

Development Consent Authority

Northern Territory



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Dear Mr Cunnington

NOTICE OF CONSENT (SECTION 53B OF THE *PLANNING ACT*) LOT 4873 (577) 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 subdivision to create 513 lots in two stages, subject to the conditions specified on the attached Development Permit DP18/0409.

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 located in Zones FD (Future Development) and CN (Conservation) of the Northern Territory Planning Scheme. Clause 14.1.5 (Planning Principles for the Lee Point Area Plan) applies to the development and the development is found to be generally complying with the broad design principles, including the land uses and densities proposed, the road layout, and areas required to be set aside for conservation.

The design responds to the Lee Point Area Plan by locating new lots entirely above the escarpment, and the application has demonstrated environmental and engineering measures to achieve an appropriate stormwater quality and to ensure no increase in peak flows from the development. The design retains “the bunkers” as a remnant site feature relating to the historic use of the land for Defence activities and includes purpose built viewing platforms, signs and landscaping in this area.

The majority of lots have been designed to have their longest axis facing east-west in order to reduce direct morning and afternoon sun. A number of north-south roads also encourage the prevailing north-west (wet season) and south-east (dry season) breezes. The shading of walls and windows including at the western edge of each lot will rely on eaves and landscaping within the lot boundary.

The landscaping provided will contribute towards a quality public realm which is responsive to local conditions, and includes playgrounds, picnic facilities, shelters and fitness stations, an extensive shared path network, trees which are top end native species, and the protection and relocation of cycads.

The subdivision promotes access to Lyons to the south with the extension on Damabilia Drive, plus four road connections to Lee Point Road to the east. The road layout facilitates route choice and is reflective of the main connections shown on the area plan. A future bus route will connect the majority of residents within 400m of public transport. An extensive pedestrian/cyclist network is shown.

The mix of uses shown in the tourism/commercial area including lots for higher residential densities is consistent with the area plan. The application states that the tourist component is to take advantage of the coastal location and to maximise views from the side. Future developments in this area will require separate planning applications for built form including assessment of building heights.

The residential lot mix shown on the Area Plan ranges from 10 – 80 dwellings per hectare. The lot mix includes:

- 18% of lots as 360 – 449 m² ('Courtyard' lots);
- 33% as 450 – 539 m² ('Villa' lots);
- 26% as 540 – 599 m² ('Small' lots); and
- 23% as >600m² ('Traditional' lots).

The northern and southern most precincts are intended for 10 – 20 dwellings per hectare and achieve a density of 11.1 and 13.2 dwellings per hectare respectively. Either side of the main street precinct are intended for 20 – 40 dwellings however lots are proposed to be developed as single dwellings at a lower density of 14.2 dwellings per hectare to the north and 11.6 dwellings per hectare to the south. The main street precinct intended for 60 – 80 dwellings per hectare is calculated at 56.6 dwellings per hectare using the highest number of storeys and densities allowed. Overall, the densities are proposed at a lower rate than anticipated by the Area Plan. At the south of the subdivision, a row of lots mirror the density and size of existing lots where adjacent to Lyons.

The land located in Zone CN includes a new single pedestrian access to Casuarina Beach, plus existing walking and mountain bike paths to be upgraded. Part of Zone CN also includes stormwater infrastructure. The design includes a boundary fence to restrict access to the conservation area.

It is noted that zone normalisation is required following the completion of the subdivision, and a condition precedent requiring a proposed zoning plan is therefore included on the permit.

2. The development accords with the detailed subdivision requirements of Clauses 11.2.1 (Site Characteristics in Residential Subdivisions) and 11.2.2 (Infrastructure and Community Facilities in Residential Subdivisions), including the provision of 19.5% public open space within 400m walking distance from all dwellings. The provision of public open space well exceeds the minimum required by the Planning Scheme of 10% of the subdivision area.

Non-compliances were found when assessed against Clause 11.2.3 (Lot Size and Configuration in Residential Subdivisions). The purpose of Clause 11.2.3 is to ensure residential subdivisions contain lots of a size, configuration and orientation suitable for residential purposes. All lots less than 600m² are noted as complying with the minimum building envelopes. 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. A total of 49 lots were assessed as not complying with the minimum building envelopes.

In accordance with 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 circumstances determined with this variation include, that most of these lots have been designed with a frontage of 18m minimum rather than 20m, and that this is consistent with other successful urban development examples in the Darwin and Palmerston area, with these dwellings being able to be sufficiently accommodated.

A small number of lots would comply if they fell within the 450m² – 600m² size range however have an increased length, or otherwise have an irregular lot shape and the margin of non-compliance generally relates to a small corner portion only. All lots are determined to provide adequate areas for the construction of a dwelling and private open space.

3. 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.

One public submission made under Section 49 was received in relation to the application and a further 19 interested parties provided comment in relation to the application after the exhibition period had ended. The consent authority accepted and considered those comments after the exhibition period, including the opportunity to address the consent authority in person at the public hearing of the application. The consent authority also notes that the inclusion of the Lee Point Area Plan in the Planning Scheme, as well as the environmental assessment process, both allowed the opportunity for public comment.

All submissions and comments have been read in detail and form an important part of the assessment process. Compliance with the Planning Scheme has been discussed in reasons 1 and 2 above and the proposed development is fully compliant with the applicable requirements other than seeking a variation to the building envelope requirements for 49 lots, which is found to not compromise the future development of these lots. The maximum residential densities are noted as being lower than those shown for the broader land use planning for the area. The future development on land in the main street precinct, including on lots shown for tourist commercial uses, will require the further consent of the authority and will provide opportunity for public comment on those applications.

Many of the comments received relate to environmental concerns/impacts and these have been considered in detail through the environmental assessment process. The conditions included on the permit in response to the EPA Assessment Report and other service authority comments are considered to address a number of the matters raised by interested parties.

4. 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 on the proposal together with the proposed development to the east of Lee Point Road, assessed at the level of an Environmental Impact Statement (EIS). 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 process undertaken by the EPA was extensive and thorough. The consent authority relies on the report and recommendations made in determining this application with regard to environmental matters.

The Assessment 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 as part of this assessment and conditions have been included on the permit relating to monitoring of

shorebirds, restricting lighting to protect turtles, construction management including dust, noise and vibration and the broader communication of construction with stakeholders, protection from biting insects, plus offsets required by the Australian Government relating to the impact to the black-footed tree-rat.

The consent authority also notes that the proposal requires separate approval under the Environment Protection and Biodiversity Conservation Act.

5. 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 accords with the broader strategic planning of the area, and is determined to be consistent with the intended future amenity of the area, in terms of the land uses, densities, open space and road layout.

The development is adjacent to the Casuarina Coastal Reserve and restricts access to the Reserve to just one location to reduce its impact. A 21.95ha parcel is zoned CN, will largely remain unchanged, and is intended to be included as part of the Reserve.

Along the frontage to Lee Point Road, the subdivision includes a 6m wide linear open space corridor. The landscape plans identify this area and the Lee Point Road reserve adjacent as including landscaping and aluminium vertical slat fencing along rear lot boundaries. The road reserve adjacent is intended to provide a 3m shared path.

6. Pursuant to section 51(k) of the *Planning Act*, the consent authority must take into consideration 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 Subdivision) of the Planning Scheme states that residential subdivision design should provide a minimum of 10% of the subdivision area as public open space. The subdivision provides a total of 19.5% of public open space, and also all dwellings are within 400m walking distance of public open space. Whilst the entrance park and part of the coastal buffer at the south-west are proposed as dual purpose open space / detention basins, the landscaping plans show this area is unencumbered by drains, and comprises a shallow, flat grassed area which can be used for active or passive recreation. The majority of open space areas are bound by road frontages, with only three areas where open spaces are also directly adjacent to residential lot boundaries (at the local park, the entrance park, and at part of the larger coastal reserve at the northern part of the subdivision). The areas where open spaces are adjoining residential lots, the entire open space area is still visible with clear views from the street frontages. The development is also proposed to occur in two or more stages, with the development of the entrance park forming part of stage 1.

The consent authority notes that the Lee Point Area Plan provides guidance for the public facilities required for the area to the east of Lee Point Road. The applicant has provided advice that the subdivision to the east of Lee Point Road is intended to include land for a new public school, public playing fields and a community centre.

7. Pursuant to section 51(j) of the *Planning Act*, 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. Also, Pursuant to section 51(m) of the *Planning Act*, the consent authority must 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.

The land is determined to be capable of supporting the subdivision. The subdivision responds to the biting insect buffers, the location of the conservation reserve and the specific stormwater design measures requested by the Area Plan to minimise the risk of impact. The application includes demonstration of environmental and engineering measures to achieve an appropriate stormwater quality and to ensure no increase in peak flows discharging from the subdivision. Conditions are included on the permit to ensure the detailed stormwater design meets the requirements of the relevant authorities.

The design avoids the steeply sloping areas along the western edge, and the small portion of land at the southwestern corner which is identified as being located within the primary storm surge zone. Where lots are proposed, the land has an approximate gradient of 3% which is not considered excessive, and a condition is included on the permit for the submission of site earthworks plans demonstrating that excessive cut/fill/retaining walls have been avoided.

All matters raised by the service authorities have been addressed through the inclusion of appropriate conditions and/or notations on the development permit. This has included consideration of traffic management, developer contributions for the upgrade of Lee Point Road, erosion and sediment control, and landscape design.

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

30 November 2018

Attachment

cc City of Darwin
Submitters