

DEVELOPMENT CONSENT AUTHORITY

LITCHFIELD DIVISION

MINUTES

MEETING No. 193 – FRIDAY 29 JANUARY 2016

WHITEWOOD HALL
325 WHITEWOOD ROAD
HOWARD SPRINGS

MEMBERS PRESENT: Denis Burke (Chairman), Bob Shewring, Keith Aitken and Michael Bowman

APOLOGIES: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Steven Kubasiewicz, Dawn Parkes and Sonia Barnes (Development Assessment Services)

COUNCIL REPRESENTATIVE: Edward Li (Engineer)

Meeting opened at 9.45 am and closed at 11.15 am

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 CLEARING OF NATIVE VEGETATION FOR THE PURPOSE OF AGRICULTURE
PA2015/0858 LOT 14 (65) PERENTIE ROAD, HUNDRED OF CAVENAGH
APPLICANT CRAIG SHEATHER

Mr Craig Sheather and Ms Thanh Thai (landowners), and Ms Linda Ouwerkerk attended.

RESOLVED
05/16

That, pursuant to section 46(4)(b) of the *Planning Act*, the Development Consent Authority defer consideration of the application to develop Lot 14 (65) Perentie Road, Hundred of Cavenagh for the purpose of clearing of native vegetation for the purpose of agriculture to require the applicant to provide the following additional information that the Authority considers necessary in order to enable the proper consideration of the application:

- (a) Demonstration and agreement with the Department of Land Resource Management that an adequate supply of groundwater is available for irrigation purposes; and
- (b) An amended plan that provides for appropriate native vegetation buffers to be established in accordance with the Land Clearing Guidelines.

REASONS FOR THE DECISION

1. Pursuant to section 51(a) of the *Planning Act*, the consent authority must take into account any planning scheme that applies to the land to which the application relates.

Clause 10.3 (Clearing of Native Vegetation – Performance criteria) requires, amongst others, that an application must demonstrate consideration of the Land Clearing Guidelines and whether there is sufficient water for the intended use.

No buffer areas are proposed to any affected property boundaries. In accordance with the Land Clearing Guidelines the primary purpose of buffers is for reasons of visual amenity and chemical spray drift. The authority considers that the reasons given by the applicant do not justify the authority supporting a lack of buffers. Buffers could be established in accordance with the Land Clearing Guidelines with a redesign of the proposed clearing area.

The Department of Land Resource Management (DLRM) advises that there is a significant shortfall in water requirements to accommodate the proposed agricultural use of the land. The authority considers that the application fails to demonstrate that there is sufficient water for the intended use as required by Clause 10.3.2 (g) of the Northern Territory Planning Scheme.

2. Pursuant to section 51(n) of the *Planning Act*, 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.

Clearing land for the purpose of agriculture where there is an insufficient water supply has the potential to draw down on the aquifer in a manner that will affect access to the supply by other water users in the locality. In addition failure of the crops through a lack of water supply could potentially affect adjoining land owners through dust and weed infestation.

ACTION: Advice to Applicant

ITEM 2
PA2015/0864
APPLICANT

SUBDIVISION TO CREATE 3 LOTS
SECTION 5346 (839) PIONEER DRIVE, HUNDRED OF STRANGWAYS
EARL JAMES AND ASSOCIATES

Mr Kevin Dodd (Earl James and Associates) and Mr Jeff Hunnan (landowner) attended.

Mr Dodd tabled two photos showing battleaxe lots and an engineering plan for a lot on Pioneer Drive with a cul de sac instead of a battleaxe.

RESOLVED
06/16

That, pursuant to section 46(4)(b) of the *Planning Act*, the Development Consent Authority defer consideration of the application to develop Section 5346 (839) Pioneer Drive, Hundred of Strangways for the purpose of subdivision to create 3 lots, to require the applicant to provide the following additional information that the Authority considers necessary in order to enable the proper consideration of the application:

An amended plan to show:

- (a) access arrangements that meet the requirements of Litchfield Council; and
- (b) Demonstration and agreement with the Department of Land Resource Management that an adequate supply of groundwater is available for domestic purposes and that the proposed subdivision will not impose unsustainable demands on groundwater.

REASONS FOR THE DECISION

1. Pursuant to section 51(a) of the *Planning Act*, the consent authority must take into account any planning scheme that applies to the land to which the application relates.

Clause 11.4.2 (Infrastructure in Subdivision of Rural and Unzoned Land) requires that where no reticulated water is available, demonstrate that an adequate supply of groundwater is available for domestic purposes.

DLRM have advised that the proposed subdivision will require in excess of the average sustainable yield and if approved, the proposed subdivision will preclude the potential future development of two rural residential lots relying on this aquifer for household and garden water

supply. The application has not satisfactorily demonstrated that an adequate supply of groundwater is available for domestic purposes and therefore the application does not meet the requirements of this clause.

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

Two public submissions were received and raised concerns with the design of the subdivision and the size of proposed Lot A not meeting the minimum requirement. The Authority considered that dispensation could be given for the size of proposed Lot A as it is only 5% below the minimum lot size and is considered to still be of a size suitable for rural living purposes. Deferral of the application to allow the applicant to resolve access issues with Litchfield Council is considered to address layout concerns raised in the submissions.

3. Pursuant to section 51(n) of the *Planning Act*, 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.

Demonstration that an adequate supply of groundwater is available for domestic purposes and that appropriate access is provided to the proposed subdivision is necessary to ensure that there is no negative impact on the existing or future amenity of the area.

4. Litchfield Council do not support a single driveway access point for the three lots and have identified that the frontage of the existing lot is such that the required separation distances is not achievable. Amended plans are required to demonstrate that access can be provided to the satisfaction of the controlling agency which in this case is Litchfield Council.

ACTION: Advice to Applicant

ITEM 3
PA2015/0804
APPLICANT

HOME BASED CONTRACTING (MATERIAL STORAGE)
SECTION 4525 (8) BOYD COURT, HUNDRED OF STRANGWAYS
MASTERPLAN NT

Mr Jack Priestly (Masterplan NT) and Mr Victor Lai (landowner) attended.

Mr Priestly showed members an updated map of the site showing the cleared area and the home based contracting area.

Submitters in attendance:- Mr Allan & Mrs Gail Marshall and Ms Lyn Gerdes.

RESOLVED
07/16

That, pursuant to section 53(c) of the *Planning Act*, the Development Consent Authority refuse to consent to the application to develop Section 4525 (8) Boyd Court, Hundred of Strangways for the purpose of Home Based Contracting (material storage) for the following reasons:

REASONS FOR THE DECISION

1. Pursuant to section 51(a) of the *Planning Act*, the consent authority must take into account any planning scheme that applies to the land to which the application relates.

The subject site is zoned RL (Rural Living) and while home based contracting is a permitted use within this zone subject to compliance with the relevant clause, the proposal is considered to be in excess of what would ordinarily be considered an acceptable use under this definition and is more akin to an industrial use that should take place in an industrial zoned area.

While the proposed use may appear at face value to accord with the definition of home based contracting, the proposal presents an important difference and that is that while the material storage may be '*associated with a business operated by a person resident in the dwelling*', it cannot meet the second part of the definition which is '*but which business does not operate on the site of the dwelling*'.

The business is completely reliant on the subject site and therefore the business has to operate on the site of the dwelling, in whatever form that may be. Without the subject site there is no business and therefore this proposal is more than home based contracting.

The purpose of clause 7.10.8 (Home Based Contracting) is to ensure that home based contracting is established and operated in a manner that does not detract from the amenity of the locality. The proposal does not comply with a number of the requirements set out in the clause and is likely to impact on the amenity of the locality. While the Authority has the discretion to vary the requirements, the Authority considered that the proposal is not appropriate to the site and that it will impact on the amenity of adjoining and nearby land and therefore cannot be supported.

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

Nine public submissions were received and mostly raised concerns with the impact that the proposed use would have on the amenity of the area. Given that the sole purpose of the clause is to ensure that the use will not detract from the amenity of the area and that the use has already been operating so it is clear to see the impact it will have, the use cannot be supported. Refusal of the application is considered to address the submitters concerns.

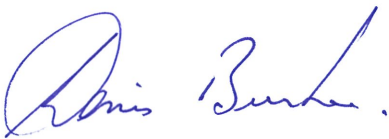
3. Pursuant to section 51(n) of the *Planning Act*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated.

The proposed use will impact on the existing and future amenity of the area through increased noise, traffic movements, dust creation and appearance to the street and neighbouring properties and is likely to place an undue burden on adjoining residents. The primary purpose of Zone RL (Rural Living) is *to provide for low-density rural living and a range of rural land uses including agriculture and horticulture*. The Authority considered that the proposed use does not accord with this purpose and is not a use that would be reasonably anticipated to take place in zone RL (Rural Living).

Furthermore, the subject site and surrounding properties are all burdened by a restrictive building covenant which goes some way to ensuring a certain quality of built form and amenity within the area subject to the covenant known as 'Morgan Heights'. While the covenant may not restrict the use of the land for business purposes it specifically states that the appropriate approvals should be sought and appears to discourage such uses as the one being proposed by way of encouraging built form that is of the 'best quality' and ensuring that the land is maintained 'in a clean and tidy condition'. It is reasonable to assume that land burdened by this covenant would not be developed for material storage such as that being proposed and that the amenity of the area with such a covenant in place would be protected from any such intrusion.

ACTION: Notice of Refusal

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



DENIS BURKE
Chairman

3/2/16