

Development Consent Authority

Northern Territory



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Mr Gerard Rosse

Cunnington Rosse Town Planning and Consulting Pty Ltd.

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Dear Mr Rosse

NOTICE OF CONSENT (SECTION 30Y OF THE PLANNING ACT 1999)

**LOTS 7658, 7659 & 7660 (14, 18 & 22) JULIUS STREET, BERRIMAH AND LOT 7349
MAKAGON ROAD, BERRIMAH, HUNDRED OF BAGOT**

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) of the NT Planning Scheme 2020, 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 a subdivision to create 21 lots including two public open space lot, subject to the conditions specified on the attached Development Permit DP23/0027.

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 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 – Berrimah Farm Planning Principles and Area Plan), Overlays (Part 3), Zone Purpose and Outcomes of Zone LMR – Low Medium Density Residential and Zone PS - Public Open Space (Part 4) and Subdivision and Consolidation Requirements (Part 6) need to be considered. Part 2- Strategic Framework (Berrimah Farm Planning Principles and Area Plan) The application is for “Stage 3D” of the Berrimah Farm ‘Northcrest’ residential development developed in accordance with the Berrimah Farm Planning Principles and Area Plan. The Area Plan principles seek to promote a safe and diverse urban residential environment that: (i) is structured around a Secondary Activity Centre; (ii) is developed in the order of six storeys in height around the Secondary Activity Centre and reduces in height and density with distance from the centre; (iii) comprises a variety of lot sizes, and housing types; (iv) provides high quality adaptable public spaces and open space areas that are usable for both passive and active recreation; and (v) has an interconnected local road network that distributes the anticipated traffic flow within site and integrates with the surrounding road network through appropriate intersection design.

The Area Plan shows the land is to be developed for residential purposes at a density of 25-60 dwellings per hectare which is intended to be met across the whole of the area shown

with the same density band. Dwelling types for this density band are described as dwelling-single (terrace/villas), and dwellings-multiple to a maximum height of three storeys.

The area of the subdivision is 164100m² (1.6ha). With 19 residential lots to be developed accommodating 26 dwellings, the density achieved in the proposed subdivision is 16 dwellings/ha (25-60 dwellings per hectare required in the Area Plan). In support of the proposal, the applicant has provided a density assumption that considers the development of the entirety of the area within the 25-60 dwellings per hectare density band. The density assumption demonstrates that the required dwelling density will be achieved upon completion, and the proposed rezoning and subdivision will not impact the overall dwelling density identified under the Area Plan.

Mr Gerard Rosse and Julian Geuho from Cunningham Rosse Town Planning and Consulting attended the hearing and spoke further to the application. Mr Rossi gave an overview of the background of the proposed subdivision, the recent amendment to the Area Plan and how density would be achieved in future subdivisions. Mr Gerard explained to the Authority that the reason for rezoning the current MR Zoned lots to LMR is due to the lack of market interest in developing these lots. Mr Gerard while acknowledging that the proposed subdivision results in a density less than the 25-60 dwellings per hectare density required in the Area Plan, it would be achieved in future subdivisions by providing medium-density residential developments in the 'Retirement Village' site identified in the Area Plan within the 25-60 dwellings per hectare band.

The Authority notes the abovementioned comments regarding density compliance as per the Area Plan. The Authority notes the Development Assessment Services (DAS) assessment, which concludes that the current density achieved in the 25-60dw/ha band (based on the subdivisions previously approved and proposed subdivision) is 20 dw/ha, and almost 40% area has been developed. The Authority further notes that future subdivisions would require medium-density lots to achieve the required density of 25-60 dw/ha across the whole area shown with the same density band.

Part 3 (Over Lays) and Part 4 (Zone Purpose and Outcomes)

No overlay applies to the site. An assessment of the subdivision development against the Part 4 requirements of the NTPS2020 as if the land were in Zone LMR (Low Medium Density) and PS (Public Open Space) found that the subdivision will create lots of a size and configuration generally anticipated in Zone LMR. In relation to Zone PS, two public open space lots are proposed in the subdivision with a combined area of 3040m². The two park lots create a connected green spine to the large park lot approved in Stage 1.

Part 6 (Subdivision and Consolidation) requirements

The DAS' assessment has found that the subdivision generally complies with Clause 6.2 (Subdivision in Zones LR, LMR, MR and HR), 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). A non-compliance has been identified against Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zone LR, LMR, MR and HR).

2. 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 ZoneLMR...)

The requirements of this clause area:

- (1) Minimum lot size of 300m²;
- (2) 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;
- (3) Lots have sufficient area and appropriate dimensions to provide for the proposed density of developments including dwellings, vehicle access, parking and ancillary buildings;
- (4) There are no battle-axe lots;
- (5) Lots are oriented to allow dwellings to take advantage of environmental conditions such as prevailing breezes and sunlight;
- (6) Lots are connected to reticulated services;
- (7) Potential land use conflicts are minimised by taking account of the visual and acoustic privacy of residents.
- (8) 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 DAS' assessment has found that the subdivision complies with many requirements of Clause 6.2.1, including the minimum lot size of 300m² in Zone LMR. No battle-axe lots have been provided, and all lots are proposed to be connected to reticulated services. Further, the orientation of the proposed lots will enable access to north-west wet season prevailing breezes. Roof overhangs and awnings ensure appropriate shading from the western sun. The proposed subdivision is\ part of the Berrimah Farm 'Northcrest' residential development; therefore, no potential land use conflicts are expected. Sub-clause 8 is not relevant as the proposed zoning is low medium density.

Subclause (6) requires a minimum building envelope of 7m x 15m for lot sizes 300m² to less than 450² and 17m x 17m for 600m² and greater. The building envelopes are exclusive of any boundary setbacks or service authority easements.

The DAS' assessment further indicates that that the application does not meet sub-clause 6 as proposed Lots 135, 296, 301 and 302 are not configured to enable compliance with the minimum building envelope requirement of 17m x 17m (exclusive of any boundary setbacks or service authority easements) that applies to lots with an area of 600m² or greater. *Note: The building envelope plan proposes front setback of 4.5m (6m required as per Clause 5.4.3 of the NTPS2020). The proposed setback is consistent with the setbacks approved for other lots in the Northcrest sub division.*

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 DAS' assessment concludes that the subdivision is generally compliant with the clause. The Authority also considers that while Lots 135, 296, 301 and 302 do not satisfy the minimum building envelope requirement of 17m x 17m, the illustrative building envelope exceeds the envelope area of 289m² exclusive of any boundary setbacks or easements. The Authority notes that the requirement of 17m x 17m is a standard requirement for all lots exceeding 600m². This means that lots that are marginally greater than 600m² (as in the subject site) and lots exceeding 800m² (predominant lot size in Zone LR) require a similar building envelope.

The Authority taking into account the application material and DAS' assessment, is satisfied that the variation to the minimum building envelope requirement of 17m x 17m for Lots 135, 296, 301 and 302 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 is also 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. Furthermore, the building envelopes respond to the angled boundary of the lot due to road truncation.

The Authority considers 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, onsite parking and street infrastructure. The Authority also notes that the design of the future dwellings can differ from the building envelope and 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.

3. 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.

There are no concerns with the capability of the land to support the proposed development. The land is not identified as being affected by drainage, slope, seasonal inundation, land units, soil characteristics, heritage constraints and easements.

The ANEF mapping to the year 2042 shows that only a narrow strip of the Berrimah Farm Area, adjoining Stuart Highway, will be in ANEF-20 in that year. The area of the proposed subdivision is outside the ANEF- 20 contour.

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.

4. 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.

The overall Berrimah Farm 'Northcrest' residential development is currently being developed, and the amenity of the area is being established. The Berrimah Farm Planning Principles and Area Plan, zoning provisions and the application all seek to promote the best amenity outcomes for the future residents of the suburb.

The proposal, with the exception of density, generally accords with the layout depicted within the Area Plan and is considered unlikely to adversely impact the area or alter community expectations for the site. Provided matters raised related to the density are addressed in future subdivisions, and pedestrian and cycle corridors, including landscaping, are established in appropriate locations and in a timely manner, the proposed subdivision can achieve appropriate level of residential amenity.

Conditions and advisory notes on any permit issued can address matters identified by service authorities (erosion and sediment control, stormwater, construction noise, vehicle access, reticulated services etc.).

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 1999*. 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 1999* in respect of this determination as section 117(4) of the Act and regulation 14 of the Planning Regulations 2000 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
Delegate
14 February 2023

Attachment

cc City of Darwin