



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING NO. 435 – MONDAY 9 DECEMBER 2024

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

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

APOLOGIES: None

LEAVE OF ABSENCE: None

OFFICERS PRESENT: Margaret Macintyre (Secretary) and Madison Harvey (Development Assessment Services) and Monica Pham (Lands Planning)

COUNCIL REPRESENTATIVE: Apology

Meeting opened at 10.45 am and closed at 11.45 am

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

ITEM 1
PA2023/0327 **CONCURRENT APPLICATION REZONE FROM ZONE FD (FUTURE DEVELOPMENT) TO ZONE LR (LOW DENSITY RESIDENTIAL) AND ZONE LMR (LOW-MEDIUM DENSITY RESIDENTIAL) AND SUBDIVISION TO CREATE 18 LOTS**
LOT 5988 (57) BAYVIEW BOULEVARD, & LOT 7433, BAYVIEW, TOWN OF DARWIN

APPLICANT Earl James & Associates

Applicant Kevin Dodd (Earl James and Associates), Simon Byrne (Byrne Consultants – Civil Engineers) and Ray Hall (EcOz Environmental Consultants) attended.

Submitter Ilias Nicolakis attended.

RESOLVED
93/24

That, pursuant to section 30P(3) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Part Lot 5988 and Part Lot 7433, Town of Darwin for the purpose of subdivision to create 18 lots 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 further information on how the Authority has power to determine the subdivision application as greenfield areas under Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR) of the Northern Territory Planning Scheme 2020 (NTPS 2020).
- 2) Provide an amended statement of effect which identifies and justifies the proposed non-compliance with sub-clause 7 of Clause 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR) of the NTPS 2020
- 3) Any amendments to the application that arise as a result of the above information request.

REASONS FOR THE DECISION

1. Pursuant to sections 30P(2)(a) and (b) of the *Planning Act 1999*, the consent authority must take into account any planning scheme that applies to the land to which the application relates and the amendment proposal contained within the application.

The NT Planning Scheme 2020 applies to the land and subdivision to create 18 lots requires consent under Clause 1.8 (When development consent is required). It is identified as Impact Assessable under Clause 1.8(1)(c)(ii), therefore the strategic framework (Part 2 of the Scheme, including Darwin Regional Land Use Plan 2015 and Darwin Inner Suburbs Area Plan 2016), overlay Clauses 3.4 (CR - Coastal Reclamation) and 3.7 (LSSS - Land Subject to Storm Surge) zone purpose and outcomes of Clauses 4.2 (Zone LR – Low Density Residential) and Clause 4.3 (Zone LMR – Low-Medium Density

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Residential) and Clauses 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR), 6.2.2 (Lots Less Than 600m² for Dwellings-Single), 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.

The Authority notes the assessment of Development Assessment Services (DAS) which found that the proposed development complies with the relevant requirements of the NTPS 2020. However, the Authority queried if it has the power to consider the subdivision in its current form as it does not have discretion under Clause 6.2.1 to consent to lots in Zone LR with a minimum lot size of less than 760m² (800m² – 5% of 800m²), unless such lots are appropriately identified in Table A to the Clause. The Authority requests that additional information be provided to demonstrate compliance with Clauses 6.2.1.

In regard to Clause 6.2.1, the Authority notes that the subdivision component of the application is for a subdivision to create 18 lots. The subdivision proposal is split into three areas, area A, area B and area C.

Area A includes 12 lots ranging in size from 454m² to 715m² and will be in zone LR (Low Density Residential). Area B includes 2 lots measuring 399m² and 392m² and is zoned LMR (Low-Medium Density Residential). Area C include 4 lots, where the 2 lots to the north will be in zone LR and include lot sizes of 1429m² and 670m². The two lots to the south will be in zone LMR and include lot sizes of 1812m² and 597m².

Sub-clause 5 of Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR) specifies the minimum lot size as:

Zone LR in greenfield areas identified for compact urban growth in the strategic framework is an average of 600m² and no smaller than 450m²

Zone LR other than greenfield areas identified for compact urban growth in the strategic framework is 800m²

The application proposes lot sizes in line with the Zone LR in greenfield areas requirements.

The DAS report provides background on how the site can be identified as a greenfield area. The broader Bayview Marina Estate was developed prior to the introduction of the Darwin Regional Land Use Plan 2015 (DRLUP) in the Planning Scheme and comprises a range of smaller lot sizes.

The zone LR lots adjoining proposed area A (Lots 7374 to 7499) have lots sizes ranging from 524m² (Lot 7378) to 732m² (Lot 7375), where the majority of lots are 600m² or less. This excludes Lot 7486 with a lot size of 887m² and Lot 7499 is 1970m² as these 2 lots are zoned LMR. Adjoining proposed lots 1 and 2 of part area C, the lots sizes are 602m² to 619m².

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The DAS report notes the high level mapping in the DRLUP does not recognise the nuances in established areas between those smaller sites that have been built upon and those that remain undeveloped.

While there is no clear definition of greenfield in the DRLUP or DISAP, there is a definition of greenfield in the Compact Urban Growth Policy 2015 which *is the creation of new planned suburbs and communities on previously undeveloped land.*

Historic imagery confirms that prior the development of the Bayview Marina Estate, the land was undeveloped and is therefore appropriately considered as greenfield.

This application applies to the last portion of land within the original estate lease area suitable for residential development. The application also seeks to match the existing zoning along proposed area A and part of area C where the existing zoning pattern is LR.

The Authority notes the assessment in the DAS report identifies the subdivision proposal complies with the minimum lot size requirements for Zone LR in greenfield areas of the NTPS 2020.

The Authority, notes the wording of Table A to Clause 6.2.1: Lot Size and Configuration in Residential Subdivisions specifies the *minimum lot size for Zone LR in greenfield areas identified for compact urban growth in the strategic framework.*

The Authority considers the site is not explicitly identified as a greenfield area identified for compact urban growth in the strategic framework within the DRLUP or DISAP and therefore cannot conclude that the site can be considered within the Zone LR greenfield areas minimum lot size.

Furthermore, the Authority noted administration sub-clause 1 of Clause 6.2.1 states, *the consent authority must not consent to a subdivision that reduces a lot size by an area greater than 5% of the minimum specified in Table A to this clause...in Zone LR.* Therefore, in its current form the Authority does not have discretion under Clause 6.2.1 to consent to lots in Zone LR with a minimum lot size of less than 760m² (800m² - 5% of 800m²). For these reasons, the Authority requests the applicant provide further information on how the Authority has power to determine the subdivision application as greenfield areas identified for compact urban growth in the strategic framework. under Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR) of the Northern Territory Planning Scheme 2020 (NTPS 2020).

2. Pursuant to section 30P(k) of the Planning Act 1999, the consent authority must take into account the public facilities or public open space available in the area in which the land is situated and any requirement for the facilities, or land suitable for public recreation, to be provided by the applicant.

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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 Authority notes that the application has not identified or justified the proposed non-compliance with sub-clause 7 of Clause 6.2.4.

Mr Kevin Dodd advised that no additional public open space is proposed as part of the application, as there is existing open space in Bayview. Furthermore, the provision of additional open space would not benefit the adjoining properties. The Authority requests that the applicant justify the non-compliance under sub-clause 7 of Clause 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR) of the NTPS 2020.

3. At the hearing, Mr Ilias Nicolakis spoke to his written submission. Mr Nicolakis raised concerns regarding the proposed relocation of the seawall and if there will be any impacts on the existing properties.

Mr Kevin Dodd explained that the seawall will not extend past the Crown Lease. It is also noted that the Authority asked the applicant for clarification regarding access between area A and area C for maintenance of the seawall and the City of Darwin comments. Mr Simon Bryne of Byrne Consultants advised that the subdivision was re-designed in consultation with the City of Darwin to ensure maintenance access for the seawall is provided.

Mr Nicolakis raised concerns regarding the proposed building envelopes. The Authority advised the building envelopes are indicative and only to show how the lots can meet the subdivision development requirements. If future developments do not comply with the minimum setbacks required under the NTPS 2020 a development permit will be required.

Mr Nicolakis noted that the application states no mature mangroves will be removed, however the mangroves have been there a long time.

Mr Nicolakis also noted his concern that a 2 storey property can be built on the proposed lots and that this may result in overlooking of his property and impact on property values. The Authority advised that impacts on property values is not a planning consideration and cannot form part of their decision making.

In addition, Mr Nicolakis advised that he is concerned about the traffic impacts on O'Ferrals Road and also questioned if the development is viable.

Mr Dodd advised the traffic impact assessment has been reviewed and commented on by the City of Darwin who have carriage of all transport related matters.

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The Authority noted the viability of a development is not a planning consideration and cannot form part of their decision making.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Deferral

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

SUZANNE PHILIP
Chair

16 December 2024