



DEVELOPMENT CONSENT AUTHORITY

LITCHFIELD DIVISION

MINUTES

**MEETING NO. 282 – WEDNESDAY 20 SEPTEMBER 2023 AT
10:15 AM**

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

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

APOLOGIES: Adam Twomey

LEAVE OF ABSENCE: Emma Sharp

OFFICERS PRESENT: Elya Sugg (Acting Secretary), George Maly (Rural Manager), Eponine Richardson and Joshua Larder (Planners)

COUNCIL REPRESENTATIVE: Julie Hillier

Meeting opened at 10.15 am and closed at 12.15 pm

Please refer to notations 2, 3 and 4 for further information.

4. Engineering design and specifications for the proposed and affected roads, street lighting, stormwater drainage, site earthworks, vehicular access, pedestrian/ cycle corridors and streetscaping are to be to the technical requirements of Litchfield Council to the satisfaction of the consent authority and all approved works constructed at the owner's expense.
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. Before the use commences the owner must, in accordance with Part 6 of the Planning Act 1999, pay a monetary contribution to Litchfield Council for the upgrade of local infrastructure, in accordance with its Development Contribution Plan.

NOTES

1. 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/>
2. 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.
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 <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 3monthsbeforeany 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. A "Works Permit" maybe 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.

6. Litchfield Council's current Fees and Charges may apply to the above conditions. Additional information can be found at <http://www.litchfield.com.au/>
7. Any new on-site waste water management system is to be installed in accordance with the Code of Practice for Wastewater Management.
8. As part of any subdivision, the parcel numbers for addressing should comply with the Australian Standard (AS/NZS4819:2011). 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.
9. 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 RECOMMENDATION 1

1. Pursuant to sections 30P(2)(a) and (b) of the *Planning Act 1999*, the consent authority must take into account any planning scheme that applies to the land to which the application relates and the amendment proposal contained within the application.

The Northern Territory 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), therefore the strategic framework (Part 2 of the Scheme, including the Howard Springs Rural Activity Centre Area Plan, which is relevant to this application), zone purpose and outcomes of Clauses 4.6 (Zone RR – Rural Residential) and 4.27 (Zone FD – Future Development), and Clauses 6.3.1 (Subdivision in Zone RR), 6.3.3 (Site Characteristics for Subdivision for Lots of 1ha or Greater in Zones RR, RL, R and H, and Unzoned Land) and 6.5.1 (Subdivision in Zone FD), need to be considered.

These clauses have been considered and it is found that the subdivision to create two lots complies with the relevant requirements of the NTPS 2020 except for Clause 6.5.1 (Subdivision in Zone FD). The proposed subdivision complies with the purpose and outcomes of Zone FD (Future Development) and will facilitate development in accordance with the Howard springs Rural Activity Centre Area Plan.

2. Pursuant to section 30P(2)(j) of the *Planning Act 1999*, the consent authority must take into account the capability of the land to support the development proposal and the effect of the proposal on the land, and on other land, the physical characteristics of which may be affected by the proposal.

With a site area of 2.09ha, the subject land is capable of accommodating the proposed subdivision. Both lots will be provided with an appropriate level of services and infrastructure including connection to reticulated power and water. Both lots can also manage wastewater via an onsite wastewater management system.

The Department of Environment, Parks and Water Security (DEPWS) advises the subject land overlies the Mount Partridge, Howard springs Howard River groundwater resource, which is considered to be over-used. The lots would still invoke a statutory right to access the underlying groundwater resource. The connection to reticulated water is a requirement of Clause 6.3.1 (Subdivision in Zone RR), which addresses the groundwater sustainability comments raised, as, without a connection to reticulated water, the subdivision cannot be approved.

The Land Suitability Assessment submitted with the application does not identify any land constraints occurring within the site.

3. Pursuant to Section 30P(2)(l) of the *Planning Act 1999*, the consent authority must take into consideration the capability of the public utilities or infrastructure provided in the area in which the land is situated and any requirement for public facilities and services to be connected to the land; and facilities, infrastructure or land to be provided by the applicant.

Power and Water Corporation has confirmed that reticulated power and water are available in the area and the developer's intention to connect to these services. They have also advised that the developer will be required to extend the DN150 water main by approximately 100m along Menaja Road to provide water services to the subject land.

The application acknowledges the lack of reticulated sewerage in the area and proposes the use of on-site effluent disposal systems, which is supported by the submitted Land Suitability assessment that confirms the soils are suitable.

4. Pursuant to Section 30P(2)(m) 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 proposed subdivision is consistent with the purpose and outcomes of both zones along with the subdivision requirements in Part 6 of the NTPS2020. The proposed subdivision results in lots with an appropriate size and configuration for the intended use.

RESOLVED
59/23

That under section 30Q of the *Planning Act 1999*, the consent authority report to the Minister for Infrastructure, Planning and Logistics advising of the likely decision in relation to the development proposal, issues raised in the submissions, issues raised at the hearing and any other matters it considers the Minister should take into account when considering the amendment proposal.

RESOLVED
60/23

That, pursuant to section 86(1) of the *Planning Act 1999*, the Development Consent Authority delegates its powers to the Chairman or in the absence of the Chairman any member of the Litchfield Division of the Authority to:

- determine pursuant to Section 30W(1)(a) to consent to the development proposal contained in the concurrent application and consent to the concurrent application after receipt of a notice under Section 30U(1) that the Minister has approved the amendment proposal contained in the application;
- issue a development permit under section 54(1) in relation to the development proposal to develop Lot 2979 (113) Menaja Road, Howard Springs, Hundred of Bagot for the purpose of subdivision to create two lots; and issue the relevant notices under Section 30Y.

FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION: Development Permit and Notice of Consent

ITEM 3
PA2023/0216 **TELECOMMUNICATIONS FACILITY WITH A 40M HIGH MONOPOLE AND ASSOCIATED ANTENNAS AND EQUIPMENT SHELTERS. PORTION 2822 (220) GUNN POINT ROAD, HOWARD SPRINGS, HUNDRED OF BAGOT**

Applicant Amplitel Pty Ltd

Applicant Mark Baade attended

Submitter/s Narelle Goodrem

Member of public in attendance Barry Shah

RESOLVED
61/23 That, the Development Consent Authority vary the requirements of Clause 5.8.10 (Telecommunications Facility), and consent to the application to develop Portion 2822 (220) Gunn Point Road, Howard Springs, Hundred of Bagot for the purpose of a telecommunications facility with a 40m high monopole and associated antennas and equipment shelters, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the commencement of works, 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.
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 Litchfield Council stormwater drainage system shall be submitted to and approved by the 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 numbered 2023/0216/01 - 2023/0216/05 endorsed as forming part of this permit.
4. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
5. The owner of the land must enter into agreements with the relevant authorities for the provision electricity 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 for further information.

6. 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, in accordance with the requirements of Litchfield Council, to the satisfaction of the consent authority.

7. 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.

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. 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.
3. 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.
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. 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 road network.
6. Notwithstanding any approved plans, signs within Litchfield Council's municipal boundaries are subject to approval under Interim Development Control Order 31.

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 with a 40m high monopole and associated antennas and equipment shelters requires consent under Clause 1.8 (When development consent is required). It is identified as *Impact Assessable* under Clause 1.8 (c) (i) and Clause 3.1 (4) of the Northern Territory Planning Scheme 2020, therefore the strategic framework (Part 2 of the Scheme, including the Darwin Regional Land Use Plan 2015 and the Litchfield Subregional Land Use Plan 2016, which are relevant to this application), zone purpose and outcomes of Clause 4.7 (Rural Living) and Clauses 3.2 (Clearing of Native Vegetation), 3.3 (Restricted Clearing of Native Vegetation), 5.2.1 (General Height Control), 5.2.4 (Car Parking), 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR and 5.8.10 (Telecommunications Facility) need to be considered.

In assessing the application of Clause 5.8.10 to the proposal, the consent authority was mindful of the decision of the Tribunal in *Telstra Corporation Limited v Development Consent Authority [2021] NTCAT 43* which found, inter alia - *Accordingly, the starting point for the DCA, in order to comply with the requirement of section 51(a), was to interpret the NTPS as facilitating and enabling the development of*

the telecommunications facility. Their role was to consider how the location and design of the facility worked to minimise amenity impact. Whether or not the amenity impact was unreasonable was not to be considered by weighing the need for the facility against amenity, but by accepting that amenity would be impacted and considering the extent of that impact as against the requirement to facilitate the infrastructure.

The Tribunal further found

How amenity impact is to be minimised is also contained in the clause. The location and design of the facility must minimise amenity impact through sensitive siting, use of non-reflective finishes and appropriate landscaping. It was the role of the DCA to consider whether Telstra had taken those measures and, then, whether the remaining amenity impacts were unreasonable

In the light of the guidance provided by that decision in respect of Clause 5.8.10, the consent authority considered all the relevant clauses and determined that the proposal complies with all of the relevant requirements of the Planning Scheme except for Clause 5.8.10 (Telecommunications Facility) as it does not propose landscaping as required by subclause (4).

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), sub-clause 5, of the Northern Territory 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 to be non-compliant with Clause 5.8.10 (Telecommunications Facility) as the development does not propose landscaping as required by subclause (4). The development is otherwise compliant with the requirement to provide a detailed feasibility assessment and adequately demonstrates that the development will not result in unreasonable amenity impacts through sensitive siting and use of non-reflective finishes. The development accords with the purpose of the clause which seeks to ensure there is no unreasonable detracting from the amenity of the locality, whilst providing telecommunications infrastructure to meet community need.

The application includes a photomontage image which depicts the structure as viewed from Gunn Point Road and demonstrates existing dense native vegetation on the subject land will provide visual screening to the base of the monopole which will mitigate amenity impacts.

In the context of the subject site, landscape planting is not desirable as there are large clusters of existing native vegetation on the subject land that are protected by Clause 3.3 (Restricted Clearing of Native Vegetation) which restricts the removal of native vegetation. Removing native vegetation to include planted landscaping and ensure compliance with Clause 5.8.10 (Telecommunications Facility) would likely incur a non-compliance with Clause 3.3 (Restricted Clearing of Native Vegetation), and depending on the extent of the removal, cause loss of amenity.

For these reasons, the consent authority considers the proposal is consistent with the purpose of the clause and a variation to landscaping requirements has been granted.

3. 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.

Nine submissions were received under the *Planning Act 1999* in relation to the proposal. All nine submissions objected to the development and raised similar concerns, including contamination risk to residential properties resulting from the emission of electromagnetic radiation generated from the development, administrative errors with the application, incorrect reference to an Optus proposal, opposition to 5G networks, increased risk of lightning strikes, environmental impacts on wildlife and plants and the de-valuation of properties.

Further, one of the submitters, Ms Goodrem attended in person and spoke to her submission. Mr Barry Shah, a resident of the locality and interested member of the public also attended and spoke to his concerns in relation to the proposal. Although not a submitter for the purposes of Section 49 of the Act, the Consent Authority considered that it was able to hear Mr Shah's comments as relevant to the questions of amenity and public concerns under Section 51(1)(t) of the Act. Both parties spoke extensively about their deeply held worries, particularly in relation to possible health impacts of electromagnetic energy emissions.

The applicant addressed the administrative errors with the application, updated the feasibility assessment to consider the collocation of the Optus Facility at Section 247 Hundred of Bagot currently under construction, addressed the need for the facility, provided clarification regarding the standards for EME and acknowledged that the NT Planning Scheme 2020 does not address land or property values.

The consent authority considered the concerns raised by the submitters and determined that, while these are legitimate concerns of residents, matters raised, such as the possible reduction in value of their properties, are outside of the statutory requirements outlined in the Planning Scheme and therefore cannot be relied upon as reasons to prevent the development from occurring. Further, the applicant has provided an Environmental EME Report, demonstrating that the EME levels of the proposed facility will fall well within the maximum levels of exposure set by the Commonwealth Government. The purpose statement and requirements of Clause 5.8.10 (Telecommunications Facility) presume the need for telecommunication infrastructure and address ways to ensure the development does not result in unreasonable amenity impacts. The application demonstrates the development will likely not have an unreasonable impact on amenity for the purposes of that Clause.

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 land is capable of supporting the proposed development. No reticulated sewerage or water is required to support the development. The site is of a scale that ensures a large expanse of native vegetation will be retained.

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.

While amenity considerations are a significant component of clause 5.8.10, the DCA must also consider amenity as required under the Act. Under section 3 of the Act amenity is defined as "any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable". The submissions

made under section 49 reflect the concerns of residents of the locality but many of those concerns are not related to planning considerations.

It is expected that the proposed development will have an unavoidable visual impact on the locality due to the height of the structure and its visual presence in the skyline. On the other hand, improved telecommunications services will provide immediate and longer term benefit to those living in the area. On balance, the consent authority considers that the development will not have an unreasonable impact on the amenity of the locality as the facility comprises a slim monopole constructed with non-reflective material and is sensitively sited behind remnant vegetation that provides visual screening to the base of the development. In addition, the development achieves a separation distance of approximately 420m to residential development in Zone RL (Rural Living) situated east and 1.5km to residential development in Zone RL (Rural Living) situated south of the subject site.

FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Determination

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

SUZANNE PHILIP
Chair

29 September 2023