



Development Consent Authority

Northern Territory

GPO BOX 1680
DARWIN NT 0801

Telephone No: (08) 8999 6046
Facsimile No: (08) 8999 6055

In reply please quote: PA2018/0436

Northern Planning Consultants Pty Ltd
PO Box 36004
Winnellie NT 0821

Dear Mr Cunnington

NOTICE OF CONSENT (SECTION 53B OF THE *PLANNING ACT*) LOT 9370 (544) LEE POINT ROAD, TOWN OF NIGHTCLIFF

The Development Consent Authority has determined to vary the requirements of Clause 11.2.3 (Lot Size and Configuration in Residential Subdivisions) of the Northern Territory Planning Scheme, and in accordance with section 53(a) of the *Planning Act*, to grant consent to the proposal to use and develop the abovementioned land for the purpose of a subdivision to create 282 lots in 5 stages, subject to the conditions specified on the attached Development Permit DP19/0050.

Reasons for the Determination

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

The land is in Zone FD (Future Development) of the Planning Scheme. Clause 14.1.5 (Planning Principles for the Lee Point Area Plan) applies and the development is found to be generally compliant with the broad design principles, including the land uses and densities proposed, responds to the constraints of the land, and the road layout.

As required by the Area Plan, the development demonstrates environmental and engineering measures to achieve an appropriate stormwater quality. The subdivision design has resulted in a slight increase of 8 – 10% of peak flows as a result of the changes made to the stormwater design to meet the EPA's recommendations for retaining native vegetation. The design however includes detention basins, vegetated buffers/swales, and a landscaping selection based on suitability of the local climate. A water quality monitoring plan has also been required by condition.

The street network reflects the required road connections, including to Aldenham Road to the south, and to Lee Point Road to the west. As a result of the initial deferral of the application, the development now also allows a future connection to the adjacent land to the north.

The design reflects the key pedestrian/cycleways shown, including a 5m landscaped extension along the frontage to Lee Point Road (to be developed by the City of Darwin as part of planned road upgrades), 3m wide shared paths from Lee Point Road east into the subdivision, within the local park and along the Bridge Street connection, plus 1.5m pedestrian paths along all local streets and a gravel walking trail through the vegetated lot at the east.

The landscape design is assessed as providing quality public areas and open space, and includes playgrounds, picnic facilities, shelters, extensive shared paths, native trees, and the protection and relocation of *Cycas armstrongii*. The landscape design also retains the existing Konfrontasi Cruciform adjacent to Lee Point Road at the north-western corner of the site, which is proposed to be integrated with native vegetation.

The Area Plan requires that the subdivision layout is responsive to climate, and material presented by the applicant demonstrates that the shape of the land including a narrow north-south dimension for urban residential development restricts the opportunity to create streets with the longest axis north-west and south-east. Australian Government guidelines suggest that in achieving environmentally sustainable homes, the lot orientation is more critical south of the Tropic of Capricorn where a balance of heating and cooling must be obtained, and north of the Tropic of Capricorn, while lot orientation is also important to take advantage of the prevailing breezes, airflow and breezes can still divert in and between dwellings through building design, positioning and landscaping. The lots are assessed as providing sufficient building envelopes to ensure built form can adapt to lot orientation, provide landscaping and shading, and take advantage of prevailing breezes.

The development has densities that comply with the Area Plan:

- The urban area, excluding the school and community centre lots is approximately 20.4ha in area. With 240 urban residential lots to be developed with single dwellings, this is a dwelling density of 11.76 dwellings per hectare which is within the intended range of 10 – 20 dwellings per hectare.
- The rural residential area is approximately 20.2ha in area. With 30 rural residential lots proposed, this is an area of 1 dwelling per 1.48 hectares which is also within the intended density of 2 dwellings per hectare.

The rural residential lots provide a buffer between the habitat of biting insects and the urban residential lots. The interim staging plan provided following the initial deferral now demonstrates that the urban lots are provided with a suitable buffer from the habitat of biting insects through an open wind buffer, until such time that the rural residential lots are constructed.

The subdivision includes a transition in residential densities with most lots along Aldenham Road to the south providing areas of 570m² or 600m², which is an average larger than the nearest lots in Muirhead, which are around 490m² in area. One proposed lot has an area of 457m², however this not significantly smaller and the overall treatment is considered an acceptable transition.

The Area Plan requires the provision of adequate land for education and community facilities and the subdivision includes a 3.25ha school site, a 0.21ha community centre site, plus a 2.46ha for active recreation. The location of the education and active recreation reserve lots have been reversed due to a requirement from the Department of Infrastructure, Planning and Logistics on behalf of the Department of Education through the developer agreement, and the reversal is proposed to mitigate any potential vehicle queuing issues related to the school at the Lee Point Road intersection during peak times. This change is considered acceptable.

The design includes 3 lots nominated for the development of a child care centre, café and sales office in the south-western corner of the site, at the Lee Point Road / Aldenham Road intersection. The Area Plan seeks to concentrate commercial and tourism uses to the west of Lee Point Road with these uses not shown in the proposed location. The proposed inclusion has merit as the 3 lots are central to the Lee Point suburbs, and the uses will service the surrounding dwellings with a child care centre in particular identified as a high need in this location. The uses are also separated from existing residential lots in Muirhead by Aldenham Road which provides a 20m buffer. The future application of Clause 8.3 (Setbacks for Commercial Uses Adjacent to Land in Zones SD...) will ensure a setback of commercial uses of 5m from the adjoining residential lots, including a landscaped visual screen of 3m within this setback, with this ensuring that the future

developments are designed to minimise impact on immediately adjacent dwellings.

As the land is currently Zoned FD (Future Development), a condition requires that a proposed zoning plan be submitted and approved consistent with the description given in the application to provide an easy reference for the rezoning process, should construction on individual lots be intended prior to zone normalisation occurring, and also to confirm all lots are for the development of single dwellings only.

2. The urban parts of the subdivision are assessed as responding to the physical characteristics of the land as required by Clause 11.2.1 (Site Characteristics in Residential Subdivisions), with the subdivision largely comprising gradients of 1% to 2%, with some steeper areas up to 5% understood as being contained within the active recreation reserve. A condition is recommended to ensure the submission of site earthworks plans to demonstrate that excessive cut/fill/retaining walls are avoided. None of the areas where lots are proposed are subject to storm surge, and the subdivision formalises the natural drainage towards the south-east within defined drainage channels, with the 2.24ha area of monsoon vine thicket protected through continued stormwater flows.
3. The urban parts of the subdivision provide 11.1% public open space, which meets the minimum requirement of 10%, with this public open space comprising the active recreation reserve of 2.46ha plus a local park of 0.58ha. The subdivision is also integrated with community facilities including the school and site for a community centre to meet the requirements of Clause 11.2.2 (Infrastructure and Community Facilities in Residential Subdivisions) and the Area Plan. All dwellings in the urban area are within 400m of public open space. A total of 8 lots include rear boundaries adjacent to the local park, however clear views and logical pedestrian pathways are included such that the design is satisfactory.
4. A non-compliance is identified with Clause 11.2.3 (Lot Size and Configuration in Residential Subdivisions), the purpose of which is to ensure residential subdivisions contain lots of a size, configuration and orientation suitable for residential purposes. For lots over 600m², minimum lot sizes 20m x 24.5m are required to meet the minimum building envelopes, and larger lot sizes on street corners.

Pursuant to Clause 2.5 of the Planning Scheme, the consent authority may grant a variation to this clause provided it is satisfied that special circumstances can be identified to justify the variation sought.

The changes made to the subdivision following the initial deferral have improved compliance with this clause. Originally 15 of the 47 'larger traditional lots' sized 600m² – 800m² sought a variation with this number now reduced to 5 lots numbered 56, 57, 79, 183 and 190.

The special circumstances identified relating to the 5 non-complying lots include the limited number of lots to which the non-compliance relates in the scale of the overall subdivision and that the irregularity in shape of the 5 lots generally arises as a result of both lot location and either, accommodating the adjacent road curve/drainage reserve, or to a corner truncation. In considering the circumstances, the 5 lots are still appropriately sized (one lot 602m², with others sized 691-773m²), would be compliant with the building envelope requirements of smaller lots sized 450 – 600m², and are still determined to be a size and configuration suitable for residential purposes as the clause intends.

5. Clause 11.4.5 (Subdivision of Land Zoned RR) relates to the 30 rural residential lots and ensures that rural residential subdivisions respond to the physical characteristics of the land, are integrated with infrastructure, and are of a suitable size and configuration. The rural residential lots are required to connect to reticulated water and sewer (or otherwise demonstrate soils are suitable for on-site absorption of effluent), provide for adequate drainage, and provide sealed roads. The rural residential lots comply with the maximum density of 2 dwellings per hectare as provided in the Lee Point Area Plan. The minimum lot size provided by Clause 11.1.1 (Minimum Lot Sizes and Requirements) for the

intended Zone RR is 0.4ha of all unconstrained land. The land is identified as being constrained, with poor drainage and seasonal inundation, and in response, lots are proposed to be engineered with earthworks to receive sufficient land fill (expected fill volumes between 0.4m and 1.2m) to overcome these constraints and to ensure that lots are free draining. A condition is included to confirm that prior to the issue of titles, the lots be demonstrated as being unconstrained and suitable for the intended purpose.

6. Pursuant to section 51(e) of the *Planning Act*, 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.

A total of 12 public submissions were received during exhibition of the proposal and a further 8 members of the public also provided comments following the close of the exhibition period. The most frequently raised concerns related to the clearing of vegetation, removal of habitat, the lot sizes proposed and subsequently concerns that future housing will not be climatically suitable, limited setbacks and private open space for future housing, concerns with land suitability including due to drainage and seasonal inundation, stormwater impacts on Buffalo Creek, odour from the Leanyer Sanderson Wastewater Treatment Plant, and the level of consultation undertaken. Submitters also had concerns regarding the delivery of community uses and that these lots would not be properly formed. Other concerns related to increased traffic on Lee Point Road, that the developer should be made to upgrade Lee Point Road, and regarding road widths. Concerns also related to ensuring the developer was responsible for implementing the water quality management plan, ensuring the integrity of the retained native vegetation including during construction, through weed management and as a result of increased proximity of residents, protecting the integrity of the monsoon rainforest including through continued stormwater flows, that the total number of lots had increased through assessment, that the proportion of smaller lots had increased, that larger lots will be developed as duplexes, and that the rural residential lots would have reduced amenity as a result of the clearing and earthworks required. Requests were also made that residents of the suburb be actively educated regarding responsible cat ownership, and that regard be given to the demand or necessity for the additional lots in the Darwin residential market.

The EPA has provided its Assessment Report, addressing the impacts of the clearing of native vegetation and subsequent impacts to habitat and local fauna as a result of the development, and odour impacts, and this determination has considered the EPA's recommendations. The application was placed on public exhibition in accordance with the requirements of the Planning Act and comments from relevant service authorities have been taken into account with respect to road access, traffic, road widths and stormwater, water quality and the downstream impacts of the subdivision. A condition is imposed requiring a contribution payable to the City of Darwin for the planned upgrades of Lee Point Road. Service authorities have also required the use of a water quality monitoring plan, weed management plan, and construction environmental management plan which are required to be in place by the developer prior to development commencing. The stormwater plan detailed as part of the application and required to be approved by condition by the relevant agencies details how stormwater flows will be maintained to the monsoon rainforest. The total number of residential lots has remained unchanged through the assessment and although the proportions of the lots have changed, this has been included through the assessment. A condition requires the submission of a proposed zoning plan such that at the time of zone normalisation, the zoning will restrict all residential lots to be developed as single dwellings only. As discussed in earlier reasons, the development is compliant with the Area Plan, lot sizes, providing for the intended future residential densities. Regard has also been given to the subdivision layout and responsiveness to climate, and the land capability of the rural residential lots as discussed in a previous reason. The future development of individual lots will be subject to setback and private open space requirements including that lots of less than 600m² provide suitable areas to allow for the planting of shade trees and to be sufficiently permeable to allow stormwater infiltration. Requests that the residents of the suburb be educated regarding responsible cat ownership, and residential market demands have been noted by

the authority however are not a matter for consideration under the *Planning Act*.

7. Section 51 of the *Planning Act* provides that a consent authority must, in considering a development application, take into account (g) if a public environmental report, or an environmental impact statement, has been prepared or is required under the Environmental Assessment Act in relation to the proposed development – the report or statement and the results of any assessment of the report or statement under the Act.

The EPA has provided an Assessment Report, with the proposal (together with the separate subdivision to the west of Lee Point Road) assessed at the level of an Environmental Impact Statement. The Assessment Report included consideration of public and agency comment, regard to key environmental factors, activities that are likely to impact the existing environment, the potential environmental impacts and risks, and the significance of those impacts and risks, and the potential avoidance or minimisation/mitigation measures to reduce potential impacts and risks to acceptable levels and to meet EPA objectives.

The Report states that the development could proceed if all recommendations are implemented, and also that the environmental commitments, safeguards and recommendations detailed in the EIS, the Assessment Report and the final management plans be implemented to deliver acceptable environmental outcomes. The assessment including the 15 recommendations have been addressed and conditions recommended relating to construction management, the broader communication of construction with stakeholders, compliance with the EPA Noise Guidelines for Development Sites, protection from biting insects, caution notices relating to lots shown within the biting insect buffer, caution notices for lots included within the odour buffer to the Leanyer Sanderson Wastewater Treatment Plant, and offsets required by the Australian Government relating to the impact to the black-footed tree-rat.

Following the initial deferral of the application in meeting 2 of the EPA's Recommendations relating to the location of stormwater infrastructure and the retention of native vegetation at the eastern parts of the subdivision, the developer submitted an application requesting to alter the development under clause 14A of the *Environmental Assessment Administrative Procedures (EAAP)*. The application included clarification of the location of stormwater drains. The EPA has confirmed that the altered proposal did not require further assessment under the *Environmental Assessment Act*.

Agency requirements relating to environmental aspects separate from the Assessment Report have included a water quality monitoring plan for Buffalo Creek, a weed management plan, and an erosion and sediment control plan, which and are also included in the conditions.

8. Section 51(j) of the *Planning Act* requires the consent authority to take into account 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 suitability assessment included with the application identified that the rural residential lots will require fill to overcome the constraints of the land. As addressed in a previous reason, a condition has been included to ensure the land is demonstrated as being entirely suitable.

The land is affected by biting insects. In order to provide an adequate separation to the urban residential lots, the rural residential lots provide the required buffer as shown on the Area Plan. Through deferral of the application, stages 1 & 2 of the subdivision now also ensure an adequate separation through an open wind buffer. Through condition, the design of the stormwater system is also required to minimise the potential for the unintended creation of mosquito breeding.

Where the urban lots are proposed, the land is described as sloping from the west to the east, with gradients of 1% to 2%, and some steeper areas up to 5% contained within the active recreation reserve lot. A condition is included for the submission of site earthworks plans demonstrating that excessive cut/fill/retaining walls be avoided for individual lots. Conditions requiring an erosion and sediment control plan also minimise any dust and erosion risk from the subdivision.

9. Section 51(k) of the *Planning Act* requires that the consent authority take into account the public facilities or public open space available in the area in which the land is situated and the requirement, if any, for the facilities, or land suitable for public recreation, to be provided by the developer.

Clause 11.2.2 (Infrastructure and Community Facilities in Residential Subdivisions) requires a minimum of 10% of the urban subdivision area to be provided as public open space and a total of 3.04ha or 11.1% is calculated, including the active recreation reserve and local park, which allows all urban dwellings to be located within 400m walking distance. Additional areas include drainage reserves and retained vegetation at the east, which provide further opportunities for recreation including walking paths. The subdivision includes land for the development of a school, community centre, and child care centre which are also contributing to the overall provision of community facilities.

10. Section 51(m) of the *Planning Act* requires the consent authority to take into account the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

Conditions are included to ensure the stormwater design meets the requirements of the relevant authorities, that approval for the landscape design is sought, approval for the traffic impact assessment report addressing intersection priority and minimum collector street carriageway widths, that public transport details be provided, and that an updated water and sewer master plan be provided. The developer is also required by condition to contribute to the planned Lee Point road upgrades.

11. Section 51(n) of the *Planning Act* requires the consent authority to take into consideration the potential impact on the existing and future amenity of the area in which the land is situated.

The subdivision will result in a change to the amenity of the local area, as the land is currently undeveloped. The subdivision has been assessed as largely according with the broader strategic planning in the Lee Point Area Plan, and is consistent with the intended future amenity of the area, in terms of the land uses, densities, open space and road layout. The development has included a 5m landscape strip along the Lee Point Road frontage which provides a softening of the development as viewed from Lee Point Road, and is in addition to the shared path proposed by the City of Darwin as part of its planned upgrades. The frontage along Lee Point Road includes only 3 lots with side boundaries fronting Lee Point Road and the landscape plans propose a consistent aluminium vertical slat fencing along these boundaries.

The subdivision also includes 3 lots to be developed as a child care centre, café and a sales office at the south-western corner of the site. This is expected to provide for improved amenity through additional community activity and facilities for the subdivision and surrounding areas, noting that the Aldenham Road frontage provides a separation to the existing adjacent residential lots in Muirhead to the south and that through setbacks and landscaping treatments, the design can achieve an appropriate internal buffer to the proposed lots. Residential lots along Aldenham Road also provide an average lot size above those in the existing development of Muirhead to the south, which provides an appropriate residential interface.

Right of Appeal

Applicants are advised that a right of appeal to the Northern Territory Civil and Administrative Tribunal exists under Part 9 of the Planning Act. An appeal under section 114 against a determination of a development application must be made within 28 days of the service of this notice.

The Northern Territory Civil and Administrative Tribunal can provide information regarding the Notice of Appeal form and fees payable. The address for lodgement of a Notice of Appeal is: Northern Territory Civil and Administrative Tribunal, PO Box 41860 CASUARINA NT 0810 or Level 1, The Met Building, 13 Scaturchio Street, CASUARINA NT 0810 (Telephone: 08 8944 8720 or Facsimile 08 8922 7201 or email AGD.ntcat@nt.gov.au).

There is no right of appeal by a third party under section 117 of the *Planning Act* in respect of this determination as section 117(4) of the Act and regulation 14 of the Planning Regulations apply to the application.

If you have any queries in relation to this Notice of Consent or the attached Development Permit, please contact Development Assessment Services on telephone (08) 8999 6046.

Yours faithfully

Dawn Parkes

Delegate

27 February 2019

Attachment

cc City of Darwin
Submitters