



DEVELOPMENT CONSENT AUTHORITY

LITCHFEILD DIVISION

MINUTES

**MEETING NO. 283 – WEDNESDAY 18 OCTOBER 2023 AT 10:20
AM**

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

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

APOLOGIES: Nil
LEAVE OF ABSENCE: Emma Sharp

OFFICERS PRESENT: Elya Sugg (Acting Secretary), George Maly and Joshua Larder (Development Assessment Services)

COUNCIL REPRESENTATIVE: Rodney Jessop

Meeting opened at 10:20 am and closed at 11:15 am

ITEM 1 **UNDEFINED USE INCORPORATING STORAGE OF BUSINESS VEHICLES AND MATERIALS NOT ASSOCIATED WITH ANY OTHER USE ON THE SITE**
PA2023/0285 **LOT 72 (50) LACEY ROAD, HOWARD SPRINGS, HUNDRED OF BAGOT**

Applicant: Kevin Dodd in attendance

Landowner Christine and Andre Tayler in attendance

Submitter Gerry Wood in attendance

Interested party Imelda Wood in attendance

RESOLVED
62/23

That, the Development Consent Authority vary the requirements of Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to use Lot 72 (50) Lacey Road, Howard Springs, Hundred of Bagot for the purpose of a storage of business vehicles and materials, for a period of eighteen months, subject to the following conditions:

Conditions Precedent

1. Prior to the endorsement of plans and prior to commencement of the use, 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 separate and clearly labelled plan of the site showing the area/s set aside for the storage of the vehicles and equipment having a maximum combined footprint of no more than 1000m².
 - b) A separate and clearly labelled plan of the site showing the area/s set aside for the storage of vehicles and equipment being reduced within 6 months of the permit being issued, to a maximum combined footprint of no more than 600m²
 - c) A separate and clearly labelled plan of the site showing the area/s set aside for the storage of vehicles and equipment being reduced within 12 months of the permit being issued, to a maximum combined footprint of no more 300m².

2. Prior to the endorsement of plans and prior to commencement of the use, 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) The demountable and the machinery shed structures along the Stanley Road boundary being suitably screened through the use of landscaping or through the use of architectural embellishments.
 - b) Demountable sea container moved to meet the 10m setback requirement from Stanley Road.

3. Prior to the endorsement of plans and prior to the commencement of the use, a "Works Permit" for the crossover design and construction works within the Council road reserve, shall be obtained from Litchfield Council, to the satisfaction of the consent authority.
4. Prior to the endorsement of plans and prior to the commencement of the use, a schematic plan demonstrating the on-site collection of stormwater, and its discharge into Litchfield Council's stormwater drainage system, shall be submitted to, and approved by Litchfield Council.

General Conditions

5. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
6. Within 6 months of the permit being issued, the footprint of the use is to be reduced to a maximum area of 600m² as per relevant plans approved by the consent authority.
7. Within 12 months of the permit being issued, the footprint of the use is to be reduced to a maximum area of 300m² as per relevant plans approved by the consent authority.
8. 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.
9. 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.
10. 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.
11. Before the use commences, firebreaks along boundaries or at appropriate locations shall be provided to the satisfaction of the consent authority based advice from Bushfires NT (Department of Environment, Parks and Water Security / Northern Territory Fire and Rescue).
12. The use and development must be managed so that the amenity of the area is not detrimentally affected, through the:
 - a. transport of materials, goods or commodities to or from the land
 - b. appearance of any building, works or materials
 - c. emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil
 - d. presence of vermin.
13. The use of the land for the purpose of a storage of business vehicles and materials must cease 18 months from the date of issue of this permit

Notes

1. Litchfield Council's current Fees and Charges may apply to the above conditions. Additional information can be found at www.litchfield.nt.gov.au.
2. 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 to which the application relates. The application was made for an undefined use, proposing that a portion of the subject land be used to store business vehicles and materials associated with a plumbing company, operated by the landowners who do not reside on the site. The subject land is zoned RL (Rural Living), the purpose of which is to provide for a range of rural lifestyle choices and rural activities, in areas where access to reticulated water and sewerage may not be available. While the zone is primarily intended for residential use it does anticipate *rural activities, such as agriculture, animal boarding, horticulture, intensive animal husbandry, plant nursery, industry-primary, stables, and veterinary clinic where the scale, intensity and nature of the activity is compatible with the character and amenity of the surrounding locality and the land is capable of supporting the development*. Home based business is also anticipated in the zone, provided it is ancillary to the primary use of dwellings-single within a rural lifestyle setting, and *the home based business is of a scale, intensity and nature that is compatible with the character and amenity of the surrounding locality*. Over and above those anticipated uses, industrial uses are generally prohibited within the zone.

The proposal was accepted by DAS for lodgement and exhibition as an undefined use. The Authority notes that advice on the lack of suitable definitions for the proposed use was provided to the applicant as part of pre-application discussions. The Authority considered possible applicable definitions contained in NTPS 2020, including home based business, industry-light, industry-general and warehouse. The proposal does not fit the definition of home based business, as the operator of the business does not live on the site and it could not be considered as *a business activity, which is subordinate to the primary residential use*, as required by the definition in Schedule 2.1 (Defined Uses) of the NTPS 2020. The definition of "industry" contained in Schedule 2.2 (General Definitions) provides that *industry means the use of land for processes involving manufacturing, assembling, packaging, altering, repairing, renovating, finishing, cleaning, treating of waste materials, testing or analysis or dismantling of an article, goods, or material including the storage or transportation associated with any such activity*. No processes, as required by the definition, occur on the site and the storage of goods and materials is not associated with an industrial use of the site. The definitions of both industry-general and industry-light in Schedule 2.1 are dependant on the definition of "industry" and are, therefore, inapplicable. The Authority further considers the proposal is not encompassed by the definition of "warehouse" as the use does not involve the use of premises for bulk storage of goods or the display or sale of goods by wholesale as required by Schedule 2.1.

As an undefined use (storage of business vehicles and materials), the application 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 Litchfield Subregional Land Use Plan 2016, which is relevant to this application), zone purpose and outcomes of Clause 4.7 (Zone RL – Rural Living), and Clauses 5.2.1 (General Height Control), 5.2.4 (Vehicle Parking) and 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), need to be considered.

These clauses have been considered and it is found that the proposal can operate in a manner consistent with the Litchfield Subregional Land Use Plan 2016, the outcomes of Zone RL (Rural Living), subject to conditions which time limit the development as discussed below. In relation to Part 5 Clauses, it is found that the proposal does not comply with Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) of the Northern Territory Planning Scheme 2020.

Litchfield Subregional Land Use Plan 2016

The Authority notes that the DAS Report states the proposal is generally consistent with the Litchfield Subregional Land Use Plan 2016. The Authority cannot agree with that conclusion. The plan identifies the area to fall within the Rural Area, which seeks to maintain rural amenity and lifestyle choice. It also seeks to provide opportunity for residential land uses in the rural area to meet market demand. The proposed use is not associated with an existing dwelling-single in Zone RL. While the use does not meet the definition of “industry” in the NTPS 2020, as discussed earlier, it is clearly associated with a plumbing business which is industrial in nature. Such a use, if applied for without the type of restrictions discussed below to ensure its temporary nature, could not be considered consistent with the intent of the strategic framework. The Authority, however, considers that, as a temporary use to allow relocation of the activity, it can be supported.

Overlays

The land is subject to Clause 3.2 (Clearing of Native Vegetation) of the NT Planning Scheme 2020. Portions of the subject land had already been cleared and as no native vegetation is proposed to be removed as part of the proposal, the proposed use complies with the requirements of the overlay clause.

Zone RL (Rural Living)

The purpose of Zone RL is to provide for a range of rural lifestyle choices and rural activities, in areas where access to reticulated water and sewerage may not be available.

The Authority considers that, in general terms, an undefined use for storage of business vehicles and materials not associated with any other use on the land is not compatible with the zone purpose. Those activities are associated with industry uses, which would typically be located in a light or general industry zone. The Authority considers that, ordinarily, such an application for an open-ended industrial-type use would not be supportable. However, the Authority notes the applicants’ intent to remove or relocate the activities from the site and that, in considering the suitability of the site for proposed use, the temporary nature of such use is relevant. A requirement for the use to cease after 18 months will enable the site owner a reasonable timeframe for the removal of the vehicles, materials and equipment from the land.

Part 5 Requirements

Due to the development being undefined, the majority of provisions in Part 5 are discretionary and are not directly applicable to the application. The Part 5 requirements chosen relate to the individual components of the proposal including Clauses 5.2.1 (General Height Control), 5.2.4 (Vehicle Parking) and 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures). The proposal does not comply with setback requirements for ancillary structures.

For the avoidance of doubt, the Authority considers that a permit for the undefined use (storage of business vehicles and materials associated with a dwelling-single) can be approved in this case, but only on the basis that it is limited to 18 months duration, with the use being reduced incrementally over the 18 month period. A condition precedent will be placed on the permit requesting amended site plans showing the use having a maximum footprint of 1000m². Within 6 months of the permit being issued, the area of the use is to have a maximum footprint of 600m² and after 12 months, the use is to have a maximum footprint of 300m². At the conclusion of 18 months all vehicles and materials approved for storage on the site are to be removed.

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 (Building Setbacks for Residential Buildings and Ancillary Structures) because sub-clause 6 requires a 10m setback for ancillary structures from each boundary where the land parcel located in Zone RL (Rural Living) exceeds 1ha in size. A machinery shed had been constructed on the site through the use of three sea containers that have been linked together to form a roofed structure. The proposed machinery shed has a setback of 7m from the eastern boundary and a variation to this clause has been requested. A site inspection also revealed that there is another single sea container with a reduced setback to Stanley Road, though a setback variation for this structure was not requested.

The NT Planning Scheme allows up to two demountable structures to be placed on land in zone RL without approval. The sea containers which form part of the machinery shed, appear to form part of the structure rather than being individual containers. In consequence, no concerns are raised in relation to the number of sea containers on site.

The purpose of Clause 5.4.3 is to ensure that residential buildings and ancillary structures are located in a manner that is compatible with the streetscape and surrounding development including residential buildings on the same site; minimises adverse effects of building massing when viewed from adjoining land and the street; avoids undue overlooking of adjoining properties; and facilities breeze penetration through and between buildings.

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

The storage structures and their placement on the site generally meet the purpose of this clause as such structures are not uncommon in rural areas. The rural living zone seeks to provide a range of rural lifestyle choices and rural activities, and the proposed use of such storage structures does not conflict with this. The primary use of the land remains the existing dwelling-single and given the subject land has a lot size of 2.34ha, storage of items in a variety of structures, including demountables is considered acceptable.

The machinery shed has a minor footprint compared to the overall area of the proposed use and being relatively low in height, has a low building massing profile when viewed from adjoining land and the street. The adjoining lot to the west is within the same ownership as the subject land with the surrounding lots to the north and east separated by Lacey Road and Stanley Road. The reduced setback to Stanley Road is not considered likely to impact on the amenity of the area as Stanley Road is a dead-end road with little traffic flows as access to Lots 71 and 72 is provided via Tobin Road or Lacey Road. The existing machinery shed does not lead to undue overlooking of adjoining properties and is a sufficient distance apart to facilitate breeze penetration.

It is also noted however, that the machinery shed is not architecturally embellished and that the existing vegetation is not adequately dense to screen it from the road. The reduced setback can only be supported if more landscaping is provided along the relevant portion of Stanley Street, which will screen the containers from view, or if a suitable embellishments can be placed on the structures to minimise their visual impact from the public land.

As no setback variation for the sea container was sought and it is transportable, the Authority considers that it should be moved to meet the setback requirements.

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 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), as identified above.

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.

The application was placed public exhibition from 1 September 2023 to 15 September 2023. Two public submissions were received. One of submissions was received under section 49(1) and one under section 49(3) of the *Planning Act 1999*.

The submission received under section 49(1) raised concerns regarding the impacts of the use on the amenity of the area, in particular its impact on the existing character of the area, the lack of screening from existing vegetation and noise emissions generated. The submitter outlined further concerns regarding the intensification of the use, traffic impacts from large trucks utilising the site and previous clearing of native vegetation.

The submission received by Litchfield Council under section 49(3) raised concerns over the industrial nature of the proposed use and the potential

impacts on the integrity of the road network within the municipality and on the rural amenity.

Both the submitter and Litchfield Council presented to the Consent Authority on the day. The submitter reiterated their concerns with the proposal's impact on the rural residential amenity of the area, noting it was inconsistent with the character of the area. The submitter advised the use was visible when viewed from his allotment and said the use has expanded since it has first commenced.

The submitter stated he was happy the landowner had made attempts to screen the use from the street and adjoining allotments but indicated that it was not sufficient enough to reduce the impacts on the visual amenity. The submitter did not argue against a temporary permit of more than 2 years being issued but expressed concerns about the use continuing after the permit has expired and the precedent being set.

An employee from Litchfield Council also attended the meeting. The employee reiterated the Council's view that the use is not suitable in the RL zone but noted the Council's request for a works permit to be placed on any permit issued as the design of the roads in the immediate area do not cater for shipping containers and semi-trailers regularly being transported on these roads. Council requested the works permit from the applicant to provide further information on the types of vehicles accessing the subject land, what is being transported and what roads are being used. Council advised they were satisfied with a temporary permit being issued for a limited time period.

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.

With a lot size of 2.34ha, the subject land has the capacity to allow for the proposed use. The subject land is irregular in shape, relatively flat with an average slope of 1.7m towards the southern portion of the site and native vegetation scattered throughout. It consists of an existing dwelling-single and a number of demountable structures. The subject land is not affected by overlays relating to storm surge or flooding.

5. Pursuant to section 51(1)(n) of the *Planning Act 1999*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated.

The Authority noted that the proposed use has an impact on the existing and future amenity of the area through visual, noise and vibration issues as raised by the submitter and Litchfield Council.

The application for planning consent came as a result of an enforcement investigation by Development Assessment Services. During this investigation, the landowner expressed a desire to eventually remove the storage from the subject land but at a time when it would be financially viable.

In consideration of the potential impact of the use on the amenity of the locality, the Authority noted that the proposal does not represent a suitable use of the land in the long term and determined that the use be limited to a period of 18

months to enable the staged cessation of the use.. The period of 18 months is considered to be adequate for the landowner to scale down the use of the site for storage purposes and remove the vehicles and the equipment from the site while balancing the concerns of the submitters.

FOR: 3

AGAINST: 1

ABSTAIN: 0

ACTION: Notice of Determination

NOTE: Authority member, Adam Twomey, did not support the development application as proposed. Mr Twomey considers that the proposal does not meet the requirements of the NTPS 2020 and is not consistent with the Strategic Framework or Zone purpose.

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

SUZANNE PHILIP
Chair

24 October 2023