



DEVELOPMENT CONSENT AUTHORITY

LITCHFIELD DIVISION

MINUTES

MEETING No. 234 – FRIDAY 10 MAY 2019

**HOWARD HALL
325 WHITEWOOD ROAD
HOWARD SPRINGS**

MEMBERS PRESENT: Suzanne Philip (Chair), Adam Twomey, Wendy Smith and Christine Simpson

APOLOGIES: Keith Aitken

OFFICERS PRESENT: Margaret Macintyre (Secretary), Alana Mackay, Fiona Ray and Ben Wollinski (Development Assessment Services)

COUNCIL REPRESENTATIVE: Edward Li

Meeting opened at 10.00 am and closed at 11.30 am

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

ITEM 1 **SHED ADDITION TO AN EXISTING SINGLE DWELLING WITH A REDUCED**
PA2019/0096 **SIDE SETBACK**
SECTION 5915 (46) GOY ROAD, HUNDRED OF BAGOT
APPLICANT **ROGER HERSEY**

Mr Roger Hersey (landowner) attended.

RESOLVED That, pursuant to section 53(a) of the *Planning Act 1999*, the Development
62/19 Consent Authority consent to the application to develop Section 5915 (46) Goy
Road, Hundred of Bagot for the purpose of a shed addition with a reduced side
setback, subject to the following conditions:

CONDITION PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the Litchfield Council's storm water drainage system shall be submitted to and approved by Litchfield Council, to the satisfaction of the consent authority. The plan shall include details of site levels and Council's stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council's system or an alternate approved connection.

GENERAL CONDITIONS

2. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit to construct an open sided verandah addition to the existing shed.
3. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to Litchfield Council, to the satisfaction of the consent authority.
4. 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.
5. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply and electricity facilities to the development shown on the endorsed plans in accordance with the authorities' requirements and relevant legislation at the time.

NOTES:

1. The Northern Territory Environment Protection Authority advises that construction work should be conducted in accordance with the Authority's Noise Guidelines for Development Sites in the Northern Territory. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and

Public Holidays. For construction activities outside these hours refer to the guidelines for further information.

2. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@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.

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 Northern Territory Planning Scheme applies to Section 5915 (46) Goy Road, Hundred of Bagot, which measures 1.07ha. Table C to Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures) requires a setback of 10m from all property boundaries in Zone RR where a property exceeds 1ha. The application is for the addition of a verandah to an existing compliant shed, with a reduced setback of 5m from the southern side boundary.

While the setback varies from that required under the Scheme, the siting of the shed was restricted due to the location of the dwelling and slope of the land. Also relevant in the siting of the addition was the location of the side roller door on the southern side of the shed. These site specific and building constraints warrant special circumstances.

In all other respects the development is in keeping with neighbouring properties and vegetation planted along the fenceline screens the shed from the adjacent neighbour. The development generally responds to the intent of Clause 7.3 to reduce visual impact and be in keeping with the streetscape.

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

As the development is limited to the addition of a verandah to an existing compliant shed the use accords with the capability of the site.

3. Pursuant to section 51(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.

Service authority requirements with regard to infrastructure provision have been included as a condition on the development permit.

4. 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.

Communication from the adjoining land owner has confirmed there is no objection to the reduced setback distance and existing landscaping along the boundary reduces the visibility of the structure from adjoining land.

ACTION: Notice of Consent and Development Permit

**ITEM 2
PA2015/0768
APPLICANT**

**EXTENSION OF TIME FOR TWO YEARS
SECTION 1603 AND 1607 (185) CYRUS ROAD, HUNDRED OF AYERS
MASTERPLAN NT**

Mr Joe Sheridan (Masterplan NT) attended.

**RESOLVED
63/19**

Pursuant to section 59(3)(a) of the *Planning Act 1999*, the Development Consent Authority consent to the application to extend the period of development permit DP16/0391 by 14 months.

Section 59(4) of the *Planning Act 1999* requires the Authority to provide reasons should it make a determination other than in accordance with the application.

REASONS FOR THE DECISION

1. The application was lodged 17 months prior to development permit DP16/0391 lapsing. The Authority considered the application could have been made prematurely and it sought clarification on this matter at the meeting.

The applicant stated that the reason for the application is a result of the current downturn in the economy and uncertainty in respect of the local property market. The developer is unwilling to commit to progressing the construction of the infrastructure to support the subdivision due to market conditions. The applicant anticipates that the economic downturn will continue to impact the ability to finalise the subdivision before the permit lapses and the applicant wishes to complete the subdivision when market conditions are more favourable. The application was made for increased certainty to allow adequate time and planning to complete the subdivision in accordance with DP16/0391.

The applicant sought an extension of two years as it is a standard period requested under section 59 of the *Planning Act 1999*. The applicant clarified at the meeting that it required at least two Dry seasons to allow for construction to occur and the subdivision works to progress. The Authority agreed to the applicant's request and considered an extension to the development permit DP16/0391 by a period of 14 months to be appropriate. Therefore, DP16/0391 will expire on 23 October 2021.

2. The Authority and the applicant were provided with an addendum to the report prepared by Development Assessment Services the day before the hearing. The addendum provided a letter from the Department of Environment and Natural Resources (DENR), dated 9 May 2019, which reiterated the comment it had provided previously during consultation on the original application. The comment identified that the Berry Springs Groundwater System is overall acted among existing uses and that the South Alligator, Berry Creek Groundwater System, has limited water availability. The Authority considered that the DENR did not provide any new information to inform its consideration of application before it – that being an application to extend the period of development permit.
3. In making its decision the Authority also considered the following:
 - (a) The application before the Authority was made under section 59 *Planning Act 1999* for an extension of time of an approved permit and, as such, was not a reconsideration of the original application for such permit. Section 59 provides that the Authority may extend or reject an application to extend and, while the Statute does not list considerations to be taken into account by the Authority, such a discretion is not unfettered. The Authority must take into account the nature and content of the application and the statutory framework through which it is made so as to ensure that its statutory power is being used for a proper purpose. All irrelevant considerations are disregarded and all relevant matters are taken into account.
 - (b) In considering the exercise of its discretion under section 59 of the *Planning Act 1999*, the Authority noted that an applicant must provide good reasons supporting an extension of time as such applications will not be granted “as of right”. However, it also noted a commonly accepted reason for granting of extensions of time throughout all Divisions of the Development Consent Authority in recent years has been the prevailing economic climate.
 - (c) Interstate decisions such as *Kantor v Murrindindi Shire Council (1997) 18 AATR 285* indicate that factors to be considered in relation to an application for extension of time include –
 - i) whether there has been a change of planning policy;
 - ii) whether the landowner is seeking to “warehouse” the permit;
 - iii) intervening circumstances as bearing upon grant or refusal;
 - iv) the total elapse of time;
 - v) whether the time limit originally imposed was adequate;
 - vi) the economic burden imposed on the landowner by the permit; and
 - vii) the probability of a permit issuing should a fresh application be made.

However, it is also clear from such decisions (see for example *AMV Homes Pty Ltd v Moreland City Council* [2015] VCAT 1699 and *Zogoolas v Stonnington City Council* VCAT, March 2019) that those factors should be considered neither mandatory nor exhaustive. Other important factors may include matters of natural justice and equity. The fact that an approved development is now prohibited does not make refusal of an extension of time mandatory but it is a factor weighing against such extension. Importantly, each case needs to be decided on its own facts and circumstances, including whether and how the development in question would undermine or offend the changed policy or planning control regime.

4. Applying those principles to the facts and circumstances of this Application, the Authority considered:
 - (a) There have been no changes to the *Planning Act 1999*, *Water Act 1992* or the Northern Territory Planning Scheme, since DP16/0391 was granted. The statutory framework, for all intents and purposes, remains the same as that under which the original application was considered and the permit, on which the application relies, was granted.
 - (b) Development permit DP16/0391 was granted following all the usual steps and procedures of the statutory framework, including a public hearing and consideration of all reports then provided, including that of the DENR. It was approved as a compliant subdivision within all the terms of the existing statutory framework save and except for conditions relating to the control of the use of groundwater formulated in consultation with the DENR. What has changed is the understanding of section 14 rights under the *Water Act 1992* and the interplay with the *Planning Act 1999* as confirmed in the Northern Territory Civil and Administrative Tribunal decision of *Jagdpanzer Pty Ltd & Ors. v Development Consent Authority*, handed down on 12 March 2019. If this was a fresh application for a development permit, it is highly unlikely that it would be granted on the basis of that new understanding of section 14. However, this is not a fresh application for a permit – it is an application for an extension of time and must be considered as such.
 - (c) Lichfield Council provided a letter in support of the application and a representative of the Council, Mr Edward Li, attended the hearing and confirmed the Council's support.
 - (d) The applicant submitted that the developer has made a substantial financial commitment of many hundreds of thousands of dollars to completing the subdivision, primarily to satisfy the condition precedents on DP16/0391, and, further, that the application to extend the base period was not intended to 'warehouse' the permit.
 - (e) The application was assessed on its merits and the applicant has a right to equity and natural justice. The developer has for all intents and purposes acted in good faith in reliance on the permit granted. The fact that the interpretation of the statutory framework by the relevant Authorities has changed is in no way a reflection on the developer. Given the large financial burden on a developer for a subdivision of this size, an application for an extension of time is not unusual and cogent reasons for the extension have been provided. The total lapse of time,

in this case, is relatively small, the original permit having been granted in August 2016 and is in keeping with the length of time taken for many subdivisions.

- (f) The Authority agreed that, should a fresh application be made, it would be unlikely to be supported due to the interplay between the *Planning Act 1999* and section 14 of the *Water Act 1992*. However, the Authority considered this to be only a factor in making its decision. The Authority further noted, however, that given the difficulties around section 14 and that fact that the applicant is now well aware of those problems, any further applications for an extension are unlikely to be approved by a future Authority in the absence of substantive changes to the facts and circumstances surrounding this application.

ACTION: Extension of Time Permit

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

SUZANNE PHILIP
Chair

15 May 2019