided to prevent increased traffic or client congestion. The proposed model is an appointment-only basis, with careful scheduling to ensure that the impact on the surrounding area is minimised.

Despite these reassurances, the Authority remains concerned about the potential scale of the operation, particularly given that the proposal employs four family members and provides professional health services. The Authority notes that it could still generate significant activity, especially if clients are coming and going for medical consultations. The number of employees and the nature of the services provided may not meet the small-scale threshold typically expected for a home based business. The Authority questioned whether an enterprise with four employees, even if limited to one practitioner at a time could truly be classified as a minor operation ancillary to the residential use of the property.

2. 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 Authority considered that as the proposed use does not meet the definition of 'home based business', the medical clinic and physiotherapy service are to be defined as 'medical clinic' which is prohibited in Zone LR. The proposal is likely to change the residential site into commercial premise, which will negatively impact the amenity of the locality, and does not comply with the purpose of Zone LR.

The Authority further notes that issues surrounding residential occupancy, the scale of the business and the appropriateness of the business activities (more than one category) could impact the amenity of the surrounding residential area. While the applicant provided detailed justifications for their proposal, the Authority remained concerned that the business, as proposed,

## Darwin DCA Meeting No 431 – Friday 18 October 2024

exceeded the scope of what is permissible under NTPS 2020 for a home based business.

The Authority also raised the concern that there is a truck currently parking on the location where the car parking spaces are proposed on. The applicant confirmed that the truck will be removed when the proposed use is approved and be carried on within the dwelling and will not affect the parking spaces arrangement.

The applicant provided the suggestion that medical and physiotherapy services should be more affordable, accessible, and integrated within local communities. A home-based setting offers a more convenient and personalized alternative to traditional commercial environment to enhance customer experience. While the suggestions are acknowledged and taken into consideration, the Authority clarified that the quality of service is not relevant to the planning scheme.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:** Notice of Refusal

**ITEM 3  
PA2024/0211**

**SUBDIVISION TO CREATE 935 LOTS IN 21 STAGES OVER 10 YEARS AND A BUILDING SETBACK PLAN FOR EACH STAGE**

**APPLICANT**

**SECTION 7348 & LOT 7349 HUNDRED OF BAGOT  
CUNNINGTON ROSSE TOWN PLANNING AND CONSULTING**

Applicant: Gerard Rosse (Cunnington Rosse Town Planning and Consulting) and Dalton Glasby (ADG engineers) attended.

Submitter: Gerry Wood attended.

Development Assessment Services (DAS) tabled a submission from PAn: the Planning Action Network. Inc, provided by Margaret Clinch.

**RESOLVED  
71/24**

That, the Development Consent Authority vary the requirements of Clauses 6.5.1 (Subdivision in Zone FD) and 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR), and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Sections 7348 and 7349 Hundred of Bagot for the purpose of subdivision to create 935 lots in 21 stages over 10 years, subject to the following conditions:

### **NOTE THAT FOR THE PURPOSE OF THIS PERMIT**

- a) Unless specified (in notation), the condition is relevant to all stages.
- b) Staging in notation refers to the staging shown on the staging plan dated 19/07/2024, prepared by ADG, submitted with the application.
- c) Any reference to the LDU means the Land Development Unit division of the Department of Lands, Planning and Environment (DLPE).
- d) Any reference to TCSD means Transport and Civil Services Division of the Department of Logistics and Infrastructure.

## Darwin DCA Meeting No 431 – Friday 18 October 2024

- e) BFSG refers to Berrimah Farm Subdivision Guidelines (BFSG).

### CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the 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 generally in accordance with the plans submitted with the application but modified to include:
  - a) Noise attenuation barriers / measures for lots abutting Tiger Brennan Drive Road Note: Stages 10B, 10C, 13A and 14C.
  - b) Any changes required as a result of compliance with Conditions Precedent 1 to 6.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), confirmation is required from the LDU or relevant council for road carriageway widths that do not comply with the BFSG to the satisfaction of the consent authority.  
Note: Stages 8A, 8B, 9A, 9C, 12A, 13A, 14A, and 14C.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a revised subdivision Masterplan is to be prepared and submitted to and approved by relevant authorities (indicated below), to the satisfaction of the consent authority. The masterplan is to include:
  - a) An updated Street and Pathways Masterplan, supported by an updated Traffic Impact Assessment showing distribution volumes for the subdivision network to support road classifications; (LDU or relevant council)
  - b) A Street and Public Lighting masterplan; (LDU or relevant council)
  - c) A revised high voltage masterplan; (Power and Water Corporation, Power Networks)
  - d) A revised water and sewer infrastructure masterplan; (Power and Water Corporation, Water Services)
  - e) Update Traffic Impact Assessment Report; (TCSD)  
*Note: TIA shall include details provided in TCSD comments. (Ref no: DDLP2012/0985-04-0417~0005)*
  - f) A sequencing staging plan showing how the overall development is going to be staged (LDU and PWC (Network division and Water Services)).
4. Prior to the commencement of works for each stage, an infrastructure sequencing staging plan is required showing how the subdivision is going to be developed including:
  - a) Stormwater, parks, roads, street lighting and public open space lighting;
  - b) A Construction Traffic Management Plan; and
  - c) A Dilapidation Report.to the requirements of the LDU, TCSD and City of Darwin, to the satisfaction of the consent authority.  
*[Note: Clearance from TCSD and the City of Darwin is required if the work impacts their infrastructure.]*

5. Prior to the endorsement of plans, prior to the commencement of works (including site preparation), the proponent must provide a Statement of Environmental Audit from a qualified person (under s68 of the *Waste Management and Pollution Control Act 1998*) certifying that the Development Site is suitable for its intended use(s), to the satisfaction of the Consent Authority.
6. Prior to the endorsement of plans, prior to the commencement of works (including site preparation), a management program must be developed to prevent mosquito breeding, to the requirements of Medical Entomology, NT Health, LDU and Crown Land Division, to the satisfaction of the consent authority. The management programme should provide details on upgrading the stormwater drain to the south of the subdivision, between Tiger Brennan Drive and Wishart Road, or as otherwise agreed, to the satisfaction of the consent authority.
7. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a site earthworks plan indicating finished levels of all proposed lots is to be submitted to and approved by the LDU or relevant council to the satisfaction of the consent authority. All cut and fill works are to be designed to eliminate the need for excessive cut/fill/retaining wall works for the proposed lots and stormwater flow from lots.
8. Prior to the commencement of works (including site preparation), written confirmation is required from the TCSD and/or City of Darwin, as the case may be, that the approvals have been provided for all works within the Stuart Highway and Marlow and Makagon road reserves, to the satisfaction of the consent authority.
9. Prior to the commencement of works (including site preparation), the proponent is to develop a Heritage Management Plan (HMP) to the requirements of the Heritage Division, Department of Lands, Planning and Environment, to the satisfaction of the consent authority. The HMP should address cultural heritage in accordance with best practice guidelines.
10. Prior to the commencement of works (including site preparation), for the following components in each stage:
  - a) roads;
  - b) Stormwater drainage;
  - c) streetlighting;
  - d) vehicular accesses;
  - e) pedestrian/cycle paths;
  - f) landscaping;
  - g) park areas, including permanent irrigation; and
  - h) streetscaping.the Developer shall submit detailed design documentation (engineering design, design report and specifications) for all such proposed works and achieve Permission to Use from the LDU or relevant council. All designs that relate to future LDU or relevant council infrastructure and residential subdivision open space under the NT Planning Scheme 2020 are to be in



## Darwin DCA Meeting No 431 – Friday 18 October 2024

accordance with the BFGS, to the satisfaction of the LDU or relevant council and must be prepared and certified by suitably qualified persons, to the satisfaction of the consent authority.

11. Prior to the commencement of works (including site preparation), a Type 2 Erosion and Sediment Control Plan (ESCP) must be developed in accordance with the Department of Lands, Planning and Environment Erosion and Sediment Control Plan (ESCP) procedures (see Note 1). The ESCP must be developed and certified by a Certified Professional in Erosion and Sediment Control (CPESC). The ESCP must be submitted for acceptance prior to the commencement of any earth disturbing activities (including clearing and early works) to Development Assessment Services via email: [das.ntg@nt.gov.au](mailto:das.ntg@nt.gov.au).
12. Prior to the commencement of works (including site preparation), public transport details, including bus stop locations and designs, and route/s that aligns with the staging of the development must be developed on the advice of the Passenger Transport Unit division of the Department of Logistics and Infrastructure, to the satisfaction of the consent authority.

### GENERAL CONDITIONS

13. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
14. The development must proceed in the order of stages as shown on the subdivision masterplan approved under condition precedent 3, unless otherwise approved by the consent authority.
15. The works carried out under this permit shall be in accordance with the following:
  - a) Construction Traffic Management Plan (CTMP);
  - b) Traffic Impact Assessment (TIA);
  - c) Conservation Heritage Management Plan; and
  - d) Management plan to prevent Mosquito breeding.
16. All works relating to this permit must be undertaken in accordance with the accepted Type 2 Erosion and Sediment Control Plan (ESCP) to the requirements of the consent authority. Should the accepted Type 2 Erosion and Sediment Control Plan (ESCP) need to be amended, the revised ESCP must be developed and certified by a Certified Professional in Erosion and Sediment Control (CEPSC) to the satisfaction of the consent authority. The revised ESCP should be submitted for acceptance to Development Assessment Services via email: [das.ntg@nt.gov.au](mailto:das.ntg@nt.gov.au).
17. All reasonable and practicable measures must be undertaken to prevent erosion occurring onsite, sediment leaving the site, and runoff from the site causing erosion offsite. 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 the completion of

## Darwin DCA Meeting No 431 – Friday 18 October 2024

works, to the satisfaction of the consent authority on written advice from the CPESC.

18. All proposed roads, street lighting, stormwater drainage, site earthworks, vehicular access, pedestrian/ cycle corridors, public open space and streetscaping/ landscaping must be designed and constructed at the owner's expense in accordance with the requirements of the BFGS and to the technical requirements of the LDU or relevant council, to the satisfaction of the consent authority.
19. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage facilities, electricity services and telecommunication services to each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.  
  
Please refer to notations 1, 2 and 3 for further information.
20. 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.
21. 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.
22. Any changes to, or, an upgrade of, an existing intersection onto Stuart Highway/Panquee Boulevard to accommodate traffic from the subdivision is subject to a Road Safety Audits in accordance with the TCSD Policy "Road Safety Audits".
23. All proposed work (including the provision or connection of services) within or impacting upon the NTG controlled road reserves shall be designed, supervised and certified on completion by a practising and registered civil engineer and shall be in accordance with the standards and specifications of the TCSD, Department of Logistics and Infrastructure.
24. Any intersection(s) upgrade with NTG controlled roads shall be upgraded to suit the expected level of traffic impact and to meet current standards in accordance with the Austroads Guide to Traffic Management, Guide to Road Design, relevant Australian Standards and the requirements of the TCSD, TCSD, Department of Logistics and Infrastructure.
25. All works within the Makagon Road reserves must be completed to the requirements of the City of Darwin, to the satisfaction of the consent authority.
26. Surface stormwater run-off from the development site onto the NTG controlled road reserves is not permitted. Accordingly, stormwater shall be wholly contained within the site and discharged into the stormwater drainage

## Darwin DCA Meeting No 431 – Friday 18 October 2024

system to the standards and approval of the TCSD (where it impacts on the NTG controlled road reserves), the Crown Land Management Division (where it impacts on Crown land or a drainage easement in favour of the Territory). Stormwater design plans submitted for approval shall provide details of site levels and existing downstream drainage infrastructure.

27. The installation of any services or service connections within the NTG controlled road reserves is subject to TCSD, Department of Logistics and Infrastructure approval.
28. Upon completion of any works within or impacting upon existing or proposed road reserves, the road reserves shall be rehabilitated to the standards and requirements of the TCSD and/or City of Darwin or LDU (or relevant council) and returned to the condition as documented in the dilapidation report.
29. Prior to issue of titles, a Stage 3 and 4 Road Safety Audit must be prepared by a suitably qualified traffic engineer in accordance with the Austroads Document Guide to Traffic Management Part 12: Traffic Impacts of Developments and be submitted to and approved by the LDU or relevant council, to the satisfaction of the consent authority.
30. Prior to the issue of titles, the developer is to provide written confirmation (in the form of plans or drawings) to the LDU or relevant council demonstrating that all lots less than 600m' for single dwellings allow for future vehicle access via a single driveway unrestricted by street infrastructure (including any power, water, sewer or stormwater infrastructure) which demonstrates a 3.5 metre driveway can be located on each lot in accordance with Planning Scheme clause 5.2.4.5.
31. The permit will expire if one of the following circumstances applies:
  - a) The development is not substantially commenced within two years of the date of the permit; or
  - b) The development is not completed within 10 years of the date of the permit.

### NOTES

1. 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 ([development@powerwater.com.au](mailto:development@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.
2. The 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).

## Darwin DCA Meeting No 431 – Friday 18 October 2024

3. 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/buildersdesigners.html>.
4. The Department of Lands, Planning and Environment lists out Erosion and Sediment Control Plan (ESCP) procedures as updated available at: <https://depws.nt.gov.au/landmanagement>.
5. Information regarding erosion and sediment control can be obtained from the IECA Best Practice Erosion and Sediment Control 2008 books available at [www.austieca.com.au](http://www.austieca.com.au) and the Land Management Factsheets available at <https://nt.gov.au/environment/soil-landvegetation>. For further advice, contact the Development Coordination Branch: (08) 8999 4446.
6. All land in the Northern Territory is subject to the *Weeds Management Act 2001* (WM Act). The WM Act describes the legal requirements and responsibilities that apply to owners and occupiers of land regarding declared weeds. Section 9 general duties include the requirement to take all reasonable measures to prevent land being infested with a declared weed and to prevent a declared weed from spreading. There are additional duties including a prohibition on buying, selling, cultivating, moving or propagating any declared weed and the requirement to notify the Weed Management Branch of a declared weed not previously present on the land within 14 days of detection. Should you require further weed management advice contact the weed management branch by phone on (08) 8999 4567 or by email to [weedinfo@nt.gov.au](mailto:weedinfo@nt.gov.au).
7. The Aboriginal Areas Protection Authority recommends that the permit holder obtain a new 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.
8. All new roads, including alterations and extensions to existing roads, are required to be named under the *Place Names Act 1967*. You should immediately make application to the Place Names Committee to commence the road naming process. Contact the Place Names Unit on 8995 5362 or [place.names@nt.gov.au](mailto:place.names@nt.gov.au). Further information can be found at [www.placenames.nt.gov.au](http://www.placenames.nt.gov.au).
9. In order to process the building setback plan submitted as part of this application, the applicant is required to make a separate application for a planning scheme amendment to include the building setback plan in Schedule 9 of the Northern Territory Planning Scheme 2020. Please contact Lands Planning on 8999 8963.

## Darwin DCA Meeting No 431 – Friday 18 October 2024

10. The Crown Land advises that Sections 7348 & 7349 are Crown land held under a Crown lease, which is subject to the Berrimah Farm Project Development Agreement (PDA). The proponent should seek approval for the master plan of the proposed subdivision under the PDA.
11. The developer must implement measures to ensure mosquito breeding does not occur during the construction phase of the development, to the requirements of Medical Entomology, NT Health, to the satisfaction of the consent authority and in accordance with the *NT Public and Environmental Health Act 2011*.
12. The Department of Defence has advised that the subject site is constrained by building height controls that protect airspace near RAAF Base Darwin to ensure the safety of aircraft on approach, departure and low-flying man. Any structures higher than 15 metres or 45 metres above ground level (AGL) require approval under the Defence (Aviation Area) (DAA) Regulations.
13. The Department of Defence advises the design of detention basins should give consideration to the minimisation of bird habitat opportunities and the ongoing monitoring of bird activities upon their construction.
14. Any organic waste and/or storage of commercial bins must be handled appropriately to minimise bird activities.
15. 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 noncompliance with the Act.

16. 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.

## 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 land in question, located within Sections 7348 and 7349, is zoned as FD (Future Development) according to the Northern Territory Planning Scheme 2020 (NTPS 2020). It covers a total area of 97.4 hectares and is situated south of the Northcrest northern precinct.

This land was initially designated for development through a Planning Scheme amendment in September 2015, which classified it as Zone FD under the Berrimah Farms Planning Principles and Area Plan (BFPPAP). Updates to the BFPPAP were made in March 2017 and again in 2022, specifically revising Clause 14.1.4 to enhance the planning principles and introduce a variety of housing densities across the site.

The BFPPAP provides a framework for the proposed subdivision and outlines how future development in the area should proceed in accordance with the planning objectives.

The proposed subdivision comprises 935 lots, including 909 residential lots, 24 open space lots, 1 community purpose lot (intended for a school site), and 1 tourist commercial lot.

The 909 residential lots are intended for dwelling-single, dwelling-group, or dwelling-multiple, with the following breakdown by lot size:

- 172 lots (19%) ranging from 405m<sup>2</sup> to 450m<sup>2</sup>;
- 478 lots (52.5%) ranging from 450m<sup>2</sup> to 600m<sup>2</sup>;
- 245 lots (27%) ranging from 600m<sup>2</sup> to 800m<sup>2</sup>; and
- 14 lots (1.5%) larger than 800m<sup>2</sup>

Out of these, 843 lots are proposed to be zoned as LMR (Low Medium Density Residential). This zoning allows for a balanced density of homes, supporting a mix of dwelling-single and dwelling-groups (2+) developments. The remaining 66 lots located adjacent to Tiger Brennan Drive at the southern edge of the subdivision are proposed to be zoned LR (Low-Density Residential), targeting dwelling-single developments only.

The subdivision proposes 24 open space lots covering a total area of 18.2ha, featuring both passive and active open spaces. These open space lots are spread across various stages of the subdivision and offer different features and functions that contribute to the plan for community facilities, environmental management, and urban aesthetics. The subdivision proposes five neighbourhood parks ranging from 6143m<sup>2</sup> to 2.3ha. The neighbourhood parks will function as Precinct Parks with lawn areas and feature small play areas with shading. In addition, the subdivision incorporates dual-purpose open spaces, particularly in the form of detention basins that also serve as recreational areas. These basins are incorporated into the landscape in such a way that they do not disrupt the usability of the open spaces, allowing for

## Darwin DCA Meeting No 431 – Friday 18 October 2024

passive recreation on flat, grassy areas. The subdivision also incorporates a series of linear parks and pathways, at least 10 meters wide, that provide important pedestrian and cycling linkages between different areas of the subdivision. These pathways help integrate the neighbourhood by connecting parks and open spaces, making it easier for residents to move around on foot or by bike.

The road layout plan for the development features a hierarchy of road reserves designed to integrate with surrounding and external networks. The layout facilitates efficient movement within the subdivision and addresses the specific access needs of each precinct. The road hierarchy comprises Primary Collector (30m -25m wide), Feature Collector (27m wide), Urban Residential Collector (20m wide), Minor Roads (16m and 17m) and Local streets Driveway & Path (10m). The pedestrian and cycling network in the subdivision includes 2.5m and 1.5m footpaths. The 2.5m footpaths improve connectivity and accessibility and support off-road cycling. Panquee Boulevard, the central primary collector road, proposes dual 2.5m footpaths, offering a safe link to the bike path along the Stuart Highway. The 1.5m footpaths are designed for pedestrians and cyclists on local streets, with cyclists sharing the road with vehicles. The overall plan creates a connected network, forming a loop that links to the Secondary Activity Centre.

The subdivision is proposed to occur in 21 different stages over a period of 10 years. The application also includes a building setback plan for all proposed lots. The setback plan aims to ensure a consistent streetscape and character that aligns with the developed stages of the Northcrest subdivision. The setback plan will be formalised through a separate amendment to the Planning Scheme amendment. This amendment will be lodged after the subdivision approval to include the setback plan within Schedule 9 of the NT Planning Scheme 2020 (NTPS 2020).

Mr Gerard Rosse from Cunnington Rosse Town Planning and Consulting (applicant) attended the hearing and spoke further to the application. Mr Rosse advised the Authority that the subdivision is part of the Northcrest subdivision, a comprehensive and phased project focusing on both the northern and southern precincts. The proposed subdivision is located in the southern precinct and has been designed with considerations such as open spaces, connectivity, and road networks.

Mr Rosse further added that the development links with the Northern Precinct, which is nearly complete, and also aligns with the BFPPAP, which outlines density, linkages and planning principles. The southern precinct will consist of 21 stages, including 935 lots, 909 of which will be residential, with 24 open spaces for both passive and active uses. A large community purpose site for a school is planned in Stage 14A, and a tourist commercial lot is also included.

Speaking further about the key feature of the subdivision, Mr Rosse indicated that the subdivision is expected to be completed in 10 years, with a target of delivering around 90 lots per year. Mr Rosse noted that this is a substantial project, backed by a comprehensive report that includes various studies, and

represents one of the largest subdivision applications in the Northern Territory. Furthermore, Mr Rosse advised that the infrastructure services, such as roads, water, power, and sewer systems, have been thoroughly planned, and the zoning plan includes a mix of LMR zoning with larger lots near Tiger Brennan zoned as LR. Mr Rosse indicated that this development reflects a long-term, detailed approach to creating a liveable and well-connected community.

2. The NT Planning Scheme 2020 applies to the land, and subdivision of land requires consent under Clause 1.8 (When development consent is required). It is identified as *Impact Assessable* under Clause 1.8(1)(c)(ii), and therefore Part 2: Strategic Framework (Berrimah Farms Planning Principles and Area Plan), Part 3: Overlay (LPA - Land in Proximity to Airports), Part 4: Zone Purpose and Outcomes of Clause 4.27 - Zone FD (Future Development) and Part 6: Subdivision and Consolidation, including Clause 6.5.1 (Subdivision in Zone FD), Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR), Clause 6.2.2 (Lots Less Than 600m<sup>2</sup> for Dwellings-Single), Clause 6.2.3 (Site Characteristics for Subdivision in Zones LR, LMR, MR and HR) and 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR) need to be considered. These clauses have been considered, and it is found that the proposal complies with the relevant requirements of the Planning Scheme except for Clauses 6.5.1 (Subdivision in Zone FD) and 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR). An overview of the Development Assessment Services' s assessment of each of the above clauses is provided below, with a detailed discussion provided on the matters seeking variation to the NTPS2020 requirements.

*Part 2: Strategic Framework (Berrimah Farms Planning Principles and Area Plan)*

The Berrimah Farms Planning Principles and Area Plan (BFPPAP) principles seek to promote a safe and diverse urban residential environment that: (i) is structured around a Secondary Activity Centre; (ii) is developed in the order of six storeys in height around the Secondary Activity Centre and reduces in height and density with distance from the centre; (iii) comprises a variety of lot sizes and housing types; (iv) provides high quality adaptable public spaces and open space areas that are usable for both passive and active recreation; and (v) has an interconnected local road network that distributes the anticipated traffic flow within site and integrates with the surrounding road network through appropriate intersection design. The area plan promotes the Compact Urban Growth Policy (CUGP) principles by indicating that the number of dwellings should be maximised within 400m of the neighbourhood centre. The area plan shows a Secondary Activity Centre (located along the Stuart Highway) with residential density and height reducing with distance from the centre.

The proposed subdivision is located wholly within the area identified for three (3) relevant density bands for the urban residential lots across the development being the "Blue Band (25-60 dw/ha)", "Orange Band (16-40 dw/ha)" and "Yellow Band (10-25 dw/ha)". The area plan dwelling density is intended to be met across the whole area, as shown in the same density band.



## Darwin DCA Meeting No 431 – Friday 18 October 2024

The Authority notes the DAS's assessment concludes that considering the subdivisions completed and approved in the northern precinct of Northcrest along with the configuration of the lot proposed in the current application, the target densities can be met in the Orange and Yellow bands throughout the subdivision. However, to meet the required density in the blue band, the future subdivisions in the Northern Precinct would need to achieve a dwelling density of 34 dw/ha (rather than the minimum 25 dw/ha provided in the BFPPAP).

Mr Gerard Rosse from Cunnington Rosse Town Planning and Consulting (applicant) attended the hearing and spoke further to the application. Mr Rosse also explained the methodology for achieving target densities in the proposed subdivision. Mr Rosse advised that the strategy involves incorporating a mix of lot sizes and placing smaller lots near amenities, particularly in the earlier phases of development. These small lots are also located around secondary activity centres.

Mr Rosse emphasised that the densities mentioned are "potential densities" rather than actual ones. The final density will depend on the built form and market demand. For example, some lots could accommodate duplexes or two dwellings, but whether the market utilises this potential is uncertain. The subdivision plan's primary aim is to facilitate the achievement of the potential densities.

Mr Rosse also gave an overview of the background of the proposed subdivision, the masterplan approach, and how it aligns with the BFPPAP. Mr Rosse explained that in terms of the overall master plan and density approach, the key focus is ensuring that the site development aligns with the area's strategic goals while offering a variety of lot sizes to meet market demand. Ms Rosse highlighted that there is a broad range of lot sizes planned, spanning from 405m<sup>2</sup> to approximately 1500m<sup>2</sup>. This variety ensures that the development caters to diverse preferences and market needs, as evidenced by the previous project phases.

Mr Rosse acknowledged the DAS report provided a clear breakdown of these lot sizes in terms of percentages, illustrating the diversity of options and density requirements. Mr Rosse noted the aim is not just to meet current market demand but also to conform to the density guidelines set out in the area plan. This area plan includes several designated density zones, symbolized by colour bands such as blue, yellow, and orange, each representing different density requirements. The development will seek to strike a balance between providing a desirable product for buyers and ensuring it adheres to these overarching density targets.

Mr Rosse explained that the additional information provided to DAS shows target density in the Blue Band would be achieved in future subdivisions by providing medium-density residential developments in the 'Retirement Village' site identified in the Area Plan.

Mr Rosse told the Authority that by adhering to the density areas and offering a mix of lot sizes, the subdivision is better positioned to create a well-rounded

## Darwin DCA Meeting No 431 – Friday 18 October 2024

community that supports the area's growth and demand patterns while ensuring that the overall design meets both market preferences and regulatory guidelines.

The Authority also notes that the 'Yellow Band' seeks dwelling-single (detached); however, there are 169 (18.5%) lots that are proposed to be zoned LMR and are greater than 600m<sup>2</sup> and therefore have the potential to accommodate more than one dwelling on the lot. While acknowledging that these lots do not strictly comply with the 'Yellow Band' requirements to have a dwelling-single, the proposed zoning is considered appropriate in the context of current market trends in which larger lots for dwelling-single are more desirable rather than a duplex/side by side arrangement.

### Part 3- Overlays (LPA – Land Proximity to Airports)

*The purpose of the Overlay is to identify areas which may be subject to additional amenity impacts and/or restrictions due to its proximity to an airport, and ensure that the use and development of land in these areas:*

- (a) minimises the detrimental effects of aircraft noise on people who reside or work in the vicinity of an airport;*
- (b) does not result in any new use or intensification of development on land that would prejudice the safety or efficiency of an airport;*
- (c) does not result in any new use or intensification of development that would jeopardise the curfew free operation of the Territory's airports (where applicable); and  
retains the non-urban character of the land.*

*The Overlay applies to land that is within Zones RL, R, A, CP, CN, RD, WM and **FD** and subject to the Australian Noise Exposure Forecast (ANEF) 20-unit value contour line or greater as defined on the ANEF maps produced by the Department of Defence.*

Section 7349 is zoned as Future Development (FD) and is partially located within the Australian Noise Exposure Forecast (ANEF) 20-unit value contour line or greater. The DAS assessment of the Development Application found that the site for the current subdivision is outside the ANEF 20-unit value contour line, making this overlay not applicable. Additionally, the comments received from Darwin International Airport and the Department of Defence raised no concerns. Approval notes include requirements for any cranes used during construction and minimise opportunities for bird habitat, including ongoing monitoring of bird activities around detention basins.

### Part 4 – Clause 4.27: Zone FD (Future Development)

#### Zone Purpose

*Identify an area that is intended for future rezoning and development in accordance with the Strategic Framework. Development is limited to a level that will not prejudice future development or is compatible with planned future purposes.*

Zone Outcomes (relevant to proposed subdivision)

1. *Subdivision and development responds to the Strategic Framework, and does not compromise existing or planned or future development or infrastructure through its location and operation.*
2. *Subdivision and development demonstrates that it does not prejudice the intended ultimate subdivision and future development.*
3. *Subdivision and development demonstrates that infrastructure can be provided and funded in accordance with an approved plan for infrastructure and will be to a standard that satisfies the requirements of the responsible service authority.*
4. *Subdivision design is informed by land suitability assessment to confirm the land is able to support the intended future development.*

The Authority notes that the BFPPAP outline a strategic framework for the development of the subject site and, as discussed previously above, the subdivision is designed to align with the BFPPAP without hindering subsequent subdivision or future development potential. All service agencies were consulted during the planning exhibition and no concerns are raised regarding provision of infrastructure and land capability. The requirements of service agencies are reflected through various conditions precedents and notes on the approval. Overall, the Authority considers that the proposed subdivision appears to meet the objectives of the BFPA and contributes positively to the long-term planning goals for the area.

The Authority queried the applicant regarding the staging and delivery of public infrastructure. The Authority expressed that when it comes to large subdivisions, one of the key concerns is the timely delivery of public infrastructure, including parks and open spaces. Although these amenities are critical for the community, their delivery often gets delayed until the final stages of the project. This could be frustrating for residents who move into early stages of the subdivision and expect access to these spaces much sooner.

Responding to the Authority query, Mr Rosse explained that the proposed subdivision features two key elements of open space. This includes existing open space with the northern precinct and the delivery of new open spaces in different stages of current subdivision. The goal is to connect the northern and southern sections of the estate through thoughtful planning of open space areas and ensure that residents from both regions have accessible parks and recreational areas.

Mr Rosse further explained that the delivery of open spaces is tied to the *staging* of the development, and while the attempt has been to align open space provision with the completion of each stage, the actual distribution of open space varies. Some stages have significant open space, exceeding the typical 10% requirement of the planning scheme, while others may have less. This creates a balancing act for the proponent, who must manage open space

distribution across the estate while meeting infrastructure requirements, like reticulation, power, and water, for these areas.

Mr Rosse told the Authority that the approach has been to deliver open spaces as evenly as possible across the stages. However, due to the complexity of development, not all stages have significant open space. In some cases, only minimal areas are provided, such as small pedestrian and cycling connectivity areas. These smaller areas serve two purposes. First, they help ensure that both existing and future residents have access to open space, even if larger parks are not yet available in the immediate stage of development. Second, these connectivity strips allow interim access to open spaces, ensuring residents aren't isolated from recreational areas as the subdivision progresses. Mr Rosse stressed that this connectivity strategy is especially important midway through the subdivision, where only partial open spaces might have been completed. The small access points or "connectivity spines" ensure that residents can still access parks and green spaces throughout the estate, even during the interim phases. The overarching goal is to ensure that no one is deprived of access to open spaces or local parks as the subdivision evolves, maintaining connectivity and accessibility across the entire estate in its final form. Mr Rosse concludes that the delivery of open spaces is a complex process in the subdivision, with stages varying in the amount of open space provided. The strategy is to balance infrastructure readiness with the need to provide both interim and permanent access to parks and open spaces. By creating connectivity spines and delivering small open space areas throughout the development stages, the plan ensures residents have access to recreational spaces even as the estate continues to grow and develop.

Part 6 – Subdivision Requirements

The Authority notes the DAS assessment on Part 6 – Subdivision requirements concludes that the proposed subdivision is generally compliant with the relevant Part 6 requirements except for Clauses 6.5.1 (Subdivision in Zone FD) and 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR). The non-compliances are discussed below.

3. 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).

6.5.1 Subdivision in Zone FD]

Purpose

*Provide for the subdivision of land in Zone FD in a manner that will not prejudice the intended ultimate subdivision and future development of the land envisaged in the strategic framework.*

Administration

1. *The consent authority may consent to a subdivision that is not in accordance with sub-clauses 3 or 4, only if it is satisfied the subdivision is consistent with the purpose of this clause.*
2. *An application for subdivision in accordance with sub-clause 4 must include a proposed zoning plan that identifies the intended future zoning.*

Requirements

3. *The minimum lot size is 50ha.*
4. *Despite sub-clause 3, subdivision may create lots consistent with the intended future zoning if it:*
  - (a) *complies with the relevant subdivision requirements of the intended future zone;*
  - (b) *is generally in accordance with an area plan or other relevant component of the strategic framework; and*
  - (c) *services are, or can be, made available to that land.*

The land that is the subject of this subdivision application is entirely within Zone FD (Future Development). The Authority notes that the subdivision is part of planned residential development, and it is being conducted in accordance with the BFPPAP. The area plan shows the land is to be developed for residential purposes, and the proposed subdivision comprises 909 residential lots of varying sizes intended for dwelling-single, dwelling-group, or dwelling-multiple. Out of these, 843 lots are proposed to be zoned as LMR (Low Medium Density Residential) and the remaining 66 lots located adjacent to Tiger Brennan Drive at the southern edge of the subdivision are proposed to be zoned LR (Low-Density Residential). The application includes a zoning plan showing the LMR and LR zoning for the residential zones. Once the subdivision works are completed, normalisation is required through a Planning Scheme Amendment to formalise the zoning for each lot.

While the lot sizes proposed are less than 50ha, they comply with minimum lot sizes in Zone LR and LMR (intended zoning for residential lots). Other lots in the subdivision are proposed to be in Zone PS (Public Open Space), Zone CP (Community Purpose) and Zone TC (Tourist Commercial). While there is no minimum lot size requirement for these zones, the assessment has found that the proposed lot sizes can accommodate the uses that could occur under the zoning.

Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zone LR, LMR, MR and HR)

The purpose of Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR) is to ensure that subdivision of land for urban residential purposes creates lots of size, configuration and orientation suitable for residential development at a density envisaged by the zone.

## Darwin DCA Meeting No 431 – Friday 18 October 2024

The requirements of this clause are:

- (1) Minimum lot size of: 300m<sup>2</sup>(Zone LMR); 800m<sup>2</sup>(Zone LR) and average of 600m<sup>2</sup> and no smaller than 450m<sup>2</sup>(LR in greenfield areas identified for compact urban growth in the strategic framework);
- (2) Minimum building envelope requirements of 17m x 17m for a lot size of between 600m<sup>2</sup> and greater, 8m x 15m for a lot 600m<sup>2</sup> to less than 450m<sup>2</sup>; and 7m x 15m for a lot 300m<sup>2</sup> to less than 450m<sup>2</sup>;
- (3) Lots have sufficient area and appropriate dimensions to provide for the proposed density of developments including dwellings, vehicle access, parking and ancillary buildings;
- (4) There are no battle-axe lots;
- (5) Lots are oriented to allow dwellings to take advantage of environmental conditions such as prevailing breezes and sunlight;
- (6) Lots are connected to reticulated services;
- (7) Potential land use conflicts are minimised by taking account of the visual and acoustic privacy of residents.
- (8) Where there are lots for medium and higher density residential development, those lots are:
  - (a) distributed in small groups serviced by public transport;
  - (b) in close proximity to public open space and with adequate access to community facilities and services; and
  - (c) not located in a cul-de-sac.

The assessment has found that the subdivision complies with many requirements of Clause 6.2.1. The majority of lots (843; 92.73%) are proposed to be zoned LMR (Low Medium Density) with lot sizes ranging from 405m<sup>2</sup> to 1509m<sup>2</sup> and meet the minimum lot size requirement of 300m<sup>2</sup> in the zone. The Authority further notes that the subdivision proposes 66 lots that are intended to be in Zone LR (Low Density Residential) and have a lot area less than 800m<sup>2</sup>. As these lots have an average of 653m<sup>2</sup> in area and are not smaller than 450m<sup>2</sup>, they comply with the minimum lot size requirement of LR in greenfield areas identified for compact urban growth in the strategic framework (*Table A to Clause 6.2.1: Lot Size and Configuration in Residential Subdivisions*).

*Note: The Planning Scheme Amendment (PSA113, dated 11/10/2024) amended the Darwin Regional Land Use Plan (DRLUP) and identified Berrimah Farm (subject site) as a 'Greenfield subdivision' site.*

Furthermore, no battle-axe lots have been provided, and all lots are proposed to be connected to reticulated services. The orientation of the proposed lots will enable access to north-west wet season prevailing breezes. Roof overhangs and awnings ensure appropriate shading from the western sun. The proposed subdivision is part of the Berrimah Farm 'Northcrest' residential development; therefore, no potential land use conflicts are expected. Sub-clause 8 is not relevant as the proposed zoning is low-medium density.

Subclause (6) requires a minimum building envelope of 7m x 15m for lot size 300m<sup>2</sup> to less than 450m<sup>2</sup>, 8m x 15m for lot size 45m<sup>2</sup> to less than 600m<sup>2</sup> and 17m x 17m for 600m<sup>2</sup> and greater. The building envelopes are exclusive of any boundary setbacks or service authority easements. Subclause (7)

requires; lots have sufficient area and appropriate dimensions to provide for the proposed density of developments including dwellings, vehicle access, parking and ancillary buildings.

The subdivision proposes lot sizes ranging from 405m<sup>2</sup> to 1509m<sup>2</sup>. Allowing for 4.5m front, 1.5m side and 1.5m rear building setbacks, and a secondary street setback of 2.5m, the assessment of the minimum building envelope requirements has found that the 164 lots greater than 600m<sup>2</sup> do not comply with the building envelope requirements.

*The relevant Administration for the clause is:*

*The consent authority may consent to a subdivision that is not in accordance with sub-clauses 5-12 only if it is satisfied the subdivision is consistent with the purpose of this clause and the zone purpose and outcomes.*

Notwithstanding the non-compliant 164 lots, the Authority notes that the illustrative building envelope exceeds the envelope area of 289m<sup>2</sup> exclusive of any boundary setbacks or easements. Furthermore, the requirement of 17m x 17m is a standard requirement for all lots exceeding 600m<sup>2</sup>. This means that lots that are marginally greater than 600m<sup>2</sup> (as in the subject site) and lots exceeding 800m<sup>2</sup> (predominant lot size in Zone LR) require a similar building envelope. Noting the purpose of the clause, the issue is whether the area of the lot is sufficient to accommodate future residential, vehicle access, parking and ancillary buildings. The applicant has provided building envelope plans for the 'worst case' non-compliant lots of greater than 600m<sup>2</sup>. These plans demonstrate that the lots have sufficient area and appropriate dimensions for dwellings, including vehicular access, parking, and ancillary buildings suitable for residential purposes.

In response to the question raised by the Authority regarding the non-compliant lots, Mr Rosse clarified that the design team, has carefully selected the most non-compliant lots and has prepared building designs and floor layouts for the non-compliant lots to demonstrate how the development could proceed despite the lack of full compliance with the planning scheme. Mr Rosse further explained that application includes a building setback plan for each lot, which will be formalised in Schedule 9 of the Planning Scheme, reflecting the specific conditions for each lot.

#### 6.2.3 Site Characteristics for Subdivision in Zones LR, LMR, MR and HR

The purpose of the clause is - *Ensure that the subdivision of land provides lots suitable for urban residential purposes that respond appropriately to the physical characteristics of the land and does not detrimentally impact on surrounding land.*

*The requirements of this clause are:*

- 2. Avoid the development of land of excessive slope, unstable or otherwise unsuitable soils (e.g. seasonally waterlogged) and natural drainage lines.*
- 3. Ensure, by site selection or site grading, that areas intended for lots less than 600m<sup>2</sup> do not slope in excess of 2%, such that the need for on-site stormwater structures, retaining walls and the like is minimised.*
- 4. Retain and protect significant natural and cultural features.*
- 5. Avoid development of land affected by a 1% AEP flood or storm surge event.*

6. *Retain and protect natural drainage lines and any distinctive landform features or stands of natural vegetation and incorporate them into public open space.*

The Authority notes that the DAS assessment has found the engineering information presented with the application describes that the design ensures all allotments are graded to fall towards the road reserve along the allotment frontage. The level differences in the design surface are achieved using a series of retaining walls ranging between 0.8m – 2.0m and earthworks batters. Batters have been preliminary designed at a maximum 1V:2H for a height of 0.8m. The information suggests that all retaining walls shall be structurally designed and certified by a qualified structural engineer prior to construction. Refinement of retaining walls to minimise heights will be further developed during the detailed design of each stage.

The Authority questioned the applicant regarding how retaining walls are minimised across the subdivisions. Mr Rosse responded that the general approach is to develop a masterplan ensuring the design is technically feasible. As design progresses, the goal is to aim for a maximum of 1.5 meters on retaining walls. Mr Rosse explained that there is no advantage for anyone, including the developer, in building higher retaining walls because of the significant costs involved. The objective is to reduce them as much as possible. Mr Rosse further explained that there are factors like the site's topography to minimize earthworks and ensure the land is both safe and serviceable. The bulk earthwork plan aims to keep the fall of lots below 2%, and ensure each lot has proper discharge,

While the Authority acknowledges the importance of retaining walls to achieve the desired slope for drainage, the excessive height of retaining walls should be minimised across the subdivision. A condition precedent is included in the to ensure appropriate compliance with the requirements of sub-clauses 2 and 3 is achieved in the subdivision.

6.2.4 Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR

*The purpose of Clause 6.2.4 (Infrastructure and community facilities for subdivision in Zones*

*LR, LMR, MR and HR) is to ensure that subdivision of land for residential purposes is appropriately integrated with infrastructure, community services and facilities.*

The proposed subdivision includes the creation of 24 Open Space lots, which includes a mixture of 7.5ha (active) and 10.38 ha (active) open space areas. This equates to of 18.12ha (17%) of open space across the proposed subdivision. The assessment notes that all dwellings are within 400m walking distance of open space. The subdivision includes open space in 'larger units', with the smallest neighbourhood park of 5,000m<sup>2</sup> still considered of substantial size. The allowance for 'active leisure pursuits' includes a number of playgrounds, extensive shared paths, vegetated batter and exercise stations.



## Darwin DCA Meeting No 431 – Friday 18 October 2024

The Authority asked the applicant about the proportionate balance between the private and active open space in the subdivision. Mr Rosse clarified that the subdivision includes dual-usage open space/detention basins, which will be unencumbered by drains and consist of shallow, flat grass areas suitable for passive recreation. While these spaces are primarily designed for drainage, they also contribute to the overall amenity of the area. In terms of active versus passive open space, the subdivision strives to maintain a balanced approach—approximately 50% of the designated open space serves active recreational purposes, such as parks, playgrounds, or sports fields, while the other 50% is more passive in nature, such as dual-usage open space/detention basins. This balance allows us to meet both functional and recreational needs in the area.

Mr Rosse further explained that the provision of open spaces across southern precinct exceeds the minimum 10% minimum requirement under the NTPS 2020. This reflects the commitment to providing more green and open areas for the subdivision. While some of the passive open space inevitably serve stormwater management purposes, such spaces can still be designed in innovative ways, transforming them into multi-functional spaces that provide ecological benefits as well as opportunities for leisure.

Sub-clause (5) requires; Subdivision *incorporate street networks capable of accommodating safe and convenient bus routes with stops within a 400m radius of a majority of dwellings*. The application includes a public transport map and proposed bus stop locations that indicate most lots are within 400 meters of walking distance from the proposed bus stops. The Authority however notes that a small pocket of residential lots on the southwest portion of the subdivision do not have access to a bus stop in a 400m radius. The Authority expressed concern about ensuring that public transportation services, particularly bus services, are meeting the needs of communities, especially those with lower socioeconomic status. The Authority highlighted the importance of small lots being accessible, pointing out that some families who currently rely on two cars may not be able to afford to maintain them in the future, especially as their family grows. The Authority therefore emphasises the need for adequate bus services, especially for areas within 400 meters of bus stops, to accommodate the residents of smaller lots.

Mr Rosse clarified that a public transport plan is still in the process of being refined, with multiple discussions having already taken place. There is a focus on flexibility around bus stop locations and public transport servicing, which can be address through the recommended condition precedent.

4. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent authority must take into account any submissions made under section 49, in relation to the development application.

Three public submissions were received, objecting to the proposal. The submissions were primarily concerned with the lot sizes proposed in the subdivision and road widths and length of time nominated to complete the proposed subdivision.

## Darwin DCA Meeting No 431 – Friday 18 October 2024

The assessment has found that the lot sizes are of a shape and size suitable to accommodate a dwelling design that complies with the applicable performance criteria stipulated by the Scheme. Further, they also adhere to the density envisaged by the BFPPAP.

Regarding concerns raised in relation to road widths in the proposed subdivision, the assessment notes that the Planning Scheme and relevant Area Plan do not provide any guidance for road widths in residential subdivisions as it is typically to the requirements of the applicable service authority (Land Development Unit of the Department of Lands, Planning and Environment). In relation to the length of time nominated to complete the proposed subdivision, the applicant seeks an extended base period to align with the 10 year delivery timeframe of the development. Due to the scale of the subdivision, it is reasonable for an extended base period to ensure that the proposed development staged over approximately 7-10 years can be adequately serviced by all essential infrastructure (roads, water, sewer, stormwater, power, and telecommunications) through the installation of new infrastructure and connection to existing infrastructure. This is discussed further under Reason (10) below.

Mr Gerry Wood attended the hearing and spoke to his submission. Mr Wood reiterated his concerns regarding the lot sizes and road widths being too small. Mr Wood raised the need for greater private open space in dwellings and suggested options such as minimum lot sizes of 600m<sup>2</sup> /800m<sup>2</sup> in the subdivision. Mr Wood further noted that the proposal does not meet the Darwin Heat Mitigation Strategy and also expressed concerns about the orientation of houses for breeze penetration and solar absorption.

Mr Wood raised concerns regarding the small size of housing lots and their potential impact on the quality of life for residents, noting that these homes are not just investments but places where people will live, raise children, and make significant financial commitments. Mr Wood opined that the minimal space, particularly in the backyards, does not allow for families to have functional private outdoor space. A 1.5-meter rear setback limits outdoor space, particularly impacting families with young children.

Mr Wood noted that the design of these subdivisions does not allow for proper air circulation, despite claims in the planning applications about breezes being considered. Mr Wood emphasised that the Planning Commission should be more involved in addressing these planning issues, as the current approach is not in the best interests of future residents. Mr Wood noted the comment made by a member of the Authority regarding lower socioeconomic families might be forced to buy smaller lots due to affordability and this limits their ability to enjoy outdoor spaces and other amenities.

Mr Wood also raised further concerns regarding narrow roads widths and the potential issues they may cause, including limited parking and access for emergency services, garbage collection, and general traffic. Mr Wood specifically referenced the challenges faced by fire trucks and rubbish

## Darwin DCA Meeting No 431 – Friday 18 October 2024

collection services in navigating these narrow roads, particularly when cars are parked on either side.

Mr Wood expressed that narrow streets were seen as a detriment to the community, as they reduce the available space for landscaping and shade, which are crucial for liveability, especially in areas with limited backyard space. Mr Wood suggested reconsidering the road designs to accommodate both parked cars and better landscaping, to preserve the aesthetic and functional value of the streetscape.

The Authority has taken all comments into account and carefully considered the concerns of the submitters raised in the written submission and also voiced at the hearing. The Authority notes that the lots sizes proposed in the subdivision comply with the minimum requirements in the NTPS 2020. The application includes a building setback for proposed lots to create a consistent streetscape and character in line with the developed stages of the Northcrest subdivision. The assessment of the building setback plan shows that the lot sizes proposed in the subdivision are sufficient to accommodate future dwellings, vehicle access, parking and ancillary buildings. The proposed building envelope plan demonstrates that it can accommodate a compliant dwelling single that has regard for vehicle access, on-site parking and street infrastructure.

The Authority notes that the application is for the purpose of subdivision, therefore, a review of the private open space in future dwellings on proposed lots is not considered as part of this application. As discussed above, the lot sizes are of a shape and large enough to accommodate a dwelling design that can comply with the applicable performance criteria stipulated by the Planning Scheme. The Authority notes that in the LMR zone (the future zoning of the proposed lots), a dwelling-single is permitted without consent as long as it meets the performance criteria of a dwelling-single in the respective zone. Any deviation from these criteria would require consent (in the form of a development application) and would be evaluated based on whether the non-compliance meets the performance standards outlined in the relevant clause.

Regarding concerns raised in relation to road widths in the proposed subdivision, the Authority notes that it had previously provided advice, on another subdivision application in Northcrest, that the Planning Scheme and relevant Area Plan do not provide any guidance for road widths in residential subdivisions, Such matters are generally subject to the requirements of the relevant service authority (in this instance, the Land Development Unit of the Department of Lands, Planning and Environment) and provided the development proceeds in accordance with the conditions included on the permit, the proposed subdivision will provide road widths in accordance with the relevant requirements and overall satisfy the purpose of the Area Plan.

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

## Darwin DCA Meeting No 431 – Friday 18 October 2024

the development on the land and on other land, the physical characteristics of which may be affected by the development.

The site is identified in BFPPAP for the purpose of accommodating 10 – 25 dwellings per hectare in the 'Yellow Band', 16 – 40 dwellings per hectare in the 'Orange Band' and 25 – 60 dwellings in the 'Blue Band'. Subsequently, the subdivision of land into 909 residential lots, each capable of accommodating a single dwelling (detached) and 24 open space lots, 1 community purpose lot and 1 tourist commercial lot, is considered an appropriate form of development for the site.

The capability of the land to support the subdivision has been addressed previously under the BFPPAP discussion (Reasons 1 and 2) and Clause 6.2.3 (Site Characteristics in Residential Subdivision). The historical use of the site during WWII and for agriculture has led to a number of contaminated areas. The proposed subdivision area includes pockets that require further assessment, and a condition to obtain a Statement of Audit prior to the commencement of site works in each stage is included on the approval.

6. Pursuant to section 51(1)(k) of the *Planning Act 1999*, the consent authority must take into consideration the public facilities or public open space available in the area in which the land is situated and the requirement, if any, for the facilities, or land suitable for public recreation, to be provided by the developer.

Clause 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR) of the NTPS 2020 requires that at least 10% of a residential subdivision area be allocated as public open space. The proposed subdivision exceeds this requirement, providing 17% of the area as public open space, with all dwellings located within 400 meters of these spaces. The subdivision includes five neighbourhood parks, ranging in size from 6,143m<sup>2</sup> to 2.3 hectares. These parks will serve as precinct parks, featuring lawn areas and small shaded play spaces. Additionally, the subdivision incorporates dual-purpose open spaces, notably detention basins that also function as recreational areas. These basins are seamlessly integrated into the landscape, ensuring they do not hinder the usability of the open spaces, which can be enjoyed for passive recreation on flat, grassy surfaces. The design also includes a network of linear parks and pathways, at least 10 meters wide, that provide crucial pedestrian and cycling connections throughout the subdivision. These pathways enhance neighbourhood connectivity by linking parks and open spaces, facilitating easy movement for residents on foot or by bike.

Most of the open spaces are bordered by roads, with a few directly adjacent to residential lot boundaries. In these locations, the open spaces remain visible from the street frontage. The landscaping plans included with the application include concepts for the design of public areas and open spaces including landscaping and shelters for park users. Regarding providing a quality public realm that is responsive to local conditions, the plans show playgrounds, picnic facilities, shelters, fitness stations, extensive shared paths and trees that are top-end native species.

In regard to public facilities, the subdivision proposes to provide a Community Purpose lot (for school development) as identified in the BFPPAP.

7. 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 site is not under any local authority. The LDU is responsible for managing the roads, parks, and stormwater infrastructure.

The LDU has requested that any Permit include conditions relating to submission of a revised Masterplan for LDU approval, including updated Street and Pathways Masterplan, Traffic Impact Assessment, Street and Public Lighting Masterplan, and an assessment for acoustic barriers for lots near major roads like Tiger Brennan Drive. A staging plan for the development phases must also be provided. LDU requested general conditions include following the Berrimah Farm Subdivision Guidelines, ensuring lot access, and completing Road Safety Audits. Conditions are included on the permit to ensure the proponent meets the requirements of the LDU.

A representative from the Land Development Unit attended the hearing, spoke about the road widths, traffic and hierarchy in the proposed subdivision and responded to a few concerns raised by the submitter (Mr Gerry Wood) regarding narrow driveways. LDU advised the Authority that the proposed subdivision complies with the road widths, traffic and other parameters provided in the BFSDG. Furthermore, in some cases it surpasses, the minimum requirements, particularly for primary collector roads, which may incorporate additional features to enhance functionality.

In terms of the extended driveways (10m wide), LDU advises it has consulted with the applicant's design engineers to address the concerns related to emergency vehicle access and to ensure proper connectivity for pedestrians and cyclists throughout the development. The extended driveways were also analysed for compliance with access regulations, particularly concerning maximum single-column access to ensure smooth and efficient traffic flow. The teams have evaluated various control measures for these driveways, which can be addressed through recommended conditions to ensure these driveways align with the necessary restrictions and design standards and promote safety and ease of movement within the development.

In response to the concerns raised by Mr Wood regarding insufficient road widths to accommodate on-street parking, LDU advises that the internal roads are not designed to accommodate on-street parking. While acknowledging it is an issue, it needs to be dealt by the relevant road agency enforcement.

## Darwin DCA Meeting No 431 – Friday 18 October 2024

All matters raised by the other service authorities have been addressed through the inclusion of appropriate conditions and/or notations on the development permit. This has included consideration of traffic management, erosion and sediment control, service infrastructure requirements, site contamination, retaining walls, heritage management, Authority Certificate from AAPA, etc.

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 overall Berrimah Farm 'Northcrest' residential development is currently being developed, and the amenity of the area is being established. The BFPPAP, zoning provisions and the application all seek to promote the best amenity outcomes for the future residents of the suburb in terms of land uses, densities, open space and road layout.

The proposal generally accords with the layout depicted within the BFPPAP and is considered unlikely to adversely impact the area or alter community expectations for the site. Provided matters raised related to noise attenuation, subdivision masterplans, earthworks and mosquito breeding are addressed (as required under Condition Precedents), the proposed subdivision can achieve appropriate levels of residential amenity.

9. Pursuant to section 51(1)(r) of the *Planning Act 1999*, the consent authority must take into consideration any potential impact on natural, social, cultural or heritage values, including, for example, the heritage significance of a heritage place or object under the *Heritage Act 2011*.

A note is included on the approval to obtain an AAPA Certificate for the site. The subdivision plan identifies the retention of the WWII Heritage Site, identified on the BFPPAP, in the open space lot (proposed lot 1011, area - 1.10ha) to be developed in Stage 9B of the proposed subdivision. The landscape plan identifies this to be developed as a 'Heritage Park' (refer to dwg. 03.6 - Heritage Slab Precinct Park) in Landscape Design. Comments received from the Heritage Division require an updated Heritage Management Plan for the subdivision to continue demonstrating the management of cultural heritage in accordance with best practice guidelines, which is conditioned on the approval.

10. Pursuant to section 51(1)(t) of the *Planning Act 1999*, the consent authority must take into consideration any other matters it thinks fit.

The application seeks approval for an extended period of the permit for a period of 10 years.

The *NT Planning Act 1999* defines 'base permit of the permit' as: *in relation to a development permit or an exceptional development permit, means the period commencing on the date of consent and ending on:*

- a) *the date specified in the permit as the date on which the permit will lapse;*  
or

## Darwin DCA Meeting No 431 – Friday 18 October 2024

- b) *if no date is specified in the permit as the date on which the permit will lapse – the date 2 years after the relevant date of consent.*

The Authority notes that it is a standard practice for applications to automatically have a base permit of two years. However, in this instance, an extended base period is considered reasonable and practical due to the scale and complexity of the proposed subdivision.

Mr Rosse told the Authority that the engineering report confirms that the proposed development, staged over approximately 7-10 years, can be adequately serviced by all essential infrastructure (roads, water, sewer, stormwater, power, and telecommunications) through the installation of new infrastructure and connection to existing infrastructure. Mr Rosse further added that 'Recommendation 12' of the 'Bringing Land To Market' also suggests extending the validity period of developments where appropriate and justified. In this case, considering the expected timeline of approximately 10 years to complete this subdivision, a longer validity period is both highly relevant and consistent with that recommendation.

The authority notes that one of the key criteria considered in determining an Extension of Time permit application is whether the original timeframe was reasonable. In this case, given the complexity of the application, it is clear that a 2-year delivery period is unrealistic. Considering the nature of this particular subdivision, an extension with a longer base period than what is typically granted seems entirely justified.

The authority further notes that under Section 55 of the *Planning Act 1999* - *consent authority may impose on a development the conditions it thinks fit and specifies in the development permit, including a provision for the permit to lapse on a specified date.*

Considering the nature of the development that requires longer construction time to complete development, the Authority supported the longer base period for the development and included a condition specifying the works to be commenced within two of the date of the permit and finish within 10 years of the date of the permit.

It is noted that Section 57(1) allows-

*The owner of land to which a development permit relates, or a person authorised by the owner, may at any time before the permit lapses, apply to the consent authority for a variation of a condition of the permit.*

**Darwin DCA Meeting No 431 – Friday 18 October 2024**

This implies that if works are not completed within 10 years from the date of issue of the approval, the landowner can lodge a variation application to seek an extension to the permit expiry date condition in the approval.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:** Development Permit and Notice of Consent

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

**SUZANNE PHILIP**

Chair

31 October 2024