



Development Consent Authority

Northern Territory

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Mr Israel Kgosiemang
One Planning Consult
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CASUARINA NT 0811

Dear Mr Kgosiemang

NOTICE OF CONSENT (SECTION 30Y OF THE *PLANNING ACT*) LOT 2975 (15) GOLDSMITH STREET, FANNIE BAY, TOWN OF DARWIN

The Development Consent Authority has determined, to vary Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR), and in accordance with section 30W(1)(a) of the *Planning Act 1999*, to grant consent to the proposal to use and develop the abovementioned land for the purpose of subdivision to create two lots, subject to the conditions specified on the attached Development Permit DP21/0135.

Reasons for the Determination of Development Proposal

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 NT Planning Scheme 2020 (NTPS 2020) applies to the land, and subdivision of land requires consent pursuant to 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), Overlays (Part 3), Zone Purpose and Outcomes of Zone LMR – Low Medium Density Residential (Part 4) and Subdivision and Consolidation Requirements (Part 6) need to be considered.

Part 2 – Strategic Framework, Part 3 (Overlays) and Part 4 (Zone - LMR)

The Darwin Inner Suburbs Area Plan (DISAP) provides the strategic framework for development in the Darwin Inner Suburbs region. The site is identified as having potential for change from Zone LR (Low Density Residential) to Zone LMR (Low – Medium Density Residential). As the subdivision will create two lots of a size and configuration generally anticipated in Zone LMR, the subdivision aligns with the strategic framework and Zone LMR requirements within the NTPS 2020. In relation to Part 3, no overlay applies to the site.

In relation to Part 6 of the NTPS 2020, the assessment has found that the subdivision generally complies with Clause 6.2 (Subdivision in Zones ...LMR...), including subclauses 6.2.2 (Lots Less Than 600m² for Dwellings-Single) and 6.2.3 (Site Characteristics for Subdivision in Zones LR, LMR, MR and HR), 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR) and 5.2.4.5 (Vehicle Access and On-site Parking for Dwellings-Single on Lots Less than 600m² but not less than 300m²). The proposal is not in accordance with subclause 6.2.1 (Lot Size and Configuration for Subdivision in Zone LR, LMR, MR and HR) as Lot A being 664m² (> 600m²), cannot achieve a building envelope of 11m x 29m.

Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NTPS 2020, the consent authority may consent to a proposed development that 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).

Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zone.....LMR...)

The requirements of this clause are:

- *Minimum lot size of 300m²;*
- *Minimum building envelope requirements of 17m x 17m for a lot size of between 600m² and greater and 7m x 15m for a lot 300m² to less than 450m²;*
- *Lots have sufficient area and appropriate dimensions to provide for the proposed density of developments including dwellings, vehicle access, parking and ancillary buildings;*
- *There are no battle-axe lots;*
- *Lots are oriented to allow dwellings to take advantage of environmental conditions such as prevailing breezes and sunlight;*
- *Lots are connected to reticulated services;*
- *Potential land use conflicts are minimised by taking account of the visual and acoustic privacy of residents.*
- *Where there are lots for medium and higher density residential development, those lots are:*
 - (a) distributed in small groups serviced by public transport;*
 - (b) in close proximity to public open space and with adequate access to community facilities and services; and*
 - (c) not located in a cul-de-sac.*

The assessment found that Lot B being 384m², requires compliance with a minimum building envelope requirement of 7m x 15m. The Authority notes that Lot B's building envelope plan shows that it can accommodate a building envelope of 7.5m x 29m (exclusive of side boundary setbacks of 1.5m). The Authority also noted that Clause 5.4.3.3 (Reduced Setbacks for Dwelling-Single on Lots less than 600m² but not less than 300m²) allows for a zero building setback to a side boundary internal to the subdivision boundary. Therefore, proposed Lot B can achieve a building envelope of 9m x 15m, exceeding the minimum requirement.

The assessment notes that Lot A being 664m² (> 600m²), requires a building envelope of 17m x 17m, where the configuration of the lot can achieve a building envelope of 11m x 29m only. A non-compliance, therefore, exists with Lot A.

The purpose of this clause is – *to ensure that subdivision of land for urban residential purposes creates lots of size, configuration and orientation suitable for residential development at a density envisaged by the zone.*

The relevant Administration for the clause is:

“The consent authority may consent to a subdivision that is not in accordance with sub-clauses 5-12, only if it is satisfied the subdivision is consistent with the purpose of this clause and the zone purpose and outcomes.”

The Authority notes that the subdivision is generally compliant with the clause. The Authority also noted that while the proposed Lot A does not satisfy the minimum building envelope requirement of 17m x 17m, it exceeds the envelope area of 289m² exclusive of any boundary setbacks or easements. The Authority was satisfied that the area of the lot is sufficient to accommodate a dwelling-single that has regard for vehicle access, on-site parking and street infrastructure. The Authority noted that the site is currently developed with a two storey single dwelling which will be accommodated within Lot A of the proposed subdivision.

At the hearing Mr Israel Kgosiemang, One Planning Consult (applicant), gave an overview of the amendment proposal and proposed subdivision. Mr Kgosiemang explained to the Authority that the amendment proposal accords with the DISAP. The proposed subdivision will provide a range of low rise housing options according to Zone LMR. In response to a question raised by the Authority at the hearing whether the future building on Lot B can achieve compliance with the NTPS 2020 requirements, Mr Kgosiemang explained that the building envelope plan demonstrates that a compliant dwelling can be accommodated within Lot B of the subdivision.

The Authority taking into account the application material and applicant's comment provided at the hearing is satisfied that the variation to minimum building envelope requirement of 17m x 17m for Lot A will not frustrate the achievement of the purpose of Clause 6.2.1 and the zone purpose and outcomes of Zone LMR, which is to provide a range of low rise housing options that contribute to the streetscape and residential amenity. The Authority notes that the building envelope plan does not depict the final location of the future dwellings and only represents that the lots can accommodate dwellings in a manner that has regard for vehicle access, on-site parking and street infrastructure. The Authority also notes that, the design of the future dwellings can differ from the building envelope, any non-compliance related to Part 5 of the NTPS 2020 will require separate planning approval, which further requires exhibition (public/ neighbour) as per the provisions of the *Planning Act 1999*, and it will be to the discretion of the Development Consent Authority to vary the requirements of Part 5 of the NTPS 2020.

The Authority notes that conditions 11 and 12 of the approval requires a confirmation from the Building Certifier that the existing dwelling- single on Lot A will not cease to comply with the *Building Act 1999* and complies with Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) of the NTPS 2020 prior to titles being issued.

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

No issues are identified with respect to land capability for this subdivision. The subject site is not affected by storm surge, riverine flooding, nor excessive aircraft noise and does not contain any easements.

No concerns with the provision of public utilities or infrastructure have been identified for the proposed subdivision, and all requests by service authorities have been appropriately addressed through recommended conditions and notes to be included on any permit issued.

3. Pursuant to section 50P(2)(m) of the *Planning Act 1999*, the consent authority must take into consideration the potential impact of the existing and future amenity of the area in which the land is situated.

Amenity is defined in the *Planning Act 1999* as: "in relation to a locality or building, any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable."

The site is identified within the DISAP as having potential for change from Zone LR (Low Density Residential) to Zone LMR (Low – Medium Density Residential). The subdivision is generally assessed compliant with the relevant clauses of the NTPS 2020 as if the land were in Zone LMR, including the minimum lot size and site characteristics. The subdivision is considered to allow for the future development of the land consistent with that anticipated in Zone LMR. Provided the subdivision proceeds in accordance with the conditions included on the permit, the land is considered capable of supporting the proposed subdivision, and no undue amenity impacts are anticipated as a result of the subdivision.

Amendment Decision (Section 30R of the Planning Act 1999)

The Minister for Infrastructure, Planning and Logistics has decided, in accordance with Section 30R(2)(a)(i) of the *Planning Act 1999* to approve the amendment proposal as specified in the concurrent application.

In accordance with Section 30R(3)(b) of the *Planning Act 1999*, the amendment decision takes effect on the date on which the attached Development Permit DP21/0135 is issued.

Reasons for the Amendment Decision

The rezoning:

- a) promotes the purpose and objectives of the Act as:
 - i. the lot is identified for infill redevelopment consistent with the Darwin Inner Suburbs Area Plan (DISAP); and
 - ii. it accords with the future zone preference as depicted in the Residential Areas Plan identified in the DISAP.
- b) has merit and is in the public interest as it facilitates a subdivision design that has considered the single dwelling characteristics of Goldsmith Street, whilst meeting the intent of the Area Plan for controlled growth opportunities along the north-western end of Ross Smith Avenue.

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



Suzanne Philip
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SUZANNE PHILIP
Delegate
14 May 2021

Attachment

cc City of Darwin