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The Manager,
Development Assessment Services,
Department of lands, Planning and the Environment.
By email

Part Lot 5182, SP S77/093B
at 213 Dick Ward Drive,
Ludmilla/Coconut Grove

Dear Sir,

1. Introduction

This submission is in response to the application by PLanit Consulting P/L, on behalf of the Gwalwa Dariniki, dated November, 2013. The application seeks approval for the subdivision of this land into five separate lots, and for the approval of Masterplan as proposed, in terms of SD 37 and other relevant considerations.

2. Historical background

This Part Lot 5182 is part of one integral Lot 5182 on Ludmilla Bay, which was granted as a special lease in 1979 to the Gwalwa Dariniki as Kulaluk, specifically to provide them with a place to live in a natural environment, free from the encroachment of European development. The Larrakia regard this as their land.

3. Zoning

Lot 5182 is primarily zoned CONSERVATION. Application was made to rezone this part lot to Light Industrial (LI) and Service Commercial (SC); with the intervening area zoned Restricted Development(RD) being the centre of the flight path to the Darwin International Airport. This airport is responsible for local, and international civil air traffic and military aircraft, including international exercises. The amalgamated Part Lot 5182 is described as SD 37 (Specific Use – Darwin) in the Northern Territory Planning Scheme (NTPS).

4. Background to Present Application

This rezoning occurred in June 2011, nearly three years ago. The application states that approval is now sought under Part 5 of the NT Planning Act, 2009, which is an incorrect reference to any authority.

The present application (November, 2013) is bulky, containing about 400 pages, being incomplete in its commitment, rather than being comprehensive, detailed and final, even after this long preparation time. The lack of continuously numbered pages makes it difficult to use and refer to.

5. Purpose of Present Application

We do not believe that it justifies the approval of either the subdivision into five lots as proposed, or the endorsement of the 'masterplan' as currently presented. Much of the bulk is unresolved background data. The supposed masterplan remains scanty, particularly in its relation to what is required of SD 37, of the NTPS. There is insufficient certainty.

6. Real Masterplan Application, or not ?

In the Project Background Section (1.2 on page 1) of the official document submitted to the Department of Lands, Planning and the Environment, as the development application, reads like a 'work in progress', rather than a finally prepared application for the proposed development, covering all required aspects. It does not commit itself to whatever the Development Consent Authority (DCA) may be able to definitely approve, as a result of assessing the application.

The first paragraph states:

'It is envisaged that this masterplan will form a broad integral component of this initial application to subdivide the land, whilst also providing an important link to the background of the project relative to this proposal.'

The fourth paragraph states:

'Importantly, the integration of the Masterplan with this proposal, does not seek to authorize the Masterplan itself as a statutory document or a 'locked in stone development approval' in its own right, rather the masterplan's integration with the proposed subdivision will facilitate the use of the Masterplan as a guiding document for any future development carried out on the land.'

What does this mean ? It lacks certainty for all else affec

7. Application for subdivision into Five/Six Lots

This application seeks approval of a subdivision into five or six lots, as follows:

Lot 1(A) -5.6 hectares (SC)

Lot 2(A) -9 hectares (SC)

Lot 3(A) -1.1 hectares (SC)

Lot 4(B) (-2.1 hectares (LI)

Lot 5 – 15.7 hectares (RD)

Lot 6 –Future Road Reserve R 1.45 hectares

The stated purpose is to break up the land covered by SD37 portions of the site, to facilitate its gradual development according to the Maserplan. Each development application could then be 'self specific to each portion of the Masterplan area.'

8. Issues about proposed subdivision into Five/Six Lots

The division of this Part Lot 5180 into 5/6 Lots raises questions.

Who will be responsible for the co-ordinated management of the area by the lessee ?

Who will be responsible for the provision of the infrastructure and essential services ?

Who will be responsible for ongoing maintenance of the total site ?

How will required 'contributions' to the NTG and Council 'contributions' by lessee/lessees be managed ?

Who is responsible for Lot 5 which is not referred to in SD37 ?

From which land is proposed Lot 6 (Road reserve to be excised) ?

Where is the true southern boundary of Lots 1&2, inside, or outside the drain parallel to Fitzner Drive ?

Have these proposed subdivisions been legally surveyed ?

Proposed Lot 6 (Road Reserve) can only be excised from Lots 1&2, and not from Lot 5. The latter is the flight path which is already seriously undersized by national standards. In any case, placing a road in that position, parallel to the flight approach would be a serious aviation hazard, especially at night.

9. Delayed Development assumed by the proposed Subdivision

The proposed development is adjacent to an established (SD) single dwelling residential area. A major concern is the impact on the amenity of the residents by abutting a Service Commercial (SD) Zone with all its implications. The proposed development is seen as unwelcome and ugly, causing traffic disruptions.

They have been told that this development is a Jape initiative. Residents see that a previous Jape estate off Trower Road has taken as long as perhaps ten years to be developed across its overall site. It might be expected that the proponents anticipate a similar time lag in the development of this land. If so, not only will the residents suffer from a permanent loss of amenity, but have the added implications of protracted construction.

Delayed development is therefore inappropriate in terms of Amenity, under Section 51 of the Planning Act.

10. Aboriginal Issues

This land is special to the Larrakia people as traditional owners. It is subject to the authority of the Aboriginal Areas Protection Authority (AAPA), which has issued an Authority Certificate (2011/15054; C2012/127) dated 10 July, 2012. This is a conditional and important document, involving further referral, and not an authority to proceed regardless.

The AAPA accompanying letter includes the following statements:

‘Different factions of the wider Larrakia group have different interpretations of the subject land. Significant opposition to the development by Larrakia custodians was noted, on a range of social, cultural, historic, and environmental grounds’.

‘Requests were further made to recognize the cultural and historical significance of the broader area in any development of the land.’

Further consultation with AAPA staff is strongly invited.

The AAPA Certificate Covers:

‘Works associated with proposed development of the subject land for mixed use retail, commercial and industrial components.’

The certificate expires if no development is commenced on the relevant land within two years.

Lots 1, 3, 4 and 5 are identified in it as containing or possibly containing areas of Aboriginal significance. In any development process, these areas should be recognized with extreme respect. Apart from other special sites, burials can be anticipated. Development on Lot 3 is especially limited.

11. Masterplan Proposals.

The Masterplan requires approval in terms of the requirements of SD37 Zoning, and other aspects of the NTPS. However, the Proposed Masterplan document appears to be dated September, 2012. This does not take into account the subdivision changes now being applied for.

12. Specific Use Zone SD37 of the NTPS.

The proponent states:

‘The Minister for Lands and Planning has amended the NT Planning Scheme in relation to Part Lot 5182, Town of Darwin. The amendment rezones Part Lot 5182 from Zone RD (Restricted Development to SD37 (Specific Use Darwin-no. 37).’

The main document for the assessment of the Masterplan is therefore SD37, and other sections of NTPS. This provides for Area A to the south to be zoned in accordance with Service Commercial(SC) and

the smaller Area B, at the Totem Road, corner to have uses in accord with the Light Commercial (LI).

14. Authority of SD 37 in endorsement of the Master Plan

At Point 10, SD 37 states:

‘A masterplan is to be prepared and submitted to the consent authority before any development commences or a development application is lodged for a areas A and B. This master plan is to be endorsed by the consent authority, and all future development is to be in accordance with the endorsed master plan.’

This compliance includes not with uses in areas zoned as for Service Commercial (SC) and Light Industry(LI) but also for other specific conditions listed at (3c) (4c) and 5-11(g).

15. Flight path now undersized.

In doing so the width of the designated flight path for Darwin International Airport and Defence RAAF Darwin was reduced well below the minimum of 50hectares required by Clause 5.24 of the NTPS. This flightpath is for taking off and landing of regular international and local flights, and military aircraft in training exercises.

16. The NTPS states:

‘The purpose of Zone RD is to restrict development near an airport.

The intention is to:

- (a) Ensure development does not prejudice the safety and efficiency of an airport
- (b) Limit the number of people who reside or work in the area, and
- (c) Retain the non-urban area of the land.'

17. It is well known that most flight accidents take place when landing or taking off. Residents of the area readily attest that aircraft both at take-off and landing do not confine themselves to the middle of the flight path. This masterplan does not comply with the objects of the NTPS. The proposed land use does not comply with aviation safety. The decision to rezone has created a dangerous situation by allowing buildings and people in the flightpath..

18 Area B Non-Compliance with Clause 11.3 of the NTPS.

It would not be possible for any light industrial use on Area B (Totem Road) to comply with Clause 3 of the NTPS. In terms of site conditions alone (Clause 11.3.1) as listed below, it would be impossible:

. 11.3.1 Characteristics in Industrial Subdivisions

1. The purpose of this clause is to ensure that industrial lots respond to the physical characteristics of the land.
2. Industrial subdivision design should:
 - (a) avoid the development of land of excessive slope, unstable or otherwise unsuitable soils (eg.,seasonally waterlogged) and natural drainage lines.
 - (b) retain and protect significant natural and cultural features

(c) avoid development of land affected by a 1% AEP flood or storm surge event.'

19. This is a very wet area, as indicated by lots of pandanus and other natural vegetation. It is a relatively small lot meaning it would have to be totally cleared. It is opposite, and adjoins bushland, Water drains through the lot, rendering drainage pollution to nearby Ludmilla Bay, a hazard.

20. The AAPA has designated it culturally as RWA1, as it is close to known burial grounds. Room for the movement of heavy vehicle traffic could be uncertain internally. Aircraft noise is a feature of the area. Lot B is at the intersection of and two busy roads – Dick Ward Drive, where traffic comes fast to a T junction at Totem Road. Traffic lights would be needed.

21. The proposed masterplan and SD37

In our view, the following undated maps/plans, combined with the remainder of the proposed Masterplan is insufficient to support the endorsement of the Masterplan .

21.1 Bagot Road-Zoning Plan

21.2 Bagot Road- Indicative Land Use Plan

21.3 Bagot Road-Indicative Built Area and Circulation

21.4 Bagot Road- Indicative Subdivision Plan

21.5 Bagot Road –Landscape masterplan

21.6 Bagot Road – Urban Structure –Connectivity

21.7 Bagot Road –Indicative Signage

22. Outstanding Issues concerning the Masterplan

A main purpose of the SD37 zone is to preserve the amenity of adjoining residential areas. Nothing in the masterplan minimizes aircraft noise. Air safety is more of a risk for aircraft and more people on the ground, especially at night. The residents of adjoining residential areas have not yet been consulted.

Some of their concerns are the following:

1. The Drainage lines on the Part Lot are not sufficiently recognized
2. The nature of the vegetation on this BUSH BLOCK has been misrepresented as degraded. The proponent's Environmental Report shows that this is not so. Any degrading is due mostly to neglect by the lessees.
3. The Traffic Report is premature, generalised and inadequate. A separate independent report needs to be prepared. There will be serious traffic problems at each corner of the proposed development, some requiring traffic lights.
4. The two junctions proposed East West Road skirting Lots 1&2 would make entrances to Dick Ward Drive and Bagot Road even more dangerous.
5. The use of the site at night, and particularly this new road would create an air safety hazard for aircraft landing.
6. The proposed signage is excessive, ugly and too big.
7. The land should not be split up, as there are better uses for it for ecotourism which would employ local people.
8. The pedestrian entrance in Fitzner Drive would attract kerb parking.
9. The proposed buffer zone is not large enough, cf Bunnings

10. The landscaping arrangements along Fitzer Drive are ineffective, being more for CPTED purposes than to hide the ugliness of the proposed development.

11. There is no need for more light industrial, and service estates estates in this area.

23. Conclusion

The proponent's present application does not provide sufficient complete and reliable and/or appropriate documentation to justify the endorsement of the proposed Masterplan.

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Convener

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