



DEVELOPMENT CONSENT AUTHORITY

LITCHFIELD DIVISION

MINUTES

MEETING No. 281 – WEDNESDAY 19 JULY 2023

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

MEMBERS PRESENT: Suzanne Philip (Chair), Adam Twomey, Rick Grant, Rachael Wright and Doug Barden

APOLOGIES: Emma Sharp

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Emily Hardy, Joshua Larder, Sonia Barnes and Elya Sugg (Development Assessment Services)

COUNCIL REPRESENTATIVE: Julie Hillier, Prabhpreet Singh, Tracey Hyde and Rachael Macrae

Meeting opened at 10.45 am and closed at 11.25 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 **DWELLING-INDEPENDENT WITH A FLOOR AREA IN EXCESS OF 80M2 AND**
PA2023/0096 **A SEPARATE EFFLUENT DISPOSAL SYSTEM**
SECTION 2546 (5) SPENCER ROAD, DARWIN RIVER, HUNDRED OF
CAVENAGH
APPLICANT Nicolas Boeyen

Applicant Nicolas Boeyen attended.

RESOLVED That, the Development Consent Authority vary the requirements of Clause
52/23 5.4.13 (Dwelling-independent) of the Northern Territory Planning Scheme, and
pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to
develop Section 2546 (5) Spencer Road, Darwin River, Hundred of Cavenagh, for
the purpose of a dwelling-independent with a floor area in excess of 80m² and a
separate effluent disposal system, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the commencement of works, a schematic plan demonstrating the onsite collection of stormwater and/or its discharge into Litchfield Council's stormwater drainage system shall be submitted to and approved by Litchfield Council.

GENERAL CONDITIONS

2. The works carried out under this permit shall be in accordance with the drawings numbered 2023/0096/01 through to 2023/0096/04 endorsed as forming part of this permit.
3. 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.
4. The owner of the land must enter into agreements with the relevant authorities for the provision of electricity supply to the development shown on the endorsed plan in accordance with authorities' requirements and relevant legislation at the time.

Please refer to notation 1 for further information.

5. 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.
6. The vehicle access to the site approved by this permit is to meet the technical standards of Litchfield Council, to the satisfaction of the consent authority.

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NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (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. This development permit is not an approval to undertake building work. You are advised to contact a Northern Territory registered building certifier to seek a building permit as required by the Northern Territory *Building Act 1993* before commencing any demolition or construction works.
3. A "Works Permit" may be required from Litchfield Council before commencement of any work within the road reserve, which would include creation of any driveway crossover connecting to Council's road network.
4. Litchfield Council's current Fees and Charges may apply to the above conditions. Additional information can be found at www.litchfield.nt.gov.au.
5. Any new on-site wastewater management system is to be installed in accordance with the Code of Practice for Wastewater Management.
6. 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) 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 applies to the land and a dwelling-independent with a floor area in excess of 80m² and a separate effluent disposal system requires consent under Clause 1.8 (When development consent is required). It is identified as Merit Assessable under Clause 1.8(1)(b)(ii)(2), therefore the Authority must consider the requirements of Part 5 that are not complied with and whether the proposal meets the purpose of the requirements.

These clauses have been considered and it is found that the proposal complies with the relevant requirements of the Planning Scheme except for Clause 5.4.13 (Dwelling-Independent).

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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 Clause 5.4.13 (Dwelling-Independent) because it will result in a dwelling-independent with a floor area in excess 80m² and a separate effluent disposal system.

The purpose of Clause 5.4.13 (Dwelling-Independent) is to ensure a dwelling-independent “...provides for increased housing choice while remaining ancillary to the dwelling-single on a site, and is developed in a matter that avoids significant impact on the amenity of adjoining and nearby property; does not detrimentally impact on the natural environment; and does not adversely impact on the local road network”.

Administratively, “the consent authority can consent to a dwelling-independent that is not in accordance with sub-clause 5, only if it is satisfied with the purpose of this clause and the zone purpose and outcomes, and provided it is appropriate to the site having regard to such matters as its location, scale and impact on surrounding amenity”. The plans submitted do not comply with sub-clause 5, as the maximum floor area of the proposed dwelling-independent is 104.65m² where a maximum of 80m² is normally required.

The proposal meets the purpose of this clause. It meets the requirements for building setbacks and height. At 22.56ha, the subject land is easily capable of accommodating a dwelling-independent. The development will not have detrimental impact on the natural environment and Litchfield Council had no issues with any impacts on the local road network. The existing dwelling-single has a floor area of 144m², so the proposal can be considered ancillary or subordinate to the larger, dwelling-single.

The consent authority was satisfied with the proposal having regard to the scale of the dwelling-independent, the boundary setbacks and the size of the subject land it is situated on. The subject land is located in Zone R (Rural) and the larger lots in the locality minimise any potential amenity impacts, noting the closest dwelling not in common ownership to the dwelling-independent is approximately 240m away. The Authority assessed that the dwelling-independent is unlikely to be used as a second dwelling (dual occupancy) given the design, scale and proximity to the dwelling-single.

As demonstrated by meeting the purpose of the clause, a dwelling-independent is considered to be an acceptable form of development in the area. The authority has noted that any future application for a dwelling-independent that exceeds 80m² under the current NT Planning Scheme 2020, would be required to be assessed against its own merits under the NT Planning Scheme 2020.

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The proposal also does not comply with sub-clause 7, because a separate effluent disposal system is being proposed for the new dwelling where a single system serving both dwellings is usually required to retain the ancillary status of the second dwelling on the site.

Administratively, the consent authority must not consent to a dwelling-independent that is not in accordance with sub-clause unless:

- (a) *“documentary evidence that an existing wastewater management system does not comply or will not comply with the requirements of the Code of Practice for Wastewater Management as a result of the proposed dwelling-independent, is provided by:*
- i. a registered certifying plumber and drainer or certifying engineer (hydraulic) (for locations within declared building control areas under the provisions of the Building Act 1993); or*
 - ii. a licenced plumber and drainer or hydraulic consultant (for locations where the Building Act 1993 does not apply);”*

The applicant has provided a written statement from All hours Plumbing NT (dated 8 March 2023), which states the existing septic system will not be suitable to accommodate the hydraulic fixtures planned for the new development. The applicant also provides an assessment from Surface Water & Erosion Solutions (dated 2 February 2023), which states that the proposed absorption trench method of discharging wastewater is suitable for the site.

As such, the proposal meets the provision of subclause 3 by providing the necessary documentation about waste disposal from both dwellings. The authority can therefore approve a variation of this clause.

3. 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 land is capable of supporting the proposed development. With a lot size of 22.56 hectares, the subject land has the capacity to allow for the proposed dwelling-independent and separate effluent disposal system without impacting on the existing infrastructure. The land is irregular in shape with a gentle slope and existing native vegetation scattered throughout. The application states approximately 4 hectares of the site has been planted with trees.

The application has provided a Site and Soil Evaluation Report from a certified consultant that states that the proposed absorption trench method of wastewater is suitable.

The subject land is not affected by overlays relating to storm surge or flooding. Additionally, the Department of Environment, Parks and Water Security did not identify or raise any issues of concern in relation to capability.

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4. 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

No adverse submissions had been received in relation to the proposal. There is unlikely to be any adverse impacts on the existing and future amenity of the area as a result of the proposed development. The proposal complies with purpose and outcomes of the zone. The proposed development complies with the relevant boundary setback and building height requirements. The proposed development will be partially screened by existing development and vegetation.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

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**ITEM 2
PA2022/0333**

**RECONSIDERATION: ANIMAL BOARDING AND INTENSIVE ANIMAL
HUSBANDRY (DOG BREEDING)
LOT 6 (295) LIVINGSTONE ROAD, LIVINGSTONE, HUNDRED OF
CAVENAGH**

APPLICANT Natalie Higgins & Russell Koenig

The applicant sent their apology.

Submitter Daniel Parslow sent his apologies.

Submitters Mark Taylor and Ronald Heyes attended.

**RESOLVED
53/23**

That, pursuant to section 46(8) of the *Planning Act 1999*, the Development Consent Authority refuse an extension of time to the section 46(4)(b) deferral period granted in accordance with section 46(7).

In considering this matter, and given the lapse of time since the application was first considered, the Authority determined the verbal indication of a request to extend the period of time in which to provide the information does not satisfy the requirements of section 46(7) as neither a written request nor reasons to support or justify were received to justify a further extension to the deferral period.

REASONS FOR THE DECISION

The Authority, at its meeting on 11 November 2022 resolved, pursuant to section 46(4)(b) of the *Planning Act 1999* (the Act), to defer consideration of the application to develop the above land for the purpose of animal boarding and intensive animal husbandry (dog breeding).

The application was placed on deferral for a period of 30 days subject to the reasons listed in the Notice of Deferral dated 22 November 2022. The correspondence detailed the additional information that the Authority considered necessary in order to enable proper consideration of the application.

Pursuant to section 46(6) of the Act, the information required in the correspondence was to be provided in writing within 30 days.

On 20 December 2022, pursuant to section 46(7) of the Act, a request in writing for an extension of time to respond to the deferral was received, and a 60 day extension was granted under section 46(7) of the Act by the delegate of the Authority, with the response due 25 February 2023.

On 24 February 2023, a further request was received in writing for an additional extension of time due to the unavailability of the draftsman to assist in preparing the plans required. Pursuant to section 46(7) of the Act, a further 90 day extension of time was granted to provide the additional information no later than 25 May 2023. No further information in response to the deferral or written request for additional time to respond, was received by this date.

Development Assessment Services contacted the Applicant via email and

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telephone to ascertain the current position in relation to this application as the further information was not received. During a telephone conversation with Mr George Maly, Manager-Rural Planning of Development Assessment Services, the Applicant verbally indicated, due to personal reasons, that an additional four (4) month period to address the deferral matters was required. Accordingly, Mr Maly asked that a request for such a further deferral, together with supporting reasons, be made in writing for further consideration by the Authority.

Section 46(7) of the Act states *'the applicant may, in writing, request the consent authority to extend the time to provide the information required under subsection (4)(b) if (a) the request is supported by reasons justifying the extension'*.

No such written request was received. Section 46(8) of the Act states *'if the consent authority refuses a request under subsection (7) to extend the time to provide the required information, it must give the applicant notice of the decision setting out the reasons for the refusal'*.

The Authority reviewed the application and the relevant provisions of the *Planning Act 1999*, and resolved, pursuant to section 46(8) of the Act, to refuse a further extension of time to the deferral period. In considering this matter, and given the lapse of time since the application was first considered, the Authority determined the verbal indication of a request to extend the period of time in which to provide the information does not satisfy the requirements of section 46(7), as a written request was not received and further, and in the alternative, the Authority considered it had not been provided with reasons sufficient to support or justify a further extension to the deferral period.

RESOLVED 54/23

That, pursuant to section 46(9) of the *Planning Act 1999*, the Development Consent Authority reject the application to develop Lot 6 (295) Livingstone Road, Livingstone, Hundred of Cavenagh for the purpose of animal boarding and intensive animal husbandry (dog breeding), for failure to provide the additional information requested in correspondence dated 22 November 2022, information the Authority considered necessary to enable proper consideration of the application.

REASONS FOR THE DECISION

Section 46(9) of the Act states *'the consent authority may reject an application if the applicant does not provide the information within 30 days of receiving the request or any longer period extended by the consent authority'*.

The Authority reviewed the material before it and noted that, on 11th November 2022, it had deferred the application pursuant to section 46(4)(b) of the Act, to require the Applicant to provide additional information, as detailed in the terms of that deferral, which it considered necessary to enable the proper consideration of the application. Such information has not been received and, in the absence of that information detailed in the Notice of Deferral dated 22 November 2022, the Authority considered that pursuant to Section 46(9) of the Act, the application for proposed animal boarding and intensive animal husbandry (dog breeding) at Lot 6 (295) Livingstone Road Livingstone, Hundred of Cavenagh,

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should be rejected. The Authority noted that the applicant is at liberty to make a fresh application in the future.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Section 46(9) Notice of Rejection

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

SUZANNE PHILIP

Chair

25 July 2023