



DEVELOPMENT CONSENT AUTHORITY

LITCHFIELD DIVISION

MINUTES

MEETING No. 264 – FRIDAY 10 DECEMBER 2021

**HOWARD HALL
325 WHITEWOOD ROAD
HOWARD SPRINGS**

MEMBERS PRESENT: Suzanne Philip (Chair via videolink), Keith Aitken, Adam Twomey, Rachael Wright and Emma Sharp

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Wendy Smith, Julie Hillier and Breanna Lusty (Development Assessment Services)

COUNCIL REPRESENTATIVE: Mark Hogan

Meeting opened at 10.30 am and closed at 12 noon

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

ITEM 1

PA2016/0733

CLEARING OF NATIVE VEGETATION

SECTION 1666 (240) MONCK ROAD, ACACIA HILLS, HUNDRED OF COLTON

APPLICANT

Phuoc Hong and Thi Nga Tran

The applicants sent their apologies as they were unable to attend the meeting.

DAS tabled a response from the applicant on the recommendation.

**RESOLVED
80/21**

That, pursuant to section 53(b) of the *Planning Act 1999*, the Development Consent Authority alter the proposed development and consent to the proposed development as altered to develop Section 1666 (240) Monck Road, Acacia Hills, Hundred of Colton for the purpose of clearing of native vegetation, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans submitted with the application but modified to show:
 - (a) a driveway crossover to the site, to the satisfaction of Litchfield Council;
 - (b) a native vegetation buffer with:
 - i. a minimum width of 50m wide for the first 200m of the northern boundary from Monck Road;
 - ii. a minimum width of 25m elsewhere along the property boundaries; and
 - (c) a minimum 4m width firebreak along all other property boundaries, in addition to the required native vegetation buffers of (b) above.
2. Prior to the endorsement of plans and prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the Litchfield Council stormwater drainage system shall be submitted to and approved by Litchfield Council, 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 clearing of native vegetation is to be undertaken only in the areas identified on the endorsed drawing as "Permitted Clearing". All remaining native vegetation is to be maintained to the satisfaction of the consent authority.

5. The permit holder must ensure that the clearing operator has a copy of the permit, including the endorsed drawings, at all times during the clearing operation.
6. Before the vegetation removal starts, the boundaries of all vegetation stands to be removed and retained must be clearly marked on the ground or marked with tape or temporary fencing to the satisfaction of the consent authority.
7. Firebreaks along boundaries or at appropriate locations shall be provided to the satisfaction of the consent authority on advice from the Bushfires NT (Department of Environment, Parks and Water Security).
8. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of Litchfield Council, to the satisfaction of the consent authority.
9. 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.
10. 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. Information resources are available on the IECA website www.austieca.com.au and the Department of Environment, Parks and 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.

NOTES

1. For the purposes of best practice land management and environmental protection it is recommended that a **Type 1** Erosion and Sediment Control Plan (ESCP) 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 should be prepared prior to commencement of works and implemented during the construction phase (including clearing and early works); and all disturbed soil surfaces should be satisfactorily stabilised against erosion at completion of works. For further advice, contact the Land Development Coordination Branch: (08) 8999 4446.
2. A permit to burn is required from the Regional Fire Control Officer, Department of Environment, Parks and Water Security, prior to the ignition of any felled vegetation on the property. Fire prevention measures are to be implemented in accordance with the requirements of the *Bushfires Management Act 2016*.
3. There are statutory obligations under the *Weeds Management Act 2001* to take all practical measures to manage weeds on the property. For advice on weed management please contact the Department of Environment, Parks and Water Security.

4. Inspection fees and charges may apply in accordance with Litchfield Council's current Fees and Charges. Additional information can be found at www.litchfield.nt.gov.au
5. A Works Permit is required from Litchfield Council before commencement of any work within the road reserve, which would include creation of any driveway crossover connecting to Litchfield Council's street network.
6. Notwithstanding any approved plans, signs within Litchfield Council's municipal boundaries are subject to approval under Interim Development Control Order 29.

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 Northern Territory Planning Scheme 2020 (NTPS2020) applies to the land and the clearing of native vegetation for the purpose of horticulture requires consent under Clause 1.8 (When development consent is required). The application is Merit Assessable under Clause 1.8(b)(ii)(1) of the NTPS2020 as the use is permitted in the zone and the Overlay 3.2 CNR (Clearing of Native Vegetation) applies.

In accordance with Merit Assessable requirements under Clause 1.10(3), the relevant clauses, including Clause 5.7.1 Rural Development (Agriculture, Horticulture and Intensive Animal Husbandry), have been considered and it is found that the proposal complies with the relevant requirements of the NTPS2020. The assessment did not require consideration of any guidance provided by the Zone R (Rural) purpose and outcomes or the applicable Area Plan, as no variations to Parts 3 or 5 of the Planning Scheme were identified.

Sub-clause 6(a) of the Overlay requires an application for the clearing of native vegetation to demonstrate consideration the Land Clearing Guidelines (as amended from time to time) by the agency responsible for natural resources and the environment. The Guidelines recommend a 50m wide buffer to each lot boundary where a property size is between 8ha and 20ha and the application includes buffers with a width of 25m. The benefits of buffers include erosion and sediment control, dust management, spray drift management, amenity, shade, productivity and wildlife movement. The proposal generally complies with the NTPS2020, in that the applicant has considered the Guidelines. An increase in buffer width to the affected landowner to the north will more effectively respond to the potential impact given the proximity of the dwelling to the proposed horticultural activity. The site is otherwise bound by road reserves to the west and to the south and to the east backs onto a property held under a perpetual pastoral lease. Retention of 25m buffers are generally considered sufficient to address erosion and sediment control, spray drift management, amenity and wildlife movement.

2. 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.

One public submission was received during the exhibition period under Section 49 of the *Planning Act 1999* with respect to the proposal. The submission was received from Anne Daw, who owns and resides on Section 1665 to the north of the subject site. Ms Daw raised concern regarding the impact on native wildlife, use of chemical spray on crops and water consumption associated with the loss of native vegetation and horticultural activities proposed.

In response to the submission, the permit is conditional on the retention of a 50m wide buffer rather than a 25m wide buffer for the 200m of the northern boundary of the subject land for the 200m closest to Monck Road, which will reduce the impact of the development on Section 1665.

3. 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 clearing of 5.1 ha of Section 1666 (approximately 64% of the site) and development of the land for horticulture is generally consistent with the purpose of Zone R (Rural), which is to provide for residential, horticultural, agricultural and other rural activities on large lots to provide separation between potentially incompatible uses and restrict closer settlement in areas where access to reticulated water and sewerage may not be available.

However, it is recognised that retaining native vegetation along boundaries will assist in maintaining and/or enhancing aesthetic amenity, privacy, noise reduction and reduce complaints from concerned neighbours.

The Land Clearing Guidelines recommend the retention of 25m wide buffers for lots with an area less than 8ha; however, for parcels with an area of between 8 and 20ha, the Guidelines recommend a minimum buffer width of 50m. In this instance, an increase in the width of the buffer proposed to the northern boundary from 25m to 50m is appropriate to respond to the concerns raised in the public submission received from the affected land owner to the north.

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 Department of Environment, Parks and Water Security confirmed that:

- the site has soils and slopes suitable to support horticultural development and does not require the proponent to prepare an erosion and sediment control plan;

- the property is within the Darwin Rural Water Control District and overlies the Berry Creek management zone of the South Alligator formation;
- water use associated with the proposal has been considered through the water licensing process and determined that there is adequate groundwater to support the clearing application; and
- the small size of the clearing area poses little risk to the fauna listed as vulnerable in the broader area.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

ITEM 2

PA2021/0341

SUBDIVISION TO CREATE TWO LOTS

LOT 4 (620) STRANGWAYS ROAD, HUMPTY DOO, HUNDRED OF STRANGWAYS

APPLICANT

One Planning Consult

Israel-Tshepo Kgosiemang (One Planning Consult) and Maria Scarlett (landowner) and her husband Julian Johnson attended.

Mr Kgosiemang tabled: a site plan showing the revised location of the existing bore and Zone SN1 (Specific Use-Namarada).

RESOLVED

81/21

That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse to consent to the application to develop Lot 4, (620) Strangways Road, Hundred of Strangways for the purpose of subdivision to create two lots for the following reasons:

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 (NTPS2020) 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 the strategic framework (Part 2 of the Scheme, including the Darwin Regional Land Use Plan 2015 and Litchfield Subregional Land Use Plan 2016 which are relevant to this application), zone purpose and outcomes of Clause 4.7 (Zone RL – Rural Living), Clause 6.3.2 (Lot Size and Configuration for Subdivision in Zones RL, R and H, and Unzoned Land), Clause 6.3.3 (Site Characteristics for Subdivision for Lots of 1ha or Greater in Zones RR, RL, R and H, and Unzoned Land) and Clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land) need to be considered.

Clause 2.1 of the NTPS2020 specifies that the purpose of the Strategic Framework includes the:

- Promotion of the Objectives of the *Planning Act 1999* through the establishment of strategic policy and strategic land use plans to guide development; and

- Balancing considerations to inform strategic planning and decision making for development including the sustainable use of resources and the protection of the natural environment and ecological processes.

The Litchfield Subregional Land Use Plan 2016 forms part of the Strategic Framework that the Authority must consider which includes statements of policy and principles to achieve these policy outcomes as follows:

Maintain rural amenity and lifestyle choice

- require reliable water supply adequate for residential use.

Support sustainable groundwater use

- require the groundwater demand of subdivision and development to not exceed the sustainable recharge of the aquifer.

The Department of Environment, Parks and Water Security (DEPWS) advised that the property is within the Darwin Rural Water Control District and overlies the Western management zone of the Howard groundwater system, which is over-allocated under the NT Water Allocation Planning Framework. Further, DEPWS advised that there is not adequate groundwater to support the proposed subdivision and that the proposed subdivision will lead to an increase in the number of land holder rights to access groundwater for rural stock and domestic purposes under section 14 of the *Water Act 1992*.

The NTPS2020 development requirements that apply to subdivision have been considered, and, specifically in relation to water supply, sub-clause 5 of clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land) requires that where no reticulated water is available, a subdivision application demonstrate that an adequate supply of groundwater is available for domestic purposes. The purpose of this clause is to ensure that subdivision of land in Zones RL and R, and unzoned land, is integrated with infrastructure, community services and facilities and will not unreasonably affect the environment. The proposal has been found not to be in accordance with Clause 6.3.4 (Infrastructure for Subdivision in Zones RL, R and Unzoned Land) because the proposal will result in subdivision of land that lacks an adequate supply of groundwater for domestic purposes. At the meeting, the applicant confirmed that an existing bore is located within proposed Lot B on the subject land; however, proposed Lot A has no existing water supply and the applicant states the land owners intend to collect rainwater in tanks, rather than use groundwater.

The Authority acknowledge the owners do not intend to use groundwater for the new lot; however, as extraction of groundwater for domestic purposes is a statutory right granted under Section 14 of the *Water Act 1992*, the Authority does not have power to prevent the future construction and use of bores for the purposes set out in Section 14 on the proposed lots. The Authority considers that refusal of the application is necessary as it will result in unsustainable demands on groundwater resources, reduced reliability of supply to existing users and cause unreasonable degradation of the environment.

While the Authority has broad powers to impose conditions on development permits under Sections 53 and 55 of the *Planning Act*, it does not, in the absence of express provision, have power to prevent the exercise of the statutory rights of owners or occupiers of land granted under other legislation, in particular, under Section 14 of the *Water Act 1992*.

In relation to a subdivision application, the adequacy of groundwater supply for domestic purposes where an over allocated water supply has been identified was previously considered by the NT Civil and Administrative Tribunal, including in the matter of *Jagdpanzer Pty Ltd & Ors. v Development Consent Authority*. The considerations made by NTCAT included the:

- i. zone purpose and the availability of groundwater to support the range of permitted uses in the zone, in addition to a single dwelling; and
- ii. Section 14 provision in the *Water Act 1992* that affirms the water rights of the owner or occupier to:
 - (a) the use of the owner or occupier or the owner's or occupier's family and employees, for domestic purposes;
 - (b) drinking water for grazing stock on the land; or
 - (c) irrigating a garden, not exceeding 0.5 ha, which is part of the land and used solely in connection with a dwelling.

The decision of the Tribunal found that the powers provided to the Controller under the *Water Act 1992* do not include the power to restrict owners or occupiers from taking water from the aquifer. The Tribunal also found that whilst mandating the use of rainwater tanks may reduce the additional demand on the groundwater, it is likely that the owners will turn to the “unlimited” and free groundwater.

The Authority have also considered the application to be non-compliant with the Litchfield Subregional Land Use Plan 2016 statement of policy regarding the resolution of problems associated with historic multiple battle-axe lots to establish an interconnected local road network. Subdivision applications are required to respond to the local road strategy which identifies a future road connection along the southern boundary of the site. As the application does not include excision of any land along the southern boundary for the purpose of a road reserve, the application is considered to be non-compliant with the NT Planning Scheme 2020.

Further, the design of the subdivision layout does not meet sub-clause 8 of Clause 6.3.2 (Lot Size and Configuration for Subdivision in Zones RL, R and H, and Unzoned Land) which specifies that lots are to have a depth to width ratio not exceeding 4:1. Part of proposed Lot B exceeds the ratio at 4.2:1. Information to address this inconsistency with the NT Planning Scheme 2020 was not detailed in the application and the suitability of the layout is questionable.

2. 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.

Ensuring an adequate supply of water to support domestic uses is a factor in maintaining rural amenity. By subdividing the land to create an additional lot where there is not adequate groundwater to support the subdivision, the future amenity of the area will be potentially impacted. The groundwater system is currently over-allocated leading to a reduction in the quantity and quality of groundwater. A reduction in groundwater reduces discharge into water dependent ecosystems. It also limits groundwater availability to existing users and can impact soil quality through increased salt and minerals.

FOR: 4

AGAINST: 1

ABSTAIN: 0

ACTION:

Notice of Refusal

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

SUZANNE PHILIP
Chair

17 December 2021