



# DEVELOPMENT CONSENT AUTHORITY

## DARWIN DIVISION

### MINUTES

**MEETING NO. 425 – FRIDAY 19 JULY 2024**

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

**MEMBERS PRESENT:** Suzanne Philip (Chair), Marion Guppy, Mick Palmer and Jimmy Bouhoris

**APOLOGIES:** Peter Pangquee

**LEAVE OF ABSENCE:** Mark Blackburn

**OFFICERS PRESENT:** Margaret Macintyre (Secretary) and Amit Magotra (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Apology

Meeting opened at 10.15 am and closed at 11.50 am

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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**  
**PA2024/0075**

**SUBDIVISION TO CREATE 55 LOTS AND BUILDING SETBACK PLAN (NORTHCREST STAGE 4C)**

**SECTION 7349, MAKAGON ROAD, BERRIMAH, HUNDRED OF BAGOT**

**APPLICANT**

Cunnington Rosse Town Planning and Consulting

Applicant: Gerard Rosse (Cunnington Rosse Town Planning and Consulting) tabled a masterplan for the subdivision that shows details on lot yield and density in all stages.

Submitter in attendance: Gerry Wood via phone.

Submitter who sent their apologies: PPlan: the Planning Action Network.

**RESOLVED**  
**46/24**

That, the Development Consent Authority vary the requirements of Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zone LR, LMR, MR and HR), and Clause 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Section 7349 Hundred of Bagot for the purpose of subdivision to create 55 lots (Northcrest Stage 4C), subject to the following conditions:

**CONDITIONS PRECEDENT**

1. Prior to the endorsement of plans and prior to the commencement (including site preparation), a revised Subdivision Masterplan is to be prepared and submitted to and approved by Land Development Unit of the Department of Infrastructure, Planning, and Logistics, to the satisfaction of the consent authority. The Masterplan is to include:
  - (a) A Traffic Impact Assessment; and
  - (b) A Stormwater Management Plan.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the applicant is to provide written confirmation from the Power Networks division of the Power and Water Corporation that anticipated substation loads for the subdivision (Stage 3D) comply with the current approved High Voltage Master Plan for Northcrest subdivision, to the satisfaction of the consent authority.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation) a revised water and sewer infrastructure master plan and design report is to be prepared and submitted to Power and Water Corporation (Water Services), to the satisfaction of the consent authority.
4. Prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the local stormwater drainage system shall be submitted to and approved by the Land

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Development Unit of the Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.

5. Prior to the commencement of works, a Dilapidation Report must be completed on existing Public Infrastructure that may be affected by the Development Works in accordance with the NT Subdivision Development Guidelines, and must be submitted to and approved by the Land Development Unit of the Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority
6. Prior to the commencement of works, a Traffic Management Plan in accordance with the Berrimah Farm Subdivision Guidelines, and must be submitted to and approved by the Land Development Unit of the Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
7. Prior to the commencement of works (including site preparation), the applicant is to prepare a Site Construction Management Plan (SCMP) to the requirements of the Land Development Unit, Department of Infrastructure, Planning and Logistics. The SCMP should address the impact to public spaces and include a waste management plan for disposal of waste, traffic control for affected roads, haulage routes, storm water drainage & sediment control, use of land within the Berrimah Farm Planning Principles and Area Plan area, and how this land will be managed during the construction phase.
8. Prior to the commencement of works, a Type 2 Erosion and Sediment Control Plan (ESCP) must be developed in accordance with the Department of Environment, Parks and Water Security ESCP Standard Requirements 2019 available at <https://nt.gov.au/environment/soil-land-vegetation>. The ESCP must be developed and/or certified by a Certified Professional in Erosion and Sediment Control (CPESC) to the satisfaction of the consent authority. The ESCP should 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).

### GENERAL CONDITIONS

9. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
10. All proposed and affected roads, streetlights, stormwater drainage, pedestrian corridors, access crossover/driveways and streetscaping must be designed and constructed in accordance with the Berrimah Farm Subdivision Guidelines to the technical requirements of the Land Development Unit of the Department of Infrastructure, Planning, and Logistics and to the satisfaction of the consent authority. All approved works constructed are at the developer's expense.

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11. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, electricity and telecommunication networks 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.
12. 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.
13. 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.
14. All proposed roads to be created on the plan of subdivision submitted for approval by the Surveyor General must be dedicated to the relevant Northern Territory or local government authority.
15. 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/or 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).
16. 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 completion of works, to the satisfaction of the consent authority. For further information refer to Note 4 below. At completion of works, clearance should be sought from the Department of Environment, Parks and Water Security regarding satisfactory implementation of permanent erosion and sediment control measures and site stabilisation. To arrange a clearance site inspection, email the Land Development Coordination Branch at: [DevelopmentAssessment.DENR@nt.gov.au](mailto:DevelopmentAssessment.DENR@nt.gov.au)
17. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
18. Prior to the issue of Part 5 clearance, the developer is to provide written confirmation to Land Development Unit of the Department of Infrastructure, Planning, and Logistics (in the form of plans or drawings) demonstrating that all lots less than 600m<sup>2</sup> for single dwellings allow for

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future vehicle access via a single driveway unrestricted by street infrastructure (including all power, water, sewer or stormwater infrastructure), which demonstrates a 3.5 metre driveway can be located on each lot in accordance with Clause 5.2.4.5 of the NT Planning Scheme 2020.

19. Prior to the issue of Part 5 clearance, a Stage 3 and 4 Road Safety Audit is to be prepared by a suitably qualified traffic engineer in accordance with the Austroads Document Guide to Traffic Management Part 12: Traffic Impacts of Developments shall be submitted to and approved by the Land Development Unit of the Department of Infrastructure, Planning, and Logistics, to the satisfaction of the consent authority.

### 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 ([powerdevelopment@powerwater.com.au](mailto:powerdevelopment@powerwater.com.au)) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. The Power and Water Corporation advises that the Water and Sewer Services Development Section ([waterdevelopment@powerwater.com.au](mailto:waterdevelopment@powerwater.com.au)) and Power Network Engineering Section ([powerdevelopment@powerwater.com.au](mailto:powerdevelopment@powerwater.com.au)) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
3. All developers, including owner-builders, are required to comply with Commonwealth telecommunications requirements. Under Commonwealth law, developers are generally required to provide fibre-ready pit and pipe in their developments at their expense. Developers may be able to access an exemption from these arrangements in some circumstances. For more information visit [www.infrastructure.gov.au/tind](http://www.infrastructure.gov.au/tind)
4. If you choose nbn to service your development, you will need to enter into a development agreement with nbn. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered nbn will be in contact to discuss the specific requirements for the development. Nbn requires you to apply at least 3 months before any civil works commence. All telecommunications infrastructure should be built to nbn guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/builders-designers.html>
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 Department of Environment, Parks and

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Water Security ESCP Standard Requirements 2019 and Land Management Factsheets available at <https://nt.gov.au/environment/soil-land-vegetation>. For further advice, contact the Land 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 an Authority Certificate to indemnify against prosecution under the Northern Territory *Aboriginal Sacred Sites Act 1989*. For advice on how to obtain a certificate please contact the Aboriginal Areas Protection Authority.
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 5333 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.
10. The development must comply with the technical standards of the Northern Territory Subdivision Development Guidelines for the construction of public infrastructure as part of subdivision works to the requirements of the relevant local and service authorities. Prior to any works commencing, it is encouraged that you engage early with the relevant authorities to confirm their requirements, and any variations that may be sought to the Subdivision Development Guidelines, to ensure the works are completed to the relevant authorities' requirements. The Northern Territory Subdivision Development Guidelines can be found at: <https://www.ntlis.nt.gov.au/sdg-online/>
11. 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

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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 NT Planning Scheme 2020 (NTPS 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 including the Berrimah Farms Planning Principles and Area Plan, Part 3: Clause 3.5 - Land in Proximity to Airports (LPA), Part 4 including zone purpose and outcomes of Clauses 4.27 – Zone FD (Future Development), Part 6 requirements Clauses 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR), 6.2.2 (Lots less than 600m<sup>2</sup> for Dwellings-Single), 6.2.3 (Site Characteristics for Subdivision in Zones LR, LMR, MR and HR), 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR) and Clause 6.5.1 (Subdivision in Zone FD) of the NTPS 2020 are applicable to the application and need to be considered.

The Authority notes the assessment of the Development Assessment Services (DAS), which concludes that the proposal complies with the Part 4 and Part 6 requirements except for Clauses 6.2.1 (Lot Size and Configuration 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). The Authority further notes the DAS assessment on Part 2: Berrimah Farms Planning Principles and Area Plan and Part 3: Clause 3.5 - Land in Proximity to Airports (LPA) and Part 4 - Clause 4.27 Future Development (Zone FD), which are discussed below.

#### Part 2 – Strategic Framework – Berrimah Farms Planning Principles and Area Plan

The application is for “Stage 4C” of the Berrimah Farm ‘Northcrest’ residential development developed in accordance with the Berrimah Farm Planning Principles and Area Plan (Area Plan). The Area Plan 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.

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The Area Plan shows the land is to be developed for residential purposes at a density of 25-60 dwellings per hectare which is intended to be met across the whole of the area shown with the same density band. Dwelling types for this density band are described as dwelling-single (terrace/villas), and dwellings-multiple to a maximum height of three storeys. The area of the subdivision is 3.67ha. With 55 residential lots to be developed accommodating 62 dwellings, the density achieved in the proposed subdivision is 16 dwellings/ha (25-60 dwellings per hectare required in the Area Plan). In support of the proposal, the applicant has provided a density assumption that considers the development of the entirety of the area within the 25-60 dwellings per hectare density band. The density assumption demonstrates that the required dwelling density will be achieved upon completion, and the proposed rezoning and subdivision will not impact the overall dwelling density identified under the Area Plan.

Mr Gerard Rosse (Cunnington Rosse Town Planning and Consulting) attended the hearing and spoke further about the application. Mr Rosse gave an overview of the proposed subdivision and tabled a masterplan for the Northcrest subdivision that shows details on lot yield and how the desired density required in the Area Plan would be achieved in future stages. Mr Rosse acknowledged that the proposed subdivision results in a density of less than 25-60 dwellings per hectare and that it would be achieved in future subdivisions. Mr Rosse explained that the area of the subdivision (existing and proposed) within the 25-60 dwellings per hectare density band is 35.35ha and upon completion of all stages in this band, it could potentially provide 760 dwellings, including 315 dwelling-single lots, 87 group lots with 2 to 3 dwellings per lot, medium-density lots for 80 units, and a site designated for a 'Retirement Village' which can provide 181 units. This will result in a density of 25.04 dwellings per hectare, as required by the Area Plan.

The Authority notes the abovementioned comments and information tabled at the hearing regarding density compliance as per the Area Plan. The Authority further notes that provided the future stages proceed in accordance with the information tabled by the applicant at the hearing, it will achieve the density required in the Area Plan.

### Part 3 – Overlays - Clause 3.5 Land in Proximity to Airports (LPA)

The purpose of LPA 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*
- d) retains the non-urban character of the land.*



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Overlay LPA applies to the site as it is within Zone FD and, based on the provisions of the overlay, it is partially 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, pursuant to sub-clause 1 of Clause 3.5.

The relevant requirements for Clause 3.5 LPA – Land in Proximity to Airports include;

3. In determining an application for the development of land the consent authority is to have regard to the 'Building Site Acceptability Based on ANEF Zones' (Table 2.1) in AS 2021 – 2000.
4. Lighting associated with development on land within flight approach paths is to ensure it does not prejudice the safe operation of an airport.
5. The use and development of land is not to be of a nature that attracts birds or bats to an extent that prejudices the safe operation of an airport.

The proposed development is for subdivision purposes without any proposed buildings; however, the resulting lots will allow for the construction of dwellings. While the application does not include the installation of lighting, street lighting will be necessary in the subdivision. The Authority notes that the Darwin International Airport (DIA) did not raise any concerns, and federal regulations, as well as other standards (such as AS 2021 – 2000), apply to the provision of external lighting within a flight path and building design. Furthermore, it is unlikely that the proposed subdivision will attract birds and bats.

The Authority further notes that the Berrimah Farm Planning Principles and Area Plan (BFAP) and Darwin Regional Land Use Plan (DRLUP) were prepared prior to the current 2043 alignment of the Australian Noise Exposure Forecast (ANEF), and at that time the 20-unit value contour line did not affect this part of the site. The Authority notes that the proposed subdivision is in Zone FD (Future Development), which will be normalised to Zone Low Medium Density after the completion of subdivision works and will not require assessment against this overlay.

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

*The purpose of Zone FD is to 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.*

The proposal identifies the future Zone of LMR (Low-Medium Residential). This is consistent with the direction provided by the BFAP within the Strategic Framework. The density requirements of Zone LMR do not meet those proposed within the BFAP. However, this does not compromise existing or planned or future development or infrastructure through its location and operation and the proposal will be connected to reticulated services. The requirements of Zone LMR are considered within Part 6.

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### Part 6 - Subdivision in Zones LR, LMR, MR and HR

The Development Assessment Services (DAS) report also concludes that the proposed subdivision generally complies with Part 6 requirements except for Clauses 6.2.1 (Lot Size and Configuration 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). The non-compliances are discussed below.

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

The proposal has been found not to be in accordance with Clauses 6.2.1 (Lot Size and Configuration 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).

### Clauses 6.2.1 (Lot Size and Configuration for Subdivision in Zones 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.*

*The requirements of this clause are:*

- (1) *Minimum lot size of 300m<sup>2</sup>;*
- (2) *Minimum building envelope requirements of 17m x 17m for a lot size of between 600m<sup>2</sup> and greater 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.*

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The DAS's assessment has found that the subdivision complies with many requirements of Clause 6.2.1, including the minimum lot size of 300m<sup>2</sup> in Zone LMR. No battle-axe lots have been provided, and all lots are proposed to be connected to reticulated services. Further, 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 450<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.

The DAS assessment has found that the proposal does not meet sub-clause 6 as proposed Lots 354, 355, 378, 379 and 399 are not configured to enable compliance with the minimum building envelope requirement of 17m x 17m (exclusive of any boundary setbacks or service authority easements) that applies to lots with an area of 600m<sup>2</sup> or greater.

*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.*

The Authority, taking into account the application material and DAS assessment, is satisfied that the variation to the minimum building envelope requirement of 17m x 17m for Lots 354, 355, 378, 379 and 399 will not frustrate the achievement of the purpose of Clause 6.2.1 and the zone purpose and outcomes of Zone LMR, which is to provide a range of low rise housing options that contribute to the streetscape and residential amenity. The Authority is also satisfied that the area of the lot is sufficient to accommodate a dwelling-single that has regard for vehicle access, onsite parking and street infrastructure. Furthermore, the building envelopes respond to the angled boundary of the lot due to road truncation.

The Authority considers that the building envelope plan does not depict the final location of the future dwellings and only represents that the lots can accommodate dwellings in a manner that has regard for vehicle access, onsite parking and street infrastructure. The Authority also notes that the design of the future dwellings can differ from the building envelope. Any non-compliance related to Part 5 of the NTPS 2020 will require separate planning approval, which further requires exhibition (public/ neighbour) as per the provisions of the Planning Act 1999, and it will be to the discretion of the Development Consent Authority to vary the requirements of Part 5 of the NTPS 2020.

In response to a question raised by the Authority at the hearing whether there is a capacity on the non-compliant lots for appropriate dwellings to

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be constructed, Mr Rosse responded that a suitable dwelling can still be constructed and will comply with the NTPS 2020 requirements. The setbacks selected in the building setback plan maintain amenity and streetscape and are consistent with the setbacks approved for other lots in the Northcrest subdivision.

### Clause 6.2.4 (Infrastructure and community facilities for subdivision in Zones LR, LMR, MR and HR)

The purpose of clause is to ensure that subdivision of land for residential purposes is appropriately integrated with infrastructure, community services and facilities. The Authority notes that the proposed subdivision is not within a 400m walking distance of an existing neighbourhood park, and it also does not allocate 10% of the subdivision area as public open space, as mandated by subclause 7(a) of Clause 6.2.4.

While this subdivision does not include dedicated public open space, it has access to other existing public open spaces already provided as part of the larger development.

At the hearing, Mr Rosse tabled a masterplan for the Northcrest subdivision, outlining the passive and active open spaces planned for future stages. Mr Rosse stressed that the Northcrest subdivision, upon completion of all stages, will offer 15.3% of open space, which exceeds the NTPS 2020 requirement.

The Authority queried how the arrangement would work and where the open space would be located relative to the subject lots. Mr. Rosse explained that the Berrimah Farm development guidelines mandate 15% open space throughout the entire area, which will consist of both passive and active open spaces. The open space masterplan for the Northcrest subdivision is developed on the basis that the dwellings are within 400m walking distance of a neighbourhood park.

The Authority also queried the intention for the lot between Lot 345 and Lot 347 shown in green. Mr Rosse responded that the site is intended for to be an open space link to provide north-south connectivity.

Administratively, the consent authority may consent to a subdivision that is not in accordance with sub-clauses 2-7, only if it is satisfied the subdivision is consistent with the purpose of this clause. The Authority considered that the proposal is consistent with the purpose of this clause through its alignment within the BFAP as listed within the Strategic Framework that identifies the location of future schools, commercial areas, public transport and public open space.

3. 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.

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Two public submissions were received, objecting to the proposal. The submissions were primarily concerned with the lot sizes proposed in the subdivision and road widths. The Authority notes that the DAS assessment has found that the lot sizes are of a shape and large enough to accommodate a dwelling design that complies with the applicable performance criteria stipulated by the NTPS 2020. Further, they also adhere to the density envisaged by the Berrimah Farm Planning Principles and Area Plan.

Mr Gerry Wood attended the hearing (via telephone) 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 raised that the proposal does not meet the Darwin Heat Mitigation Strategy. Mr Wood also expressed concerns about the orientation of houses for breeze penetration and solar absorption.

Mr Wood also spoke about his concern regarding the proposed road widths not being sufficient to accommodate rubbish trucks and emergency vehicles. He also posited that not enough space is provided for landscaping planting. Mr Wood requested an alternative design with a two-storey dwelling design, larger roads and increased lot sizes. Mr Wood stated the onus is on the Authority if they were to approve a subdivision layout with narrow road widths.

Mr Rosse (applicant) also responded to matters raised by Mr Wood at the hearing. Regarding density, Mr Rosse explained that the subdivision proposed is less dense than envisaged by the Area Plan. Furthermore, 70% of the lots proposed in the subdivision are between 450m<sup>2</sup> to 500m<sup>2</sup>, which is larger than what is required to meet the density requirements.

Mr Rosse further explained that the building setback plan sets out greater setbacks than what is required by the NTPS 2020. Mr Rosse stated that the application seeks to increase the setback requirements, requiring a 1.5m boundary setback rather than allowing a 0m setback. Mr Rosse noted the lots to the south have larger front setbacks.

Regarding road width, Mr Rosse responded that there is a road hierarchy that sets out the road width in the design guidelines for the area. The proposed roads, in this instance, comply with the requirements of the subdivision guidelines and design guidelines. Mr Rosse advised that the master plan for the subdivision includes a detailed road hierarchy plan.

The Authority has taken all comments into account and carefully considered the concerns of the submitters. The Authority also took into account the documents tabled at the hearing. In relation to the lot sizes proposed in the subdivision, the Authority noted that the lot sizes are of a shape and large enough to accommodate a dwelling design that complies with the applicable performance criteria stipulated by the NTPS 2020. Further, the Authority also consider that the proposed subdivision creates

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a diverse urban residential environment by providing a variety of lot sizes and housing types as required under Clause 14.1.4 (Berrimah Farm Planning Principles) of the Scheme.

In relation to road widths the Authority notes that the NTPS 2020 and relevant Area Plan do not provide any guidance for road widths in residential subdivisions as such standards are typically to the requirements of the relevant service authority and, provided the development proceeds in accordance with the conditions included on the permit, the proposed subdivision will provide adequate road widths in accordance with the relevant requirements, and overall is sufficient to satisfy the purpose of the Area Plan. The Authority notes that while there is currently no local council for the area, the Land Development Unit of the Department of Infrastructure, Planning and Logistics is responsible for roads and provides advice on whether the roads are suitable.

Regarding Mr Wood's comment that the Development Consent Authority has discretion over several matters, the Chair explained that the Authority's role is bound by the requirements in the NT Planning Scheme 2020 and Section 51 of the *Planning Act 1999*. The Authority noted that many of the concerns raised in Mr Wood's submissions are of a broader ambit than the present application for subdivision and such concerns can be submitted to the NT Planning Commission for consideration in developing future Area Plans and more generally.

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

The site is identified within the *Berrimah Farm Principles and Area Plan* (BFAP) for the purpose of accommodating between 25 and 60 dwellings per hectare, including in a single dwelling (detached) manner. Subsequently, the proposed subdivision of land into 55 Lots, each capable of accommodating at least one single dwelling (detached), is considered to align with the capacity of the land.

No other land capability issues have been identified. The subdivision area is not affected by either storm surge or riverine flooding and the Department of Environment, Parks and Water Resources has no objection to the proposal subject to an Erosion and Sediment Control Plan being developed by a suitably qualified and experienced professional. Requirements of other service agencies have been addressed by precedent and general conditions on the development permit. Provided the development proceeds in accordance with the conditions included on the permit, the land is considered capable of supporting the proposed subdivision.

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5. 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 subdivision will result in a change to the amenity of the area, as the land is currently undeveloped; however, this change accords with the broader strategic planning and developer's masterplan, demonstrating that it is consistent with the intended future amenity. The overall development includes a functional road layout and residential land uses, as intended.

The proposal, with the exception of density, generally accords with the layout depicted within the Area Plan and is considered unlikely to adversely impact the area or alter community expectations for the site.

**FOR: 4**

**AGAINST: 0**

**ABSTAIN: 0**

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

**ITEM 2  
PA2024/0126**

**ADDITION (STORAGE ROOMS WITH ABLUTIONS) TO AN EXISTING DWELLING-MULTIPLE WITH A REDUCED BUILDING SETBACK TO THE REAR BOUNDARY**

**APPLICANT**

**LOT 6079 (23) KELSEY, CRESCENT, MILLNER, TOWN OF NIGHTCLIFF**  
Goldbox

Applicant: Maria Pajarillo (Goldbox) and landowner Hasan Islam attended.

**RESOLVED  
47/24**

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 6079 (23) Kelsey Crescent, Millner, Town of Nightcliff for the purpose of storage room with ablutions addition to an existing dwelling-multiple with a reduced building setback to the side and rear boundaries 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:

Amended site plan showing one shed on site with the following:

- 3m setback to side boundaries.
- 1m setback to the rear boundary provided that the subject wall of the shed:
  - only includes openings that are either glazed in an opaque material and cannot be opened, or have a sill height of 1.6m or greater;
  - does not extend beyond a maximum height of 3.5m; and
  - does not extend beyond a maximum length of 9m.
- Without a shower area.

**REASONS FOR THE DECISION**

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

The NT Planning Scheme 2020 (NTPS 2020) applies to the land. The site is located in Zone MR (Medium Density) and developed with 6 x 2 bedroom

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multiple dwellings. The proposed application includes the construction of two storage sheds at the rear of the site to provide storage space for furnishings, cleaning materials, and tools for maintaining the property. These sheds will replace the existing storage and ablution block, which is dilapidated due to age and is no longer functional.

The Development Assessment Services (DAS) has carried out the assessment of the application against the zone purpose and outcomes of Clause 4.4 (Zone MR – Medium Density Residential) and Clauses 5.2.1 (General Height Control), 5.2.4 (Car Parking), 5.2.6 (Landscaping), 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR), 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), 5.4.6 (Private Open Space), 5.4.7 (Communal Open Space), 5.4.8 (Residential Building Design), 5.4.17 (Building Articulation), 5.4.18 (Fencing) and 5.4.19 (Residential Plot Ratio). The DAS's assessment has found that the development comply with all relevant clauses except Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), as below:

- 1.5m building setback and 1.1m roofline setback to the side (western) boundary, where the NTPS 2020 requires 3m building setback and 2.1m roofline setback for ancillary structures in Zone MR.
- 0m building setback and a 0m roofline setback to the rear boundary, where the NTPS 2020 requires 3m building setback and 2.1m roofline setback for ancillary structures in Zone MR.

*Administratively, under sub-clause 3, the consent authority may consent to a development that is not in accordance with sub-clause 6-8 only if it is satisfied that the reduced setback is consistent with the purpose of this clause and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.*

The Authority notes the assessment of the Development Assessment Services (DAS), which concludes that the proposal includes a 0m setback variation to the rear boundary (where 3m is required) that affects a significant portion of the rear boundary. It is approximately 16.1m of the 22.1m boundary, 73% of the boundary length. As no setback is provided, a firewall is proposed, which has a maximum height of 3.9m. The Authority further notes that proposed additions are likely to result in adverse building massing when viewed from adjoining land due to their large size without any treatment. Furthermore, a 1m gap provided in the design provides less opportunity for breeze penetration as the storage additions occupy the majority of the rear site.

The Authority notes the purpose of Zone MR is to provide a range of mid-rise housing options close to community facilities, commercial uses, public transport or open space, where reticulated services can support medium density residential development. The relevant Zone MR outcomes include: ***Building design, site layout and landscaping provides a sympathetic interface to the adjoining public spaces and to adjoining lots, and provides privacy and attractive outdoor spaces (bold emphasised).***



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The Authority noted that the application is for storage structures that will encroach upon the minimum setback requirements. The applicant needs to justify how the application complies with the relevant regulations and will not negatively impact the surrounding environment and the neighbours. Additionally, the Authority has observed that the proposed design includes two large storerooms with separate areas for clean and dirty storage, each equipped with bathrooms. This proposal represents a significant increase in size and does not simply replace what currently exists on the site. The Authority has also noted that the NTPS 2020 allows the provision of a 15m<sup>2</sup> shed with a nil setback and that usually provides enough space for residential buildings for storage. The proposed structures exceed the setback requirements and resemble two habitable units with bathrooms that can only be accessed through the storage units.

The applicant, Ms Maria Pajarillo (Goldbox) and landowner Mr Hasan Islam attended the hearing and spoke to the application. Mr. Islam, who is based in Katherine, explained that he wants a base in Darwin to oversee the property. Initially, he proposed having two toilets - one for staff and one for himself, but later amended it to only one toilet facility in response to a notice of deferral. Mr Islam mentioned that he is replacing what already exists, and pointed out that there is currently a shower and toilet attached to the existing storage room. In response to a question from the Authority about the need for a large storage area, Mr Islam explained that the larger space is necessary to store furnishings, white goods, landscaping equipment, and tools to avoid the cost of transporting them back and forth from Katherine. The Authority also questioned the need to store landscaping equipment, considering that the site does not have a large amount of landscaping requiring maintenance.

The Authority inquired about the potential use of storage space for living purposes (dwelling) since it is equipped with shower and toilet facilities. Ms. Pajarillo mentioned that the dimensions of the storage units are unlikely to provide enough living space for use as a dwelling. Moreover, there is already a shower and toilet attached to the existing storage room, and the landowner plans to replace it with a larger area. The Authority also asked if the units have their own laundry facilities. Ms. Pajarillo confirmed that each unit has its own laundry facilities.

Ms Marion Guppy (a member of the Authority) advised that the level of non-compliance makes it difficult for the Authority to consider, and would like to see an amended design that is smaller, respects the setback and amenity of neighbours and also used for storage purposes only rather than creating another habitable use. Ms Guppy noted that many of the submitter's concerns were about the proposal being able to be used as dwellings.

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NTPS 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).

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The Authority has considered all comments and carefully considered the applicant's response to the matters raised. The Authority is satisfied with the assessment of the DAS, which concludes that the proposed additions are likely to result in adverse building massing when viewed from adjoining land due to their large size and the proposed setback of 0m.

The Authority is not persuaded to exercise its discretion to approve a variation to the setback requirements because the proposed development does not satisfy the purpose of Clause 5.4.3 as it results in building massing and also does not meet the zone outcome as discussed under reason (1) above.

The Authority noted the DAS recommendation to alter the design and include only one storage area, which will minimise the adverse impact on the existing and future amenity of the area as a result of its reduced size and impact on the rear boundary.

The Chair advised the applicant that the Authority does not consider that their current proposal is an acceptable outcome as it does not fit within the NTPS 2020 requirements and that it has three options: either to reject the application, accept DAS's recommendations and approve the application or defer the application requesting an amended design.

Mr Islam stated that a single storage unit would not provide enough space and would not be cost-effective. Ms Pajarillo suggested postponing the application to address the concern regarding a 3m setback non-compliance.

The Authority acknowledges that NTPS 2020 does not require the provision of a storeroom in dwelling-multiple developments, but it is generally seen that such a facility exists to meet the residents' needs. In this instance, the site is developed with six dwellings-multiple pre-dated planning controls and has existing noncompliance with the development requirements, such as car parking, landscaping, private open space and communal open space. As it is not practical to provide a storeroom for each separate unit due to existing site constraints, a storeroom that can meet the collective needs of residents may be warranted.

The Authority is also mindful about the importance of setback provision and size of storage shed that commensurate with the residential character. After careful deliberation on the matter the Authority determined to defer the application to provide amended plans showing compliant side setbacks and reduced rear setback of 1m with some additional constraints to restrict the size of the shed and minimise building massing.

The Authority noted the existing development was developed pre-dated planning controls and did not provide for the need for storage facility. While the Authority determined that a reduced setback of 1m to the rear boundary may be acceptable, it should neither pre-empt full consideration of the merits of an application, nor pre-suppose a favourable decision by the Authority. In indicating that such a 1 m setback may be sufficient, the Authority was mindful of the MR zoning for the site although the land has been developed

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as a two-story unit, similar to what can be built in low medium density zoning. The NTPS 2020 permits a reduced setback of 1m to the rear boundary, with additional design controls for ancillary structures in zone LMR.

The Authority acknowledges that in this case, the application was evaluated on its merits, and the Authority considered that a reduced setback to the rear boundary, may be 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) provided other aspects of the design comply with the NTPS 2020.

**FOR: 4**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:** Notice of Deferral

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

**SUZANNE PHILIP**  
Chair

30 July 2024