



DEVELOPMENT CONSENT AUTHORITY

PALMERSTON DIVISION

MINUTES

MEETING No. 255 – MONDAY 12 DECEMBER 2022

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

MEMBERS PRESENT: Suzanne Philip (Chair), Trevor Dalton, Monica Baumgartner, Athina Pascoe-Bell and Sarah Henderson

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Adelle Godfrey, Sally Graetz, Dawn Parkes and Daniel Herlihy (Development Assessment Services)

COUNCIL REPRESENTATIVE: Peter Lander

Meeting opened at 10.00 am and closed at 11.00 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

PA2022/0277 SUBDIVISION TO CREATE FOUR LOTS

LOT 8310 (1) KIRKIMBIE COURT, FARRAR, TOWN OF PALMERSTON

APPLICANT Tatam Planning Co

Cat Tatam (Tatam Planning Co) attended via videolink.

DAS tabled an amended subdivision plan showing good neighbour fencing to a height of 1.8m along the length of the northern boundary, and noting the proposed retaining wall to Kirkimbie Court will be of a painted render finish or similarly suitable finished treatment.

RESOLVED
33/22

That, the Development Consent Authority vary the requirements of Clause 6.2.3 (Site Characteristics for Subdivision in Zones LR, LMR, MR and HR) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 8310 (1) Kirkimbie Court, Farrar, Town of Palmerston for the purpose of subdivision to create four lots, subject to the following conditions:

CONDITION PRECEDENT

1. Prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Palmerston stormwater drainage system shall be submitted to and approved by the City of Palmerston, to the satisfaction of the consent authority. The plan shall include details of site levels and Council's stormwater drain connection point/s.
2. Prior to the commencement of works (including site preparation), in principle approval is required for the crossovers and driveways by the City of Palmerston, to the satisfaction of the consent authority.

GENERAL CONDITIONS

3. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
4. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage, and electricity services to each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time. Please refer to notation 1 for further information.
5. 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.

6. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Palmerston, to the satisfaction of the consent authority.
7. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the City of Palmerston, to the satisfaction of the consent authority.
8. The owner shall undertake reinstatement works to the technical requirements of and at no cost to the City of Palmerston, to the satisfaction of the consent authority.
9. Before the issue of titles, the developer is to provide written confirmation (in the form of plans or drawings) demonstrating that all lots less than 600m² for single dwellings allow for future vehicle access via a single driveway unrestricted by street infrastructure (including any power, water, sewer or stormwater infrastructure) which demonstrates a 3.5 metre driveway can be located on each lot to ensure that the each lot's street frontage has a minimum continuous length of 6.5m, 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) 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. A "Permit to Work Within a Road Reserve" may be required from the City of Palmerston before commencement of any work within the road reserve.
3. As part of any subdivision, the parcel numbers for addressing should comply with the Australian Standard (AS/NZS 4819:2011). For more information contact Survey and Land Records surveylandrecords@nt.gov.au 08 8995 5356. The numbers shown on the plans endorsed as forming part of this permit are indicative only and are not for addressing purposes.
4. 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.
5. 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.

6. 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/>

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 the subdivision of land requires consent under Clause 1.8 (When development consent is required). It is identified as Impact Assessable under Clause 1.10(4), and therefore the strategic framework (Part 2 of the Scheme, including the Darwin Regional Land Use Plan), the zone purpose and outcomes of Clause 4.3 Zone LMR – Low-Medium Density 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 development is found to comply with the Darwin Regional Land Use Plan, with the land identified within the Palmerston urban / peri-urban area. The land is not subject to any overlays.

The development is consistent with the purpose of Zone LMR (Low-Medium Density Residential) being to *“Provide a range of low rise housing options that contribute to the streetscape and residential amenity in locations supported by community services and facilities, and where full reticulated services are available”*. The subdivision will facilitate the future development of low-rise housing options in the form of dwellings-single within an established neighbourhood, and contribute to the suburb by supporting the future development of vacant land.

The subdivision assessed as complying with the requirements of Clause 6.2.1 Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR, Clause 6.2.2 Lots Less Than 600m² for Dwellings-Single, and Clause 6.2.4 Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR.

The indicative house plans submitted under Clause 6.2.2 Lots Less Than 600m² for Dwellings-Single show that each lot can satisfactorily achieve vehicle parking requirements, plus minimum primary and secondary street setbacks, and side and rear setbacks to the perimeter of the site. The applicant indicates a future intention to apply for 0.3m side setbacks as a variation to Clause 5.4.3.3 Reduced Setbacks for Dwellings-Single, however this is not as a result of a lack of developable area within each lot.

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 is not in accordance with Clause 6.2.3 Site Characteristics for Subdivision in Zones LR, LMR MR and HR, because the site has a slope of 6%, and the clause requires that subdivisions *“Ensure, by site selection or site grading, that areas intended for lots less than 600m² do not slope in excess of 2%, such that the need for on-site stormwater structures, retaining walls and the like is minimised.”*

To address the site constraints, the application included an earthworks plan showing cut/fill, plus retaining walls and a batter along the northern boundary of lots B – D to enable each lot to be developed. The application was initially deferred by the consent authority requiring instead a retaining wall along the northern boundary of lots B – D. This was requested as the batter was seen to reduce the extent of useable private open space for future owners, cause additional costs of modifying the batter to be borne by future owners, and may be subject to modification by future residents which may affect its integrity. The applicant responded by providing an amended earthworks plan now showing a 1.3m height retaining wall, offset 1.3m from the northern boundary.

The use of retaining walls to the northern and western boundaries of the site are as a result of cutting into the site and are unlikely to be visually intrusive, and are considered an appropriate response to allow the site to be developed without detrimentally impacting on the surrounding land.

The design includes a raised retaining wall between Lots A and B of 1.1m maximum height, and along Kirkimbie Court of maximum 0.9m height. The retaining wall to Kirkimbie Court is not of a height likely to be visually intrusive, and the applicant provided plans confirming a painted render surface finish as viewed from the street. The design is likely to be similar to existing examples in the surrounding locality, and considered an acceptable outcome.

Administratively, the consent authority may consent to a subdivision that is not in accordance with subclause 3, only if it is satisfied the subdivision design is consistent with the purpose of this clause. Overall the subdivision has accounted for the site constraints presented. By condition, the proposal is assessed as meeting the Clause 6.2.3 purpose in that the subdivision "...provides lots suitable for urban residential purposes that respond appropriately to the physical characteristics of the land and does not detrimentally impacting on surrounding land."

The considerations listed under Clause 1.10(4) have been given regard to and it has been found that the proposal complies with all relevant requirements of the NT Planning Scheme 2020, except for Clause 6.2.3, as identified above.

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 existing slope has been discussed in reason 2 previously and relates to the capability of the land to support the proposal and site grading and retaining walls being included. The land is otherwise considered capable of accommodating the subdivision.

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.

The development of a vacant site will change the result in a change from the existing character of the area, however this is an expected change as the application aligns with the densities anticipated for the site in the original development of Farrar.

The subdivision includes earthworks to account for the level changes across the site. As previously discussed in reason 2 above, the earthworks are considered similar to other examples of visible retaining walls and grade changes in the locality, are reasonably consistent with the existing character, and expected to unduly impact the amenity of the area.

5. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent authority must take into consideration any submissions made under section 49, and any evidence or information received under section 50m, in relation to the development application.

The application received four submissions during the exhibition period, plus a further submission on the amended plans following deferral of the application. The main concerns raised in the submissions related to the to the impacts of future development on the created lots, including the impact of additional on street parking, increased noise, stormwater,

reduced breezes and other environmental issues, and the size of lots. Specific issues were raised by the adjacent neighbour at 2 Kirkimbie Court to the north, relating to impacts on the shared boundary including the height difference between the properties, concerns regarding the batter originally proposed along the shared boundary, and a request for the boundary fencing to be replaced by 2.1m good neighbour fencing.

It is considered that the lot size and resultant housing outcome is consistent with Zone LMR, and the intent of the original subdivision of Farrar. Any future dwellings are likely to create some additional noise, impact on breezes and create additional traffic in the locality however this can be expected in the development of a vacant site and would not be considered undue. Stormwater management for the subdivision is required to be addressed by condition precedent to the approval of the City of Palmerston. In their comments, the City of Palmerston did not raise any concerns with the street network accommodating the subdivision, or the potential impact on street car parking.

The consent authority deferral required the inclusion of a retaining wall and good neighbour fencing along the northern boundary of the site, which was accommodated by the developer. Fencing to a height of 1.8m is considered appropriate by the consent authority noting this is a typical fence height required by the Planning Scheme to achieve privacy between neighbours.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

ITEM 2

PA2022/0179

TELECOMMUNICATIONS FACILITY WITH A 35M HIGH MONOPOLE AND ASSOCIATED ANTENNAS AND EQUIPMENT SHELTER

LOT 15681 (111) RADFORD ROAD, ZUCCOLI, TOWN OF PALMERSTON

APPLICANT

Telstra Corporation Ltd

Athina Pascoe-Bell and Sarah Henderson advised they are Community Members of the Development Consent Authority and Ms Pascoe-Bell is Mayor of the City of Palmerston. The City of Palmerston is a submitter to this application under Section 49 of the Planning Act 1999. The Chair noted that section 98A of the Planning Act 1999 – Independence of Community Members – contemplates that Community Members, while acting independently, may take account of opinion of a local government council in relation to a development application. Further no parties present raised any concerns with Ms Pascoe-Bell and Ms Henderson considering the application. Pursuant to section 97 of the Planning Act 1999 the Chair determined that Ms Pascoe-Bell and Ms Henderson’s positions were not significant or relevant and permitted these members to form part of the quorum and participate in the determination of this item.

Applicant: Mark Baade (SAQ Consulting Pty Ltd) and Reece Watt (Empower) attended via video link.

Hannah Barraza (Land Development Corporation) attended.

Submitter: Peter Lander (City of Palmerston) attended.

- RESOLVED** That, the Development Consent Authority vary the requirements of Clause 5.8.10 (Telecommunications Facilities), and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 15681 (111) Radford Road, Town of Palmerston for the purpose of a Telecommunications facility with a 35m high monopole and associated antennas and equipment shelter, subject to the following conditions:
- 34/22**

CONDITIONS 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 local stormwater drainage system shall be submitted to and approved by the City of Palmerston and Land Development Unit, Department of Infrastructure, Planning and Logistics stormwater drainage system, to the satisfaction of the consent authority. The plan shall also consider the drainage area required to accommodate both the existing and future stages of the Zuccoli Village subdivision.
2. Prior to the endorsement of plans and prior to the commencement of works, a new title must be issued for the area of land on which the telecommunications facility is to be located, to the satisfaction of the consent authority.

GENERAL CONDITIONS

3. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
4. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to the City of Palmerston and Land Development Unit, Department of Infrastructure, Planning and Logistics, 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 electricity to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time. Please refer to notation 1 for further information.
6. 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.
7. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the City of Palmerston and Land Development Unit, Department of Infrastructure, Planning and Logistics), to the satisfaction of the consent authority.

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 telecommunications facility requires consent under Clause 1.8 (When development consent is required). It is identified as 'Impact Assessable' under Clause 4.1.2.1 SP1 Part Lot 15460 Town of Palmerston (Zuccoli), therefore: the strategic framework (including Darwin Regional Land Use Plan and Palmerston Eastern Suburbs Planning Principles and Area Plans), the zone purpose and outcomes of Clause 4.1.2.1 together with Clauses 5.2.1 (General Height Control), 5.2.4 (Vehicle Parking), 5.2.6 (Landscaping) and 5.8.10 (Telecommunications Facilities), are potentially relevant. However in the NTCAT decision, *Telstra Corporation Limited v Development Consent Authority [2021] NTCAT 43*, the Tribunal considered the NTPS 2020 Schedule 3 Exceptions, in particular, Clause 3.1(c) which provides that the scheme does not prevent:

- (c) The construction, alteration, repair or maintenance of:
 - i. *facilities for the reticulation of water, sewerage, gas or electricity or, subject to clause 5.8.10, transmission of telecommunications services.*

The Tribunal considered that the exceptions exist to **enable** the provision of particular types of infrastructure and facilities. Telecommunications is one of those facilities and the effect of Schedule 3 is that nothing in the NTPS (other than clause 5.8.10 in certain circumstances) operates to prevent the construction of facilities for the transmission of telecommunications services.

The application complies with Clause 5.8.10 (Telecommunications Facilities) except in respect of the landscaping proposed.

The application was previously considered by the consent authority in September 2022 (resolution 17/22) with the consent authority deferring consideration to require the applicant to provide:

- further information, by way of revised plans and proposed conditions precedent and/or other means proposed by the applicant to satisfy the concerns raised by the City of Palmerston regarding the proposal.

Updated materials were submitted in November 2022 in response to the deferral with the following alterations noted:

- The distance of the telecommunications tower from Radford Road has been decreased from 5m to 3.5m and distance from the future stormwater infrastructure (and nearest residential properties in Zuccoli) increased by 1.5m;
- Site compound fencing increased in height from 1.8m to 2.4m high hard slat fence;
- New drainage features including a new open drain along the top and eastern side of the site to 'run the flow to Radford Road culvert on south' and a concrete spoon drain to 'convey minor flows' around the site have been included on the plans, together with details that more clearly identify features around the site (i.e. existing vegetation, proposed native grasses, areas of filling and site levels).
- The future subdivision lease area decreased to an area with dimensions 7m x 30m (210m²).

The above changes did not alter the technical assessment prepared by Development Assessment Services and the level of compliance noted above. Additionally, further public exhibition was not considered necessary as alterations were to respond to requirements of the City of Palmerston and did not materially alter the proposal in that its purpose, height and exterior appearance was

unchanged. The updated materials were instead circulated to the City of Palmerston, public submitter and Land Development Unit, Department of Infrastructure Planning and Logistics.

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:
 - (c) The purpose and administration clauses of the requirement; and
 - (d) The considerations listed under Clause 1.10(3) or 1.10(4).

The proposal has been found to be non-compliant with Clause 5.8.10 (Telecommunications Facilities) as the development does not propose landscaping as required by subclause (4). The development otherwise performs well against the requirements and adequately demonstrates that the development will not result in unreasonable amenity impacts, as the clause purpose seeks to ensure, whilst facilitating the provision of telecommunications infrastructure, as required.

The application included photomontage images to help illustrate the visibility of the facility from Follington Street (to the west of the site) where the bulk of surrounding residential properties are located, which demonstrated that existing vegetation will have a mitigating impact. No images were provided from the Radford Road/Virginia side of the development however the slope of the land in this area is likely to be such that the facility is not overly-noticeable from most properties and therefore of reduced visual impact. The consent authority also noted that the land directly across Radford Road/the Power and Water pump access road has existing subdivision approval, but that the land constraints of that land are such that the potential number of future dwellings is limited.

The proposed siting (as altered), on the far side of Lot 15681 and adjacent to non-residential uses substantially diminishes the impact of the facility. The application argued the structure is typical and will not present as a 'particularly dominant or unusual presence in the urban landscape' and that the '[a]ppropriate colouring/finishing of the structure is also likely to assist in minimising its impact.' The application also suggested that 'landscaping within the private and public realm over time will be much more effective in mitigating any impacts' and the proposal therefore does not include any landscape treatment.

There are likely to be differing views of what might constitute 'appropriate landscaping' for a facility of this nature depending on its setting. In this case, provision of landscaping is considered desirable but impractical due to the specific location and design challenges brought about as a result. The site is located adjacent to open space and drainage infrastructure and, what has been referred to as a 'Power and Water Corporation pump access road' by relevant authorities rather than a formalised road way. The relevant strategic framework also indicates that the adjacent access road is intended to be closed in the future. Landscaping within the adjacent public open space and nearer to residential properties rather than within the site, as suggested in the application, would be more effective and have greater long-term benefits.

On this basis, the proposal is considered appropriate, unlikely to result in unreasonable amenity impacts and a variation to landscaping requirements has been granted.

3. While Schedule 3 provides an exception relating to provisions of the NTPS 2020, that exception does not extend to considerations under the *Planning Act 1999*, in particular the matters listed in Section 51. Pursuant to section 51(1)(j) of that Act, 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 City of Palmerston lodged a submission against the proposal raising concerns with the land capability, and in particular the potential influence that the proposal may have on achievement of public open space totals and the capacity and design of the adjoining drainage infrastructure located within the same lot.

As part of this process, the design of the telecommunications facility was updated in an attempt to address these concerns, including provision of additional drainage within the site, decreasing the area of the site and adjustment to the siting of the facility further east toward Radford Road and away from the 'dambo' drainage area.

The consent authority considered the City of Palmerston's position expressed in its formal comments and at the consent authority hearings, and the attempts that the applicant had made to resolve the matter. It considered that the applicant had made reasonable attempts to address the identified issues, that the critical issues to be resolved were external to the telecommunications facility site, that there was a need for telecommunications infrastructure to be provided to the surrounding residential area, and the undertakings provided by the Land Development Corporation (as landowner) that potential future drainage issues (outside the telecommunications site) could and would be addressed as part of future stages of the residential subdivision, were sufficient for it to be convinced that further deferral (as recommended) to allow the issues to be resolved was not appropriate.

It considered that the remaining issues in relation to drainage and the telecommunications facility site could be managed via conditions precedent, including requiring the applicant to provide stormwater drainage design plans for the development to the City of Palmerston and Land Development Unit, Department of Infrastructure, Planning and Logistics (as required).

The consent authority also considered the advice from Urbex (land developer) that the development of the telecommunications facility in this location would not significantly erode the total open space area provided as part of the surrounding residential subdivision, such that achievement of the required total was jeopardised.

Having considered these matters, the consent authority was of the opinion that there was not sufficient evidence to find that the land was incapable of supporting the development as proposed. There are still a number of stages to be developed in the surrounding residential subdivision that require consideration of the capability of the land and design of the stormwater infrastructure to the City of Palmerston's approval. The consent authority consider that the issues raised by the City of Palmerston as part of this application are more appropriately addressed as part of those subdivisions.

Beyond this issue, no land capability issues were been identified.

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.

Due to the nature of telecommunications facilities, there is potential for impacts on the existing and future amenity of the area. Clause 5.8.10 (Telecommunications Facilities) requires that development of a telecommunications facility does not 'unreasonably detract from the amenity of a locality whilst facilitating the provision of telecommunications infrastructure'. The application demonstrated that the potential impacts of the facility are reasonable and to be

expected of such a facility. The current siting balances the needs associated with telecommunications coverage and adequate separation from more sensitive uses.

Remaining issues external to the telecommunications facility site, including drainage and ongoing achievement of open space totals, are considered more appropriately considered as part of future subdivision applications, or as part of separate discussions between the landowner/land developer and Council external to the consent authority's considerations.

5. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent authority must take into consideration any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application.

Two submissions were received under section 49 of the *Planning Act* in relation to the proposal.

The first submission was received under section 49(1) of the Act from a member of the public. The submission contained only a signature and did not include any information about the submitter's position on the proposal. Despite attempts to contact the submitter to clarify their position, no contact was able to be made. The submitter was invited to attend both consent authority meetings to add to their submission but did not attend.

The second submission was received from the City of Palmerston under section 49(3) of the Act as the relevant local authority. It objected to the development based on the grounds outlined at reason (3) above. As noted above, the consent authority was of the opinion that the applicant, has made reasonable attempts to resolve the issues raised, which largely relate to matters external to the telecommunications facility site itself and beyond what it considers the developer (being Telstra) is reasonably able to address. Accordingly, it was unable to find any convincing evidence to further defer consideration of the application for the telecommunications facilities and considers instead that the issues would be more appropriately addressed separately.

6. The community members acknowledged their obligation to act independently under Section 98A *Planning Act 1999*, but expressed concerns about community safety as a result of the larger drainage issues for the subdivision, referenced in the Council submission, and exercised their right to abstain from a decision in relation to this application.

FOR: 3

AGAINST: 0

ABSTAIN: 2

ACTION:

Notice of Determination

ITEM 3

PA2022/0359 DWELLING-GROUP (13 X 3 BEDROOM) IN 13 X SINGLE STOREY BUILDINGS LOTS 12884 & 12885 (1 & 9) TUCKEROO BOULEVARD, ZUCCOLI, TOWN OF PALMERSTON

APPLICANT Goldbox

Pursuant to section 97 of the *Planning Act 1999*, Trevor Dalton, Specialist Member of the Development Consent Authority disclosed an interest and was not present during, contributed to or took part in the deliberation or decision of the Division in relation to Item 3.

Applicant: Maria Pajarillo (Goldbox) and Paul Winter attended.

RESOLVED

That, the Development Consent Authority vary the requirements of Clause 5.4.3.1 (Additional Setback Requirements for Residential Buildings longer than 18 metres and for Residential Buildings over 4 storeys in Height) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lots 12884 (1) and 12885 (9) Tuckeroo Boulevard, Zuccoli, Town of Palmerston for the purpose of dwelling-group (13 x 3 bedroom) in 13 x single storey buildings, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Palmerston stormwater drainage system shall be submitted to and approved by City of Palmerston, to the satisfaction of the consent authority. The plan shall include details of site levels and Council's stormwater drain connection point/s.
2. Prior to the commencement of works (including site preparation), in principle approval from the City of Palmerston is required for the crossover, driveway and pedestrian access points to the site, to the satisfaction of the consent authority.
3. Prior to the commencement of works (including site preparation), details of waste disposal, storage and removal shall be submitted to and approved by the City of Palmerston, to the satisfaction of the consent authority.

GENERAL CONDITIONS

4. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
5. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage, electricity and telecommunication networks to the development 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.
6. 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.
7. 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.
8. Lots 12884 & 12885 Town of Palmerston are required to be consolidated and a new title issued for the consolidated lot. Also please refer to Note 4 for advice relating to the National Construction Code (NCC).
9. Confirmation shall be provided to Development Assessment Services (in the form of an email addressed to the Power and Water Corporation) from a suitable qualified professional confirming that all new number labels have

been correctly installed at the Customer's Metering Panel(s) and water meters (where applicable). Please provide a copy of an email addressed to both landdevelopmentnorth@powerwater.com.au and powerconnections@powerwater.com.au.

10. Prior to the use/occupation of the development and connection of services (i.e. power and water), the owner of the land must apply for street addressing from the Surveyor-General of the Northern Territory. This will form the legal address and will be required to be placed on the meters within the development in accordance with the allocation. An Occupancy Permit will not be able to be granted until such time as addressing is obtained.
11. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the City of Palmerston, to the satisfaction of the consent authority. The owner shall:
 - (a) remove disused vehicle and/ or pedestrian crossovers;
 - (b) provide footpaths/ cycleways;
 - (c) collect stormwater and discharge it to the drainage network; and
 - (d) undertake reinstatement worksall to the technical requirements of and at no cost to the City of Palmerston, to the satisfaction of the consent authority.
12. Storage for waste disposal bins is to be provided to the requirements of the City of Palmerston to the satisfaction of the consent authority.
13. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street to the requirements of the City of Palmerston to the satisfaction of the consent authority.
14. Before the use/occupation of the development starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
15. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.
16. Before the use or occupation of the development starts, the area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - (a) constructed;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather-seal coat;
 - (d) drained;
 - (e) line marked to indicate each car space and all access lanes; and
 - (f) clearly marked to show the direction of traffic along access lanes and driveways to the satisfaction of the consent authority.Car parking spaces, access lanes and driveways must be kept available for these purposes at all times.

17. The private open space areas of each dwelling shall be screened on each boundary by:
 - (a) the erection of a solid wall or screen fence not less than 1.8 metres high: or
 - (b) fenced to a height not less than 1.8 metres high and planted with dense vegetation.
18. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view, located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority.
19. All pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view 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) 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. 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
3. If you choose nbn to service your development, you will need to enter into a development agreement with nbn. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered nbn will be in contact to discuss the specific requirements for the development. Nbn requires you to apply at least 3 months before any civil works commence. All telecommunications infrastructure should be built to nbn guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/buildersdesigners.html>
4. 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. Due to provisions in the National Construction Code (NCC), the subject lots may need to be consolidated before a building permit can be issued.

5. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5354 (surveylandrecords@nt.gov.au).
6. Any proposed works on/over City of Palmerston property shall be subject to separate application to City of Palmerston and shall be carried out to the requirements and satisfaction of City of Palmerston.
7. 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 dwellings-group (3+) requires consent under Clause 1.8 (When development consent is required). It is identified as Merit Assessable in the zone table of Clause 4.3 Zone LMR (Low-Medium Density Residential), and requires the exercise of discretion of the consent authority in determining whether the use can be established and operated in a way that does not impact on the amenity of the area and accords with the relevant zone purpose and outcomes.

Clause 1.10(3) requires in considering an application for consent for a use or development identified as Merit Assessable the consent authority take into account all of the following:

- (a) the relevant requirements, including the purpose of the requirements as set out in Parts 5 or 6;
- (b) any Overlays and associated requirements in Part 3 that apply to the land;
- (c) the guidance provided by the relevant zone purpose and outcomes in Part 4 relevant to a variation of requirements in Parts 5 or 6; and
- (d) if an Area Plan in Part 2 applies to the land, any component relevant to a variation of requirements in Parts 5 or 6.

The strategic framework (Part 2 of the Scheme, including the Palmerston Eastern Suburbs Area Plan), zone purpose and outcomes of Clause 4.3 Zone LMR (Low-Medium Density Residential), and Clauses 5.2.4 (Vehicle Parking), 5.2.6 (Landscaping), 5.4.1 (Residential Density Limitations), 5.4.2 (Residential Height Limitations), 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), 5.4.6 (Private Open Space) and 5.4.8 (Building Design for Dwelling-Group,

Dwelling-Multiple, Rooming Accommodation and Residential Care Facility), need to be considered.

These clauses have been considered. The proposal is found to comply with the Palmerston Eastern Suburbs Area Plan, which provides planning principles for the creation of compact, accessible, and walkable neighbourhoods, neighbourhood centres, providing a range of lot sizes and housing choice to cater for diverse household types, among others. The site is within the walkable radius of the Zuccoli Village secondary neighbourhood centre. The Area Plan does not provide any specific consideration for reduced building setbacks, being the one non-compliance requiring consideration as addressed in reason 2 below.

The purpose of Clause 4.3: Zone LMR (Low-Medium Density Residential) is *“Provide a range of low rise housing options that contribute to the streetscape and residential amenity in locations supported by community services and facilities, and where full reticulated services are available.”* Zone outcome 1 is *“A blend of dwellings-single, associated dwellings-independent, dwellings-group and dwellings-multiple predominantly of two storeys or less, on a range of lot sizes that respond to changing community needs.”* The development is for single storey dwellings-group in individual buildings as anticipated by the zone purpose and zone outcome 1.

Zone outcome 5 provides, *“Building design, site layout and landscaping provide a sympathetic interface to the adjoining public spaces and between neighbours, provides privacy and attractive outdoor spaces.”* In response to zone outcome 5, the single storey building design is generally consistent with the surrounding locality. The design includes good neighbour fencing to the majority of the adjoining street frontages, with pool type open fencing included together with landscaping in limited locations, including where adjacent to the public open space to the south. Overall the design satisfactorily balances the privacy needs of residents whilst providing opportunities for passive surveillance.

One non-compliance was found with Clause 5.4.3.1 (Additional Setback Requirements for Residential Buildings longer than 18 metres and for Residential Buildings over 4 storeys in Height). The applicant made changes to the development during assessment such that the development complies with the other requirements of Part 5.

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 5.4.3.1 (Additional Setback Requirements for Residential Buildings

longer than 18 metres and for Residential Buildings over 4 storeys in Height), because due to a 20.8m building length, an additional setback of 0.5m is required. This results in setbacks of 3m being required for 2 dwellings adjacent to Zuccoli Parade, and 1 dwelling adjacent to Tuckeroo Boulevard, with setbacks of 2.5m proposed.

The purpose of Clause 5.4.3.1 is to *“Ensure that residential buildings respond to the potential adverse effects of building massing and visual bulk when viewed from adjoining land and the street.”* Under administration clause 1, *“The consent authority may consent to a development that is not in accordance with sub-clause 3 if it is satisfied it is consistent with the purpose of this clause and that the design of the development adequately mitigates the adverse effects of building massing and visual bulk that may arise from non-conformity with sub-clause 3.”*

It is considered that a variation to this clause is appropriate in this instance. A number of factors contribute to a slight stepping of dwellings 6 and 7 when viewed from the street. This includes since the Zuccoli Parade boundary is offset from a true north-south alignment, dwellings 6 & 7 are not directly aligned with each other, and the minimum setback of each building increases to a compliant 3.5m & 3.8m. The design was amended to also include a 0.5m step along the building wall, to add a slight variation to the façade when viewed from Zuccoli Parade. These factors combined contribute to a design which is considered to adequately mitigate the adverse effects of building massing and visual bulk as a result of the additional 0.5m setback not being met.

In considering the reduced setback to dwelling 13, the 5 other dwellings along the Tuckeroo Boulevard frontage include larger setbacks of 4m – 6m, and are designed with their shortest length facing Tuckeroo Boulevard with setbacks of 3.5m – 3.9m between. These elements of the design reduce the overall effect of building massing and visual bulk beyond a compliant design. A reduction to the additional setbacks from 3m to 2.5m may be acceptable on this basis.

Under clause 1.10(3), the consent authority must take into account part (c), guidance provided in the zone outcomes in the variation of requirements. Overall, the site layout and building design is assessed as satisfactorily achieving a sympathetic design when viewed from the street, generally aligning with Zone LMR outcome 5, that *“Building design, site layout and landscaping provide a sympathetic interface to the adjoining public spaces and between neighbours, provides privacy and attractive outdoor spaces.”*

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 was identified for low-medium density residential development when first created in Stage 2B of the Mitchell Creek Green subdivision. The site is flat and has no constraints affecting the capability of the land in supporting the development, or that would affect surrounding land as a result of the development.

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.

Whilst the development will change the appearance of the land which is currently vacant, the scale and density of that proposed is consistent with what is reasonably expected in Zone LMR. The applicant has improved the appearance of the development as viewed from the surrounding streets and adjacent open space by including segments of open fencing, noting the development still retains a large component of solid fencing along street frontages to balance the need for privacy for future residents. The Tuckeroo Road reserve to the north of the site is of significant width, and includes the 'Mitchell Creek Green' entrance statement and landscaping. This assists in softening the appearance of the solid fencing when viewed from the intersection.

The proposal complies with the majority of requirements of the Planning Scheme, with one variation sought to the additional setbacks required due to building lengths for three dwellings. As provided in reason 2, this is not expected to unduly impact on the existing and future amenity of the area.

FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

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

SUZANNE PHILIP
Chair

16 December 2022