


# NORTHERN TERRITORY OF AUSTRALIA

## *Planning Act*

### **NOTICE OF DECISION REFUSAL TO GRANT AN EXCEPTIONAL DEVELOPMENT PERMIT PA2013/0170**

I, Peter Glen Chandler, the Minister for Lands, Planning and the Environment, in pursuance of section 40(6) of the *Planning Act*, give notice that:

- (a) I have, in pursuance of section 40(2)(d), refused to grant an Exceptional Development Permit for Lot 5182 (213) Dick Ward Drive, Town of Darwin;
- (b) an Exceptional Development Permit has been refused for the purpose of an operational stockpile of fill;
- (c) the land is within Zone CN (Conservation) of the NT Planning Scheme, and the development proposed would otherwise be prohibited;
- (d) copies of the Reasons for the Decision are available from the Offices of the Department of Lands, Planning and the Environment, Ground Floor, Arnhemica House, 16 Parap Road, Parap.



Minister for Lands, Planning and the Environment

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# NORTHERN TERRITORY OF AUSTRALIA

## *Planning Act*

### Section 41

#### **REASONS FOR DECISION IN RELATION TO PROPOSED EXCEPTIONAL DEVELOPMENT PERMIT**

The decision to refuse to grant an Exceptional Development Permit over Lot 5182 (213) Dick Ward Drive, Hundred of Bagot for the purpose of an operational stockpile of fill was made pursuant to section 40(2)(d) of the *Planning Act* for the following reasons:

1. Pursuant to section 40(1) of the *Planning Act* I may only issue an exceptional development permit if I am satisfied that it is preferable to issue a permit than to amend the NT Planning Scheme.

I am not satisfied of this in relation to this proposal in this location as I believe that the integrity of the surrounding areas within Zone CN would be eroded during the period of any ongoing use for this purpose and as such the overall context and value of the zoning for the area in the longer term is likely to be detrimentally impacted.

I am further not satisfied of this as any decision to allow the introduction of an industrial use, adjacent to, and with access through a low density residential community, in an area so proximal to sensitive vegetation communities with significant physical constraints, should in my view only be taken in the broader policy context and having regard to the longer term intentions for the locality.

2. Pursuant to section 26(2) of the *Planning Act* I must consider the section 24 report provided to me by the Reporting Body on issues raised in public submissions and at the hearing and any other matter the Reporting Body considers I should take into account when considering the proposal.

The Reporting Body report includes 58 submissions all in opposition to the proposal indicating considerable community passion and identifying numerous and varied concerns including (but not limited to) environmental impacts, traffic concerns particularly pedestrian impacts and impacts of heavy industrial vehicles in close proximity to a residential area, unsuitability of the vehicular access for the use, inconsistency with the character of the locality

and the degradation of the amenity of the area through loss of aesthetic, dust and noise.

The concerns expressed by public submitters were shared in many instances by service authorities and government agencies with legislative responsibilities and expertise in relation to the particular matters raised.

3. Pursuant to section 42 of the *Planning Act* I must take into account a range of section 51 matters in determining whether or not to grant an exceptional development permit. Whilst the decision to refuse the application is based on cumulative consideration of the matters I must take into account, the following were pertinent (but not the only) factors:

- Section 51(d) specifies the need to take into account a relevant environment protection objective within the meaning of the *Waste Management and Pollution Control Act* and section 51(s) relates to consideration of any beneficial uses, quality standards, criteria or objectives, that are declared under section 73 of the *Water Act*.

The *Waste Management and Pollution Control Act*, identifies a beneficial use, quality standard, criteria or objective declared under section 73 of the *Water Act* as an environment protection objective. No other environment protection objectives are relevant to the proposed development.

Under section 73(1) of the *Water Act*, the following beneficial uses are declared for the Darwin Harbour Region, within which this site is located:

- Aquaculture – to provide water for commercial production of aquatic animals;
- Environment – to provide water to maintain the health of aquatic ecosystems; and
- Cultural – to provide water to meet aesthetic, recreational and cultural needs.

In addition to the above beneficial uses there are also declared water quality objectives for the Region that are specified in Tables 8 & 9 of the document 'Water Quality Objectives for the Darwin Harbour Region –Background Document'.

Given the site's location in close proximity to sensitive vegetation communities, and the requirements of the *Waste Management and Pollution Control Act* and the *Water Act*, the operation of a stockpile has the potential to impact on each of the relevant environment protection objectives. The application does not adequately address the potential for off site environmental impacts having regard to these physical constraints and legislative obligations.

- Section 51(m) specifies the need to take into account the merits of the proposed development as demonstrated in the application.

The application does not in my opinion demonstrate sufficient merit to justify the use of land in close proximity to, and with vehicular access through, a low density residential community over unmade roads that intersect with pedestrian routes and linkages to recreation facilities and external services.

It is further noted that the application fails to comprehensively define or address the particulars of the proposed use and provides limited information to explain how the use would appropriately coexist with surrounding sensitive vegetation and conservation areas and the adjoining residential area.

Despite the application referring to many relevant components of the NT Planning Scheme that would normally apply to an application of this type (if it were not unlawful), the application does not seek to address pertinent requirements that would otherwise apply and as such does not demonstrate a robust analysis of the likely impacts of the proposed development.

- Section 51(j) specifies the need 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 other land, the physical characteristics of which may be affected by the development.

It is my opinion that the ongoing use of the site as an operational stockpile will undermine and prejudice the integrity and ability of surrounding land to be retained and maintained to conserve and protect the flora, fauna and its natural character (the purpose of Zone CN (Conservation) of the NT Planning Scheme). The site is located within a large area of coastal land included in Zone CN and the existing placement of fill has notably degraded the conservation value of the land on which it is located. The proposal to continue to utilise the site for this purpose for the next 10 years has the potential to degrade further areas as a result of further impacts on stormwater drainage, sediment and erosion, weed intrusion and associated increased fire risk to sensitive vegetation communities.

The Ecological Assessment Report contained in the application identifies the land as being subject to a moderate to high level of seasonal waterlogging and often dry season seepage yet the impacts of these physical characteristics on the capability to support the use

housing and community facilities (including a basketball court and children's play equipment). The safety implications for both pedestrians and vehicles of Minmarama Park as well as other road users of Dick Ward Drive are not addressed by the application other than to note that the applicant's view is there will be no notable strain on the local road network.

- Section 51(p) specifies the need to take into account the public interest.

It is in the public interest that development of land be undertaken in a proper and orderly manner, in fact the object of the *Planning Act* is specifically to "provide a framework of controls for the orderly use and development of land" and the Act sets out to achieve that through (but not limited to):

- Effective controls and guidelines for the appropriate use of land, having regard to its capabilities and limitations;
- Control of development to provide protection of the natural environment...; and
- Minimising adverse impacts of development on existing amenity and, wherever possible, ensuring that amenity is enhanced as a result of development.

Having regard to these matters I am not satisfied that the proposal is in the public interest.



PETER GLEN CHANDLER

Minister for Lands, Planning and the Environment

15/5/2013  
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