

CITY OF PALMERSTON

**Minutes of Council Meeting
held in Council Chambers, Civic Plaza, Palmerston
on Tuesday, 16 February 2016 at 6.30pm**

Audio Disclaimer

An audio recording of this meeting is being made for minute taking purposes as authorised by City of Palmerston Policy MEE3 Recording of Meetings, available on Council's Website.

1. PRESENT

Elected Members: His Worship the Mayor Ian Abbott (Chair)
Deputy Mayor Sue McKinnon
Alderman Andrew Byrne
Alderman Paul Bunker
Alderman Geoff Carter
Alderman Seranna Shutt
Alderman Athina Pascoe-Bell

Staff: Ricki Bruhn, Chief Executive Officer
Ben Dornier, Director of Corporate and Community Services
Mark Spangler, Director of Technical Services
Emily Fanning, Minute Secretary

Gallery: Gerard Rosse, Manager Planning and Environment Services
Two members of the public

2. APOLOGIES

Nil

3. CONFIRMATION OF MINUTES

Moved: Alderman Shutt
Seconded: Deputy Mayor McKinnon

THAT the minutes of the Council Meeting held Tuesday, 2 February 2016 pages 8399 to 8409, be confirmed.

CARRIED 8/1828–16/02/2016

4. MAYOR'S REPORT

M8-15

Moved: Alderman Carter
Seconded: Alderman Shutt

THAT Council receives Report Number M8-15.

CARRIED 8/1829–16/02/2016

5. REPORT OF DELEGATES

Nil

6. QUESTIONS (WITHOUT DEBATE) FOR WHICH NOTICE HAS BEEN GIVEN

Nil

7. QUESTIONS (WITHOUT DEBATE) FOR WHICH NOTICE HAS NOT BEEN GIVEN

Nil

8. PETITIONS

Nil

9. DEPUTATIONS / PRESENTATIONS

Nil

10. CONSIDERATION OF MOTIONS FOR WHICH NOTICE HAS BEEN GIVEN

Nil

11. COMMITTEE RECOMMENDATIONS

11.1 Governance and Organisation

The Chair invited Alderman Byrne, Chair of the Governance and Organisation Committee to provide a report to the meeting.

A verbal report on the Governance and Organisation Committee Meeting held on 11 February 2016 was presented by Alderman Byrne.

Moved: Alderman Byrne
Seconded: Alderman Carter

THAT the minutes from the Governance and Organisation Committee meeting held on 11 February 2016, be received and noted and that Council adopts the recommendations made by the Committee and accordingly resolves as follows:-

11.1.1 Review Community Consultation Policy

1. THAT Council approve the Community Consultation Policy COMM003.
2. THAT community assets be defined in the policy to reflect those assets directly providing amenity to the community.
3. THAT changes to the rating structure of Council be identified as requiring a level 2 city wide consultation.

CARRIED 8/1830–16/02/2016

11.2 Economic Development and Infrastructure

The Chair invited Alderman Bunker, Chair of the Economic Development and Infrastructure Committee to provide a report to the meeting.

A verbal report on the Economic Development and Infrastructure Committee Meeting held on 11 February 2016 was presented by Alderman Bunker.

Moved: Alderman Bunker
Seconded: Alderman Carter

THAT the minutes from the Ordinary and Confidential Economic Development and Infrastructure Committee meeting held on 11 February 2016, be received and noted and that Council adopts the recommendations made by the Committee and accordingly resolves as follows:-

11.2.1 Lighting of Cross and Tank in Memorial Park

THAT Council approves in principle the proposal by the RSL to improve lighting in Memorial Park.

11.2.2 Tender TS2016/02 – Flockhart Drive Pedestrian/Cycle Bridge

1. THAT Council award contract TS2016/02 – Flockhart Drive Pedestrian/Cycle Bridge to Norbuilt for the amount of \$408,902.11 (GST exclusive).
2. THAT the Mayor and Chief Executive Officer are granted consent to sign and seal all required contract documentation for the contract TS2016/02 – Flockhart Drive Pedestrian/Cycle Bridge.

11.2.3 Street Lighting Charges

THAT Council delegate to the Economic Development and Infrastructure Committee the responsibility to examine consultation options in more detail and forward a recommendation to Council for consideration.

11.2.4 Arch Rival Bar – Alfresco Dining

1. THAT Arch Rival Bar & Grill be advised in writing that should an unconditional bank guarantee or cash security deposit to the value of \$20,000 satisfactory to the Chief Executive Officer not be lodged with Council by 11th March 2016 the current Alfresco Dining licence will be revoked and the site reinstated at no cost to Council.
2. THAT staff take whatever action is necessary to recover verge reinstatement costs should reinstatement become necessary as a result of the revocation of the Arch Rival Bar & Grill Alfresco Dining Licence.

CARRIED 8/1831–16/02/2016

11.3 Community, Culture and Environment

The Chair invited Alderman McKinnon, Chair of the Community, Culture and Environment Committee to provide a report to the meeting.

A verbal report on the Community, Culture and Environment Committee Meeting held on 3 February 2016 was presented by Alderman Bunker.

Moved: Deputy Mayor McKinnon
Seconded: Alderman Shutt

THAT the minutes from the Community, Culture and Environment Committee meeting held on 3 February 2016, be received and noted and that Council adopts the recommendations made by the Committee with the exclusion of items 11.3.1, 11.3.2 and 11.3.4 and accordingly resolves as follows:-

11.3.3 Financial Support – Lung Foundation Australia

THAT Council approve sponsorship to the value of \$4,750 to Lung Foundation Australia for the 2015/2016 financial year to establish the Lungs In Action – Palmerston program.

CARRIED 8/1832–16/02/2016

11.3.1 Flic Nics Program 2016

Moved: Alderman Carter
Seconded: Alderman Bunker

THAT Council approve the relocation of Flic Nics to Goyder Square and host a FlicNics @ Goyder program each Saturday and Sunday night from April 2016 to October 2016.

AMENDMENT

Moved: Alderman Byrne
Seconded:

THAT Council approve the relocation of Flic Nics to Goyder Square and host a FlicNics @ Goyder program each Saturday and Sunday night from April 2016 to May 2016.

AMENDMENT LAPSED FOR WANT OF A SECONDER

The original motion was put and **CARRIED 8/1833–16/02/2016**

Alderman Pascoe-Bell declared a conflict of interest on item 11.3.2 and left Chambers at 6.57pm.

11.3.2 Financial Support – Palmerston Rugby Union Club

Moved: Deputy Mayor McKinnon
Seconded: Alderman Bunker

THAT Council approve the grant request from Palmerston Rugby Union Club to the value of \$6,500 to purchase a new scrum machine.

CARRIED 8/1834–16/02/2016

Alderman Pascoe-Bell returned to Chambers at 6.57pm.

11.3.4 Protocol for Welcome to Country and Acknowledgement of Traditional Ownership

Moved: Alderman Shutt
Seconded: Alderman Carter

THAT Council adopt the Welcome to Country and Acknowledgment of Traditional Ownership protocol.

CARRIED 8/1835–16/02/2016

12. INFORMATION AGENDA

12.1 Items for Exclusion

Nil

12.2 Receipt of Information Reports

Moved: Alderman Bunker
Seconded: Deputy Mayor McKinnon

THAT the information items contained within the Information Agenda be received.

CARRIED 8/1836–16/02/2016

13. DEBATE AGENDA

13.1 Officer Reports

13.1.1 Liquor Licence Application “Liquor Merchant” (BWS) on Lots 11037, 7765 and 7766 (11, 5 and 15) Yarrowonga Road, Yarrowonga (Gateway Shopping Centre) 8/0818

Moved: Deputy Mayor McKinnon
Seconded: Alderman Carter

1. THAT Council receives Report Number 8/0818.
2. THAT the attachment to Report Number 8/0818 be endorsed.

CARRIED 8/1837–16/02/2016

13.1.2 Financial Report for the Month of January 2016

8/0820

Moved: Alderman Byrne
Seconded: Deputy Mayor McKinnon

THAT Council receives Report Number 8/0820.

CARRIED 8/1838–16/02/2016

13.1.3 Sale of Land - Lot 10024 and Part Lot 9609

8/0823

Item withdrawn.

14. CORRESPONDENCE

14.1 Archer Landfill Site

Moved: Alderman Carter
Seconded: Alderman Shutt

THAT Council receives Correspondence from the Department of Local Government and Community Services dated 5 February 2016 'Application to borrow \$4 million for Archer Landfill Site'.

CARRIED 8/1839–16/02/2016

15. RESPONSE TO PREVIOUS QUESTIONS TAKEN ON NOTICE

15.1 Response to Previous Public Questions from Council Meeting held on 2 February 2016

8/0822

Moved: Alderman Bunker
Seconded: Alderman Byrne

THAT Council receives Report Number 8/0822.

CARRIED 8/1840–16/02/2016

16. PUBLIC QUESTION TIME

At the invitation of the Chair

Nil

17. OTHER BUSINESS - ALDERMAN REPORTS

17.1 Deputy Mayor McKinnon – Liquor Licences

Discussed reviewing the wider context of liquor licence applications.

17.2 Deputy Mayor McKinnon – Multicultural Aged Care

Attended the Multicultural Council NT National Consultation by the Federation of Ethnic Community Councils in relation to aging and multicultural communities

17.3 Alderman Carter – Change of Address Notifications

Noted that change of address procedures have been updated.

18. CONFIDENTIAL REPORTS

Moved: Alderman Shutt
Seconded: Alderman Carter

18.1 Financial Hardship Application – Assessment 102837

8/0819

1. THAT pursuant to Section 65 of the Local Government Act, Council orders that the public be excluded from the meeting with the exception of the Chief Executive Officer, Director of Technical Services, Director of Corporate and Community Services and Minute Secretary on the basis that Council considers it necessary and appropriate to act in a manner closed to the public in order to receive, discuss and consider the report and associated documents in relation to confidential agenda item 18.1 Financial Hardship Application – Assessment 102837 and that Council is satisfied that the meeting should be conducted in a place open to the public is outweighed in relation to the matter because receiving, considering and discussing the report and associated documentation involves:

- (b) information about the personal circumstances of a resident or ratepayer;

This item is considered confidential pursuant to Regulation 8 (b) of the Local Government (Administration) Regulations.

2. THAT Council orders that the minutes from the Confidential Council meeting held on 16 February 2016, in relation to confidential item number 18.1 Financial Hardship Application – Assessment 102837 and the report and associated documentation remain confidential and not available for public inspection for a period of 12 months from the date of this meeting or a lesser period as determined by the Chief Executive Officer.

CARRIED 8/1841–16/02/2016

The meeting moved into the Confidential Session at 7:21pm.

18.2 Moving decisions from the Confidential Session into the Open Session

In accordance with the resolutions of Council, the following decisions from the Confidential Session are moved into the Open Session:

Financial Hardship Application – Assessment 102837

8/0819

1. THAT Council receives Report Number 8/0819.
2. THAT Council approves the remission of interest for the period 27 January 2016 to 30 June 2016 for assessment 102837 under financial hardship policy FIN17.
3. THAT Council approves a statutory charge to be placed on the assessment 102837.
4. THAT the Mayor and Chief Executive Officer be authorised to sign and seal all documentation relation to the statutory charge for assessment 102837, including discharge of statutory charges if full payment should occur.
5. THAT the resolutions only come back to the Open Session.

19. CLOSURE

Meeting closed at 7.25pm

(Chair)

CITY OF PALMERSTON

**Minutes of Confidential Council Meeting
held in Council Chambers, Civic Plaza, Palmerston
on Tuesday, 3 February 2015 at 7.42pm**

RELEASED TO THE PUBLIC RECORD

1. PRESENT

Elected Members: His Worship the Mayor Ian Abbott (Chair)
Deputy Mayor Heather Malone
Alderman Paul Bunker
Alderman Andrew Byrne
Alderman Sue McKinnon
Alderman Seranna Shutt

Staff: Ricki Bruhn, Chief Executive Officer
Ben Dornier, Director of Corporate and Community Services
Mark Spangler, Director of Technical Services
Caroline Hocking, Minute Secretary

Gallery: Gerard Rosse, Strategic Planner

2. APOLOGIES

Alderman Carter – Apology

ACCEPTANCE OF APOLOGIES AND LEAVE OF ABSENCE

Moved: Alderman McKinnon
Seconded: Deputy Mayor Malone

THAT the apology received from Alderman Carter be received and granted.

CARRIED 8/1402–03/02/2015

3. DEPUTATIONS / PRESENTATIONS

Nil

4. OFFICER REPORTS

The Director of Corporate and Community Services tabled an updated legal advice 'Town Planning and the Application of FD Zoning' received from HWL Ebsworth dated 3 February 2015.

MEETING PROCEDURES

Suspension of Standing Orders

Moved: Alderman Bunker
Seconded: Alderman McKinnon

THAT Standing Orders be suspended to allow for open discussion.

CARRIED 8/1403–03/02/2015

Standing Orders were suspended at 7.59pm

Reinstatement of Standing Orders

Moved: Deputy Mayor Malone
Seconded: Alderman McKinnon

THAT Standing Orders be reinstated.

CARRIED 8/1404–03/02/2015

Standing Orders were reinstated at 8.54pm

4.1 Subdivision to create 181 lots over Lot 4251 (575) Roystonea Avenue, Zuccoli

8/0621

Moved: Alderman Bunker
Seconded: Deputy Mayor Malone

1. THAT Council receives Report Number 8/0621.

CARRIED 8/1405–03/02/2015

Moved: Alderman Bunker
Seconded: Alderman Byrne

2. THAT Council accepts the tabled document from HWL Ebsworth Lawyers dated 3 February 2015 titled "Town Planning and the application of FD Zoning" as Attachment D.
3. THAT Attachment A to Report Number 8/0621 be endorsed.
4. THAT the Mayor, Chief Executive Officer, Director of Technical Services and Chair of the Economic Development and Infrastructure Committee meet with the Chief Executive of Department of Lands and Planning to discuss the legal advice outlined in Attachment D.
5. THAT the outcome of the discussion with the Chief Executive of Department of Lands and Planning be brought back to Council in the form of a report.
6. THAT the resolutions and Attachment A be released to the Public Record.

CARRIED 8/1406–03/02/2015

5. MOVE TO OPEN

Moved: Deputy Mayor Malone
Seconded: Alderman McKinnon

THAT the Council move into the open session.

CARRIED 8/1407–03/02/2015

The meeting moved to the Open Session at 8.55pm

CONFIRMED AT MEETING TO BE HELD 17 FEBRUARY 2015

(Chair)

ITEM NO. 17.1 Subdivision to create 181 lots over Lot 4251 (575) Roystonea Avenue, Zuccoli

FROM: Director of Technical Services
REPORT NUMBER: 8/0621
MEETING DATE: 3 February 2015

Municipal Plan:

3. Environment & Infrastructure

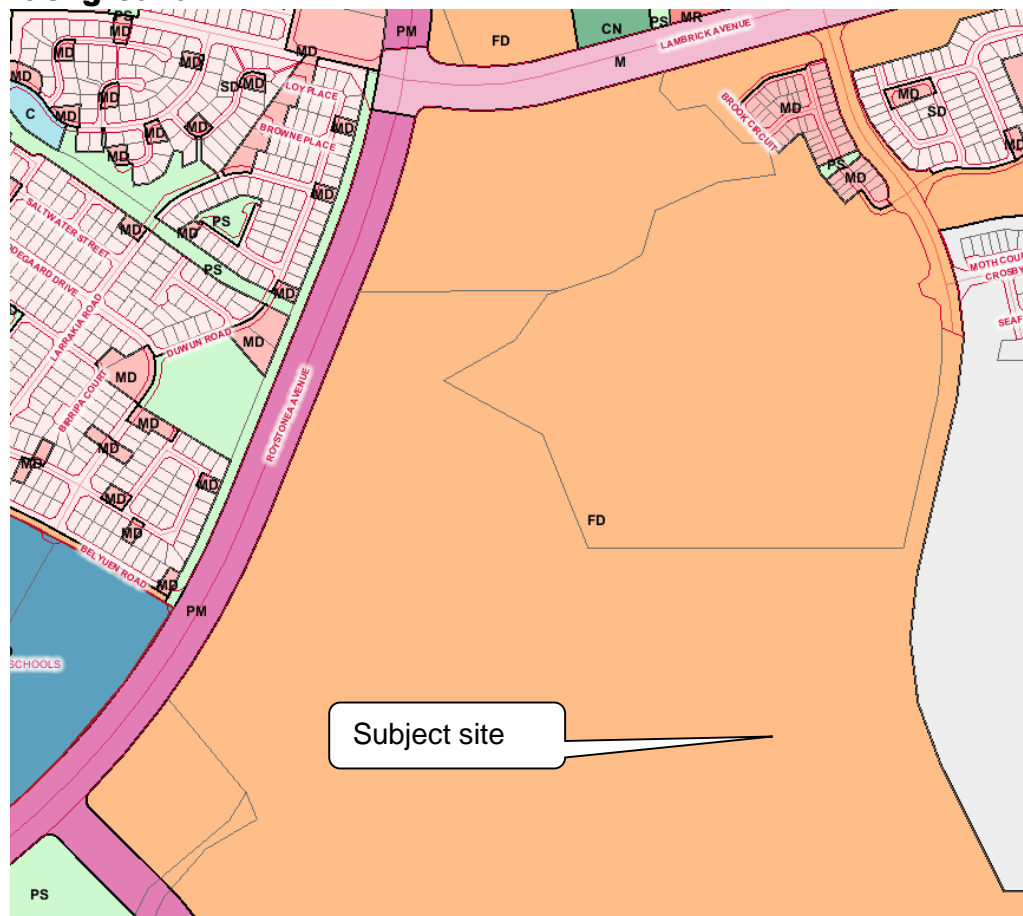
3.2 Assets and Infrastructure

2.3 We are committed to effective and responsible city planning which balances and meets both residential and commercial needs in our community

Summary:

This report outlines issues to be considered by Council in regard to the development application for the subdivision to create 181 lots over Lot 4251 (575) Roystonea Ave, Zuccoli.

Background:



Source: NT Atlas and Spatial Data Directory

The lot is currently within Zone FD (Future Development) and is surrounded to the west and south by other lots in that same zone. Land to the east of the subject site is in Zone SP9 (Specific Uses), which crafts specific development requirements for further stages of Zuccoli. Land to the north contains the earlier stage of the Zuccoli Development currently under construction. As a whole, the suburb of Zuccoli is expected to provide a mixture of residential uses, including single dwelling, multiple dwelling and medium density residential sites. The suburb will also include public open spaces, conservation zones, community purpose and commercial uses.

The application proposes the following:

- An initial subdivision application of Zuccoli 3 & 4 in two portions, i.e. Portion One (Sub-stage One - Lot 4251) and the Remainder Portion Lots 12433 & 12432 (future Sub-stages Two to Six);
- The subdivision of Sub-stage One into 181 lots with nominated zones;
- The staging of Sub-stage One into Sub-stages 1A and 1B for construction and Part 5 clearance purposes; and
- The in principle support for the staging of the Zuccoli 3 & 4 development into six stages. A subsequent application for the subdivision of the Remainder Portion Lots 12433 & 12432 into sub-stages (Sub-stages Two to Six) and the subsequent applications for subdivision per stage. The subdivision applications for each stage will accord with market demand.

Stage 1 (below) of the proposed stages 3 and 4 of Zuccoli is to create 181 lots over two sub-stages (1A and 1B) with a nominated zone of primarily Multiple Dwelling Residential (MD) for single dwellings and lot sizes between 300 square metres and 953 square metres. Stage 1 also includes some Zone MD for multiple dwellings and lot sizes of 600 square metres up to 4,231 square metres and some Medium Density Residential (MR) for multi storey development up to a maximum height of four storeys and lots sizes of 2,174 to 2,605 square metres.



Source: Masterplan Planners

Stage One is proposed to be subdivided into 181 individual lots as follows:

Zone	Lot Size	# of lots
MD Multiple Dwelling Residential (single dwellings)	300-349	43
	350-399	42
	400-499	47
	500-599	17
	600-799	13
	800-999	2
	SUB-TOTAL	164
MD - Multiple Dwelling Residential (multiple dwellings)	> 600m ²	7
	1,044m ² & 1,199m ²	2
	4,167m ²	1
	SUB-TOTAL	10
MR - Medium Density Residential	2,586-3,303m ²	5
Public Open Space		2
TOTAL		181

Source: Masterplan Planners

It is noted that as part of this application the applicant has submitted a Concept Master Plan for the entire site (Zuccoli 3 & 4) and has indicated that all future development will be in accordance with this Master Plan as far as detailed design permits. This plan has no formal planning status; however the applicant has noted that it is to guide future planning and compliance with the Palmerston Eastern Suburbs Planning Principles and the agreement between NTG and the developer.

General:

Statutory / Procedural

At the time of writing this report legal opinion on some of the following matters had not been received or assessed. This information will be available for the ordinary meeting.

Proposed Zoning:

As the intended ultimate zoning of the land is as yet unstated by the Minister, Council staff are of the view that support cannot be provided nor can this application be fully assessed as the intended ultimate zoning of the land is unknown.

At this time, the Minister has not given any indication of the zones proposed within this FD site, either by letter of statement or by advertising any amendment for a rezoning of this area. As it is unknown what the Minister's intent for the zoning of this area is, Council staff believe that the application is premature and that it should not be assessed until the Minister has at least advertised a rezoning for the area.

Alternatively, this subdivision application and the proposed zoning for the site could be exhibited and assessed under the concurrent application process, which would give the service authorities and public opportunity to comment on the proposed zoning of the site, rather than the zoning being a by-product of this subdivision application.

While it is acknowledged that land in Zone FD may have been subdivided previously in a similar manner, Council staff are of the view that that was in error and is a result of the misinterpretation of Clause 11.1.3(3) of the NT Planning Scheme.

Concept Master Plan:

It is noted that the application explicitly states that the Concept Master Plan “is to guide future planning and compliance with the Palmerston Eastern Suburbs Planning Principles”. Council staff are of the view that the appropriate pathway is for the Area Plan to support the Planning Principles and that as such, it should be considered whether an appropriate option may be to amend the NT Planning Scheme such that a simplified version of the proposed Concept Master Plan is proposed to act as the Area Plan for the area of Zuccoli Stages 3 and 4.

As stated above, as the zoning is unknown, Council Staff are unable to fully assess the subdivision portion of this application. However, the following preliminary comments have been prepared:

Road Design and Hierarchy

Primary concern is raised over the proposed road design and hierarchy layout, in particular the proposed road widths are below those identified in the relevant Council guidelines. The proposal features a large number of cul-de-sacs which is not supported by staff and inconsistent with the relevant Council guidelines. It is noted that opportunities for through connections occur with a large number of the proposed cul-de-sac which would be the preferred outcome in the majority of cul-de-sac locations. The provision of cul-de-sac to service proposed higher density development is not supported due to servicing and traffic concerns and inconsistent with Council guidelines and draft policy recently released by the NT Government relating to “compact urban growth” outlining development principles for higher density development that are not to be serviced by cul-de-sacs.

Traffic Assessment

Council staff require clarification on the reasoning for significant differences in traffic figures and traffic volume estimates for the same site between the GHD report from April 2014 commissioned by the NT Government and the SMEC report from December 2014 provided by the applicant. An independent review of the traffic modelling for the development is also required.

Density and Zoning

It is noted that there are many lots designated on the proposed subdivision and land use plan that designate a property as being within Zone MD but listed as a single dwelling. It is noted that when a property is within Zone MD, the allowable density for that lot is 1 dwelling per 300m². Therefore, for each lot of 600m² or greater, more than one dwelling would be permitted by right under the proposed zoning designation. It is queried as to how those lots designated as single dwelling but larger than 600m² will be restricted to one dwelling within the development. If a single dwelling is intended on these lots, it is recommended that some form of formal restriction be placed on those lots, such that the consent authority must not consent to more than a single dwelling on these lots. For lots of 800m² or greater, it is recommended that these lots be formally designated as being within Zone SD.

Council staff also raises concerns relating to the interface of zones to ensure appropriate amenity is maintained and suggest whether some lots would be more appropriate as lots in Zone MD rather than Zone MR.

Concern is also raised with the total amount of small lots overall. The subdivision is extremely dense, with over 80% of the lots proposed in Stage 1 being less than 500m² in area. Council would prefer a wider mix and variation of lot sizes and it is noted that the traffic modelling for the subdivision within the application notes 1,775 lots which is well in excess (over 1,000 more lots) than the application that was required by the original NT Government call for proposals for the site. It is considered that a greater degree of variation in lot sizes and zones would not be unreasonable in this proposed development.

It is noted that the proposed area of land in Zone CP has reduced dramatically in size from that depicted in the Area Plan and it is highlighted that the current proposal does not comply with the Area Plan. According to the Area Plan, Council would have expected the land in Zone CP to front two major roadways within the development rather than only Zuccoli Parade. The concentration of the school community purpose uses on the eastern side of the development will have an impact on the GHD traffic impact assessment.

Significant concerns are raised regarding the Concept Master Plan's indication that there intends to be further investigations of the possibility of urban development within the public open space areas adjacent Mitchell Creek. Council notes that the amount of public open space provided for the development will dramatically decrease if additional urban development is proposed in these areas in the future. Additionally, the impact of that development on Mitchell Creek is unknown and has not been addressed by the application or within the community. Further development will also impact on the traffic volumes using the local network.

Open Space

There are 181 lots proposed within Stage 1, with almost nil public open space proposed in this stage. Three small parcels are designated as public open space, each appearing approximately 250m² in size. While it is acknowledged that the intent is for the entire subdivision as a whole to exceed the 10% of public open space required for the subdivision, it is not considered appropriate to provide 181 lots with so little public open space. Staff cannot support this current design, as there may be a possibility that if for some reason the remainder of the development did not go ahead, these residents, including the large lots of medium density development, would be without public open space. In particular, it is noted that the Concept Master Plan shows several larger areas of public open space in Stages 2 and 3 that is immediately adjacent Stage 1. It is recommended that portions of these public open space areas be incorporated into Stage 1.

Clarification of the intent of the "designated open space" areas on the building envelope plans is requested. It appears that this space is contained within the boundaries of each lot but its purpose is not clear. As the covenants proposed restrict front fences, it is queried how the applicant sees this as usable, rather than dead, space for each lot.

Development Permit for Subdivision versus Development Permit for Development –

It is noted that the application is for subdivision, yet several proposals are made within the application and variations requested to clauses that are applicable at the further

Development Application stage for individual lots, rather than at the time of subdivision. To ensure the items are raised at this initial stage, comments on several items including setbacks and tandem parking have been made for noting purposes.

Stormwater Drainage -

General comments regarding the requirement for a site stormwater drainage plan are provided along with comments of support in the provision of ornamental lakes as the primary form of stormwater drainage cleansing rather than bio-retention basins.

Summary

Council staff have raised a number of concerns relating to the proposal both on Statutory / Procedural matters and also on technical items as outlined above and detailed in the attached.

Financial Implications:

There are no financial implications for Council as a result of this proposal.

Legislation / Policy:

There are no legislation or policy implications for Council as a result of this proposal.

RECOMMENDATION

1. THAT Council receives Report Number 8/0621.
2. THAT Attachment A to Report Number 8/0621 be endorsed.
3. THAT the resolutions and Attachment A be released to the Public Record.

Recommending Officer: Mark Spangler, Director of Technical Services

Any queries on this report may be directed to Mark Spangler, Director of Technical Services on telephone (08) 8935 9958 or email mark.spangler@palmerston.nt.gov.au.

Author: Gerard Rosse, Strategic Planner.

Schedule of Attachments:

Attachment A - Council's letter of comment for Lot 4251 (575) Roystonea Avenue Zuccoli

Attachment B – Development Application and Drawings

Attachment C – Legal Advice regarding rezoning process



19 December 2014

Development Assessment Services
Department of Lands, Planning and the Environment
GPO Box 1680
DARWIN NT 0801
Attn: Douglas Lesh

Dear Mr Lesh

**Re: Zuccoli Stages 3 and 4 (Sub-Stage One)
Lots 12432 & 12433 Town of Palmerston**

Please find enclosed herewith an application for a development permit for the staged subdivision of the above land parcels. As subdivision requires consent under the NT Planning Scheme, an application is made pursuant to Section 44(b) of the NT Planning Act. Enclosed documentation comprises:

- Landowner Authorisation;
- Statement of Effect;
- Attachment A: Location Plan;
- Attachment B: Site Plan;
- Attachment C: Concept Master Plan and Design Philosophy;
- Attachment D: Staging Plan;
- Attachment E: Subdivision and Staging Plans – Sub-stages 1A & 1B;
- Attachment F: Draft Covenant Document;
- Attachment G: Building Envelope and Setback Plans;
- Attachment H: Concept Master Plan with Staging;
- Attachment I: Landscaping Master Plan;
- Attachment J: Engineer Services Report;
- Attachment K: Compliance with NTPS Planning Principles;
- Attachment L: Notice of Intent;
- Attachment M: AAPA Certificates; and
- Attachment N: Allotment Mix Plan.



Please forward advice on application fee requirements and we will arrange for payment as soon as possible.

Given the Northern Territory Government's time frame for delivery of this project we understand this matter is to be presented to the DCA meeting on 18 February 2015. Further, under separate correspondence we have requested the opportunity to brief the DCA on the 21 January 2015. The DCA previously was presented with a high level briefing during the master planning phase however now that the application is lodged and there is greater detail available, we have requested the opportunity to formally present the application.

Please do not hesitate to contact the undersigned to discuss any of the matters contained herein, or any other aspect of this proposal.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Simon Tonkin', written over a large, faint oval shape.

Simon Tonkin
MasterPlan NT

ZUCCOLI 3&4 SUB-STAGE 1

PLANNING REPORT
DECEMBER 2014

PREPARED BY



MASTERPLAN
TOWN + COUNTRY PLANNERS



PREPARED BY



MASTERPLAN
TOWN + COUNTRY PLANNERS

ON BEHALF OF



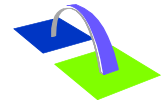


Table of Contents

1.0	INTRODUCTION	2
2.0	SITE AND LOCALITY DESCRIPTION.....	5
2.1	Description of Locality	5
2.2	Description of Site	5
2.3	Topography and Drainage	5
2.4	Land Units, Soils and Vegetation.....	6
3.0	DESCRIPTION OF PROPOSED DEVELOPMENT	8
3.1	Subdivision	8
3.2	Building Setback	11
3.3	Staging	12
3.4	Circulation	13
3.5	Open Space and Landscaping.....	17
3.6	Site Constraints	19
3.7	Servicing and Infrastructure	19
4.0	COMPLIANCE WITH NORTHERN TERRITORY PLANNING SCHEME, NTEPA AND AAPA.....	23
4.1	Planning principles	23
4.2	Environmental Protection Authority – Notice of Intent.....	23
4.3	AAPA Certificates.....	24
5.0	STATUTORY REQUIREMENTS - Section 46(3) of the NT Planning Act	25
5.1	Section 46(3)(a) – Compliance with the Planning Scheme	25
5.2	Section 46(3)(b) – Interim Development Control Order	33
5.3	Section 46(3)(c) – Public Environmental Report/Environmental Impact Statement	33
5.4	Section 46(3)(d) – Merits of Proposed Development	33
5.5	Section 46(3)(e) – Physical Characteristics of the Subject Land, Suitability of the Proposed Development and Effect on Locality	34
5.6	Section 46(3)(f) – Public Facilities/Open Space	35
5.7	Section 46(3)(g) – Public Utilities/Infrastructure	35
5.8	Section 46(3)(h) – Impact on Amenity	35
5.9	Section 46(3)(j) – Benefit/Detriment to Public Interest.....	35
5.10	Section 46(3)(k) – Compliance with the Building Act.....	35
6.0	CONCLUSION	36



1.0 INTRODUCTION

MasterPlan NT has been engaged by Costojic Pty Ltd to prepare a development application for the subdivision of Stages 3 & 4 of Zuccoli, located at Lots 12433 & 12432 Town of Palmerston (575 Roystonea Ave, Zuccoli).

Zuccoli Suburb is designed in two phases; Phase One has already been developed, and Phase Two consisting of Stages Two to Five. Stage Two is in the process of development, and Stages Three and Four are the subject of this application. A Request for Proposal is currently out for Stage Five.

The Northern Territory Government hereinafter referred to as NTG, released Stages 3 & 4 earlier in the year through a "Request for Proposal". As part of the proposal call a Master Plan has been developed for the development of Stages 3 & 4 (to be referred to as Zuccoli 3 & 4 for the purposes of this report) and based on the principles of this Master Plan the project was awarded to Costojic Pty Ltd. The project consultant team consists of:

- SMEC – Civil infrastructure engineering and landscaping design;
- Aurecon – Electrical engineering design;
- Bennett Design – Urban design; and
- MasterPlan – Town Planning, Subdivision and statutory requirements.

This Master Plan has status as the principle agreement between the Northern Territory Government (NTG) and the developers Costojic, and development is to be broadly in accordance with this Master Plan.

In terms of the "Proposal Call" and the tender agreement the development of Zuccoli 3 & 4 is intended to deliver an innovative residential subdivision of at least 750 lots that support quality, diverse and reasonably priced housing product (between \$160,000 and \$180,000) to the market. The detailed proposals have to respond to the following:

- Delivery of a range of lot sizes which provide for a mix of single dwelling, multiple dwelling, medium and high density residential developments;
- A minimum of 100 diverse dwellings to be made available to eligible purchasers through the Territory's Home Buyer initiatives;
- 10 titled lots to be returned to the Territory (Chief Executive Officer Housing) at nil cost for the purpose of Public Housing (or similar housing initiatives). A reduction in the number of lots may be considered where supplied lots support more than one dwelling;
- 15 percent of lots to be offered to Defence Housing Australia at a 9 percent discount;
- A 9.5 hectare titled lot for the purpose of community use and more specifically for the purpose of educational facilities, which is linked to the neighbourhood through effective off street shared path circulation routes;



- A neighbourhood activity centre that integrates residential development opportunities above the ground floor level and is located and designed for ease of pedestrian and public transport access;
- Provides for the protection of the values of the Mitchells Creek corridor and associated drainage lines and flood plain through integration in the open space and passive recreation outcomes of the development through preparation and implementation of a comprehensive Stormwater Management Plan; and
- Job and contract opportunity for local residents and business.

Zuccoli 3 & 4 falls within the Palmerston Eastern Suburbs Area Plan (Plan 2 of 3) and is zoned Future Development (FD) under the NT Planning Scheme. Zone FD is an interim zone identifying an area that is intended for future rezoning and development in accordance with an Area Plan and its purpose is to limit uses and development within the zone to an extent that will not prejudice the future development and provide for development in accordance with the Area Plan once services are made available to the land.

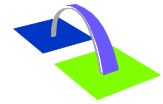
Statutory Application Approach

The application approach is to provide for:

- an initial subdivision application of Zuccoli 3 & 4 in two portions, i.e. Portion One (Sub-stage One) and the Remainder Portion Lots 12433 & 12432 (future Sub-stages Two to Six).
- the subdivision of Sub-stage One into 181 lots with nominated zones.
- the staging of Sub-stage One into Sub-stages 1A and 1B for construction and Part 5 clearance purposes.
- the in principle support for the staging of the Zuccoli 3 & 4 development into six stages. A subsequent application for the subdivision of the Remainder Portion Lots 12433 & 12432 into sub-stages (Sub-stages Two to Six) and the subsequent applications for subdivision per stage. The subdivision applications for each stage will accord with market demand.

As part of this application a Concept Master Plan for the entire site (Zuccoli 3 & 4) has been provided and all future development will be in accordance with this Master Plan as far as detailed design permits. This plan has no formal planning status; however it is to guide future planning and compliance with the Palmerston Eastern Suburbs Planning Principles and the agreement between NTG and the developer.

Engineering constraints, requirements and opportunities that will apply to the proposed development have been considered and advice has been received from the City of Palmerston, Northern Territory Government, Power & Water Corporation and other relevant service authorities. Civil engineering services including earthworks, roadworks, stormwater drainage, sewerage reticulation, water reticulation, environmental impacts, geotechnical services, lake management, electrical provisions and telecommunications have been considered.



The Stage One subdivision is to create 181 lots with a nominated zone of primarily Multiple Dwelling Residential (MD) for single dwellings and lot sizes between 300 square metres and 953 square metres. Some Zone MD for multiple dwellings and lot sizes of 600 square metres up to 4,231 square metres and Medium Density Residential (MR) for multi storey development up to a maximum height of four storeys and lots sizes of 2,174 to 2,605 square metres.

Included in the application are this Statement of Effect, Land Owner Authorisation, and Title Documents. Included in this Statement of Effect are the following documents:

- **Attachment A** Location Plan
- **Attachment B** Site Plan
- **Attachment C** Concept Master Plan and Design Philosophy
- **Attachment D** Staging Plan
- **Attachment E** Subdivision and Staging Plans: Sub-stages 1A & 1B
- **Attachment F** Draft Covenant Document
- **Attachment G** Building Envelope and Setback Plans
- **Attachment H** Concept Master Plan with Staging
- **Attachment I** Landscape Master Plan
- **Attachment J** Engineering Services Report
- **Attachment K** Compliance with Planning Principles
- **Attachment L** Notice of Intent Letter
- **Attachment M** AAPA Certificates
- **Attachment N** Allotment Mix Plan

In preparing this Statement of Effect, we have examined the development application and associated documents, inspected the subject land and locality, and considered the most relevant provisions of the Northern Territory Planning Scheme.

Throughout the planning phase, consultation was undertaken with the Department of Lands, Planning and the Environment (Development Assessment Services, Land and Economic Development) the Power and Water Corporation, and the Palmerston Council. Information from all meetings have been considered and incorporated within the proposed approach.



2.0 SITE AND LOCALITY DESCRIPTION

2.1 Description of Locality

The subject site forms part of the Zuccoli suburb and is located approximately 6.0 kilometres to the south of the Palmerston Central Business District (CBD) and 21 kilometres from the Darwin CBD. It is located within the boundaries of the City of Palmerston.

Access to Stuart Highway will be via Lambrick Avenue. Zuccoli Parade runs from Lambrick Avenue in the north and southwards to the Southern Loop Road. Access to Zuccoli 3 & 4 will be via a roundabout from Zuccoli Parade. A Location Plan is provided at **Attachment A**

2.2 Description of Site

The site comprises Lots 12433 & 12432, Town of Palmerston, and is 132.08 hectares in total. The land is zoned FD (Future Development) under the Northern Territory Planning Scheme. Lot 12433 & Lot 12432 comprises Zuccoli Stages 3 and 4 and is the subject of a Crown lease with Costojic Pty Ltd. The site is vacant and no known easements exist. The land is irregular in shape, and is bound by Roystonea Avenue to the west, Lambrick Avenue to the north, Zuccoli Parade to the east and the Weddell Connector to the south. Mitchells Creek runs immediately to the west of Zuccoli, separating it from Roystonea Avenue. Brookings Creek is to the south. A Site Plan is provided at **Attachment B**.

2.3 Topography and Drainage

The topography of the Zuccoli area is predominantly gently undulating with steeper rockier slopes in the first order creek lines. It is dominated by a ridge running south-east through the site (shown as a dashed red line in Figure 1). The area to the west of the ridge drains to Mitchells Creek and features well defined and generally incised, rocky, eroded creek lines. The area to the east drains to Brookings Creek and features wide shallow wetland drainage corridors and seepage zones.

The topography is highlighted in Figure 1, and areas of lower elevation are shown in blue and areas of higher elevation are shown in orange and red. Figure 1 clearly shows the incised rocky creek lines draining to Mitchells Creek. The site is drained by several small creeks and drainage lines, making their way from east to west into Mitchells Creek, and in a south easterly direction towards Brookings Creek.

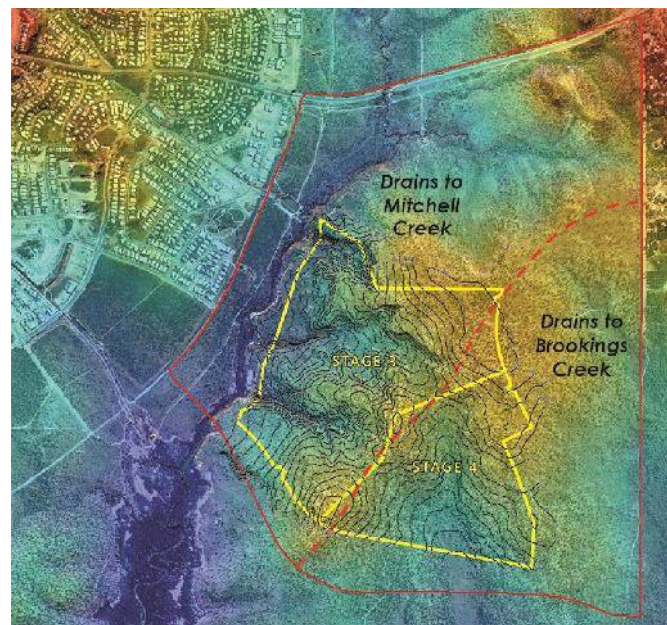


Figure 1: Topography and Drainage (*)

2.4 Land Units, Soils and Vegetation

Land units and soils are shown in Figure 2. The land units at Zuccoli reflect the site's topography. On the plateau in the east is a small area of shallow gravelly yellow massive earths. Through the escarpment are shallow gravelly lithosols. On the gentle to steep slopes below the escarpment are shallow gravelly massive earths and in the drainage lines are hard setting deep mottled yellow massive earths. Other than in the drainage lines, the soils are generally shallow and gravelly. The typical soil surface is shown in Figure 2.

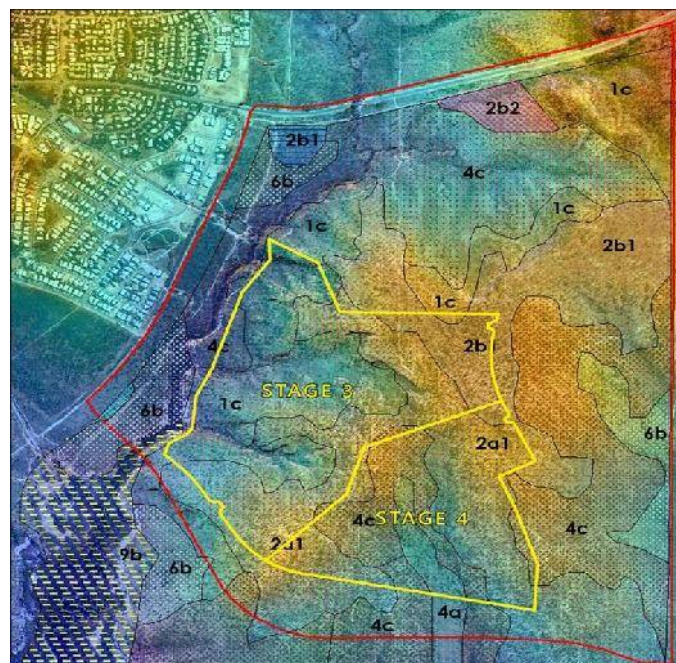


Figure 2: Land units at Zuccoli (*)



These soils can be susceptible to erosion when disturbed, but otherwise a layer of gravel protects the surface. The land/soils and vegetation at Zuccoli are described as shown in Table 1.

Table 1: Land units, soils and vegetation. (*)

Ref	Topography	Soils	Vegetation
1c	low scarps and short steep slopes, gradient 5-15%	mostly on lateritic sediments; shallow gravely Rudosols	woodland <i>E.miniata</i> <i>E.bleeseri</i>
2a1	low rises and upper slopes, gradient to 4%	shallow to moderately deep Rudosols and Kandosols	open woodland <i>E.miniata</i> <i>E.tetrodonta</i>
2b1	Gentle side slopes to low rises, gradient 2-5%	moderately deep gravelly brown Kandosols	open woodland <i>E.miniata</i> <i>E.tetrodonta</i>
4c	Gentle lower slopes, gradient 0.5 - 1.5%	hydrosols	open forest <i>E.tetrodonta</i> <i>E.papuana</i>

* Equatica – Water Sensitive Urban Design Strategy Dec 2011



3.0 DESCRIPTION OF PROPOSED DEVELOPMENT

Master Plan and Design Philosophy for Zuccoli 3 & 4

A detailed design philosophy and concept master plan is provided in **Attachment C**.

This document formed the foundation for the proposal that was provided as part of the proposal call from the NT Government. All development will be in accordance with the overarching design principles and philosophy as far as detail design permits. Initially, the NT Government required a school site of 7.0 hectares, however the size of the school site has been increased to 9.5 hectares which was not reflected in the Concept Master Plan, but it is reflected in the updated Master Plan forming part of this Statement of Effect.

The design philosophy for Zuccoli 3 & 4 met the requirements as set out in the Request for Proposal and is set around the following principles:

- a fully integrated suburb where the community enjoys a community hub integrated within the heart of an urban residential area with diverse housing to allow for housing choice that is affordable;
- access to a school and public transport;
- a suburb that is accessible, legible and connected in terms of access for both pedestrians and cyclist to open space areas and Mitchells Creek;
- public accessibility to all open space areas will be afforded throughout by a comprehensive shared path network and reinforced through location of facilities and activities and the overall connectivity between land uses; and
- adoption of water sensitive urban design principles in the design of the open space and stormwater management concept in order to protect the values of the Mitchells Creek, and to provide for an attractive neighbourhood with high quality active and passive open space.

3.1 Subdivision

The development comprises the subdivision of Lots 12433 & 12432 Town of Palmerston (575 Roystonea Ave, Zuccoli) into two portions; proposed Portion One and the Remainder Portion (Lots 12433 & 12432) comprising future Stages Two to Six. **Attachment D** depicts overall staging of Zuccoli 3 & 4.

The proposed Portion One will be Sub-stage One of six delivery sub-stages. The Subdivision and Staging Plans for Sub-stages 1A & 1B is provided at **Attachment E**.



Stage One is proposed to be subdivided into 181 individual lots as follows:

Zone	Lot Size	# of lots
MD Multiple Dwelling Residential (single dwellings)	300-349	43
	350-399	42
	400-499	47
	500-599	17
	600-799	13
	800-999	2
	SUB-TOTAL	164
MD - Multiple Dwelling Residential (multiple dwellings)	> 600m ²	7
	1,044m ² & 1,199m ²	2
	4,167m ²	1
	SUB-TOTAL	10
MR - Medium Density Residential	2,586-3,303m ²	5
Public Open Space		2
TOTAL		181

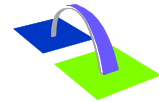
The subdivision is designed in accordance with the Master Plan for Zuccoli 3 & 4 and is consistent with the principles of Clause 11.1.3 and 11.2.4 of the Planning Scheme, accommodating single dwellings on lots between 300 to 600 square metres within Zone FD and the nominated Zone MD as well as in Zone MR.

The developer intends to covenant this development by providing for certain design guidelines to protect the investment of purchasers in this development. In essence, standards and guidelines will be managed and enforced through the covenants. Although the final legal covenant document is still in the process of formulation and review, a draft covenant document is provided in **Attachment F**.

3.1.1 Single Dwelling lots in Zone Multiple Dwelling (MD)

The individual urban residential lots range in size from 300 square metres, to 953 square metres. All frontages are between 11 and 20 metres and are generally 30 metres deep to provide building design flexibility.

Most of the lots within Sub-stage One will be developed as single dwellings in zone MD, with a minimum boundary length of 11 metres to any public road and no battle axes. Building setbacks will be in accordance with the attached Building Envelope and Setback Plans at **Attachment G**. In some instances variation to the required setbacks in Table A to Clause 7.3 are requested. The setbacks have been



determined to provide for an appealing streetscape with variation to the normal single and sometimes monotonous setbacks.

Variations in setbacks are proposed to enhance curb appeal of the subdivision. It is an illusion that eliminates the monotony that a rigid, symmetrical line of building frontages can create. Setbacks can also increase the amount of land available for the building footprint. These setbacks of less than six metres are strategically focused on the smaller lots which have a more constrained building envelope than their larger counterparts.

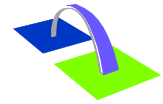
The subdivision for all stages has been designed as far as possible to provide for east-west orientated lots to enable future dwellings with the long axis of buildings east-west to reduce heat gain, with the northern and southern exposures to be shaded with eaves. Sub-stage One lots however are mostly orientated north south with the long axis to north south. The east west lot orientation for all lots could not be achieved due to the contours and gradient of the area. The orientation of blocks was primarily designed to accommodate drainage. The area drains to the south and the lots are orientated to ensure stormwater drains to the roads running east west into the drainage lines flowing south to Brookings Creek.

The majority of lots in this zone are in the size range of 300 to 700 square metres to provide for more affordable housing choice.

The publically available pricelist for single dwelling lots at Muirhead Breezes Release 2 shows for example the largest lot is 812 square metres and priced at \$370,000. This subdivision provides a diverse range of lots from 302 square metres up to over 800 square metres, with many in the 500 to 700 square metres range. Purchasers who seek the amenity that is evident in this proposed subdivision, but who require a larger lot, have the opportunity to purchase two of the smaller lots and consolidate them into a larger lot. Even when consolidated, price points are very competitively priced. For example, two smaller lots consolidated into a larger 800 square metre lot will on current estimates be priced around \$300,000. The 600 square metre lots will on average be priced, again on current estimates, in the low-to-mid \$200,000's. Although current land prices elsewhere, in Muirhead for example, are higher than Zuccoli, the developer is of the opinion that the larger 600 to 800 square metre lots at the consolidated price will be positively received by the market as an alternate which provides opportunity to increase ultimately housing choice.

3.1.2 MD - Multiple Dwelling Residential Lots

The subdivision creates ten Zone MD (multiple dwelling) lots ranging from 600 to 4,167 square metres. The developer may choose to sell the one MD lot of 4,167 square meters to another developer. It is noteworthy that the public open space provided as part of the total scheme is designed to incorporate the contribution from the whole of the land and the further development of the land. The further development of that land in that circumstance would be the subject of a separate application. The maximum density of multiple dwellings which can be developed on any multiple dwelling MD site is one per 300 square metres, based on the zone area and density limits for residential development in Zone MD.



3.1.3 MR - Medium Density Residential

The subdivision creates five Zone MR lots which can be developed to a height of four storeys and associated density requirements in accordance with Table B to Clause 7.1.1. The future developments of these MR lots will be the subject of a development application at which stage compliance with the zone requirements will be facilitated.

3.2 Building Setback

Sub-stage One is planned and provided with a building envelope and setback plan. The NTPS requires under Clause 11.2.3 (2)(b) that lots have to conform with the Table to the clause. Table A to Clause 7.3 provides setback requirements for one and two storey residential buildings and Clause 7.3.3 provides for setback requirements for single dwellings in zone MD.

Building Envelope and Setback Plans are provided at **Attachment G**. The setbacks of 6.0 metres and 4.5 metres for structures without walls are referred to as the primary setback and the secondary setback for the purposes of this application. The grey coloured area on the setbacks plan indicates the building footprint or the primary setback as per the NTPS requirements, i.e. 6.0 metres. The red dotted line indicates the secondary setback as per the requirements of the NTPS, i.e. 4.5 metres. The last three diagrams, in **Attachment G** titled *Stage 1 Building Envelope*, represent the envelopes typical for various lot sizes.

In instances where a variation is sought, the proposed setback is indicated in red on the relevant lot. However where a variation to the 4.5 metres secondary setback is requested, the primary setback reduces by the same distance. For example, a 1.5 metre secondary setback implies a 3.0 metre primary setback. A 3.0 metre secondary setback implies a 4.5 metres primary setback and where no distance is indicated it implies compliance with the relevant setback clauses. The design philosophy to this is to provide for a streetscape that is not monotonous, but rather provides for an interesting and appealing streetscape.

The building setback and envelope plan indicates the required number of parking bays for single dwellings on lots less than 600 square metres in Zone MD, unobstructed driveway access, on-street car parking as well as the minimum required open space of 50 square metres with a minimum 6.0 metre by 6.0 metre dimensioned area. Zero lot line side boundary setbacks are indicated with a thick orange line.

The proposed variations to setbacks are to provide for additional open space and convenience on smaller lots. It has also been established that on the smaller lots due to the provision of the 50 square metre area of open space and the minimum dimension of 6.0 metres by 6.0 metres requirement for open space, that a swimming pool or a splash pool could be accommodated on the smaller lots. This would assist in the territory lifestyle still to be achieved in the tropics where the climate almost requires the potential to "cool off".



3.3 Staging

A Conceptual Master Plan with Staging is provided at **Attachment H**. The staging of the development is proposed to be in six sub-stages. Sub-stage One, the subject of this application will provide for mostly single dwelling residencies on MD zoned lots with five MR zoned lots to a height of four storeys. The proposed future five sub-stages include a neighbourhood centre with the potential for a senior's village in Zone MD and some MR and HR zoned properties surrounding the neighbourhood centre. This application seeks to establish the practical staging of the development in six sub-stages, with a development approval for the subdivision into two portions (i.e. Portion One and the Remainder Portion Lots 12432 & 12433) and the further subdivision of Portion One (i.e. Sub-stage One).

The current FD zone allows for the subdivision as long as the subdivision does not prejudice the intended ultimate subdivision and future use or development of the land. The proposed subdivision of Stage One does not prejudice the potential future development of the site, nor does the subdivision into two or the staging of the land.

It is furthermore proposed to develop Sub-stage One into two sections being Sub-stage 1A and Sub-stage 1B. This staging proposal is more specifically for the construction programme, but will also allow the developer to apply for Part 5 clearance once the first 60 lots are developed and ready to be transferred to new owners, whilst the following sub-stage are finalised to deliver the remainder 120 lots. Figure 3 below indicates the Sub-stages 1A and 1B.



Figure 3 – Proposed Sub-stages 1A and 1B subdivision.



3.4 Circulation

3.4.1 Road Layout and site access

The Zuccoli 3 & 4 main access is proposed off Zuccoli Parade into South Loop Road, running east west to link up with West Loop Road being the north south connector road that links Zuccoli 2 in the north. West Loop intersects with the Weddell Connector Road in the south. These roads meet the classification of Sub Arterial Roads in accordance with the City of Palmerston (CoP) design guidelines. Figure 4 indicates the road circulation and is discussed in detail in the Engineering Report provided at Attachment J.



Figure 4: Circulation



The following roads are proposed for Zuccoli 3 & 4 and more specifically for Sub-stage One.

Sub Arterial Road

Sub arterial roads act as feeder or connecting roads, linking the residential areas with the arterial road system and are typically dual lane. Sub arterial roads typically run external to the suburb, forming part of the suburb boundary and do not provide direct frontage to residential lots. However they can provide access to larger traffic generating developments such as schools, public facilities and shopping centres. The following are the standard formats for these roads:

- 27 metre Road Reserve: 17 metre pavement with dual 6.6 metre lanes, bike lanes and footpaths.
- 21 metre Road Reserve: 11 metre pavement with single 3.5 metre lanes, bike lanes and footpaths.

Collector Roads

A collector road's primary purpose is to connect the residential cells of a suburb to the traffic carrying sub arterial roads. The roads generally have a number of access roads branching from them and can provide direct access to residential lots. Collector roads will typically be single. The following sets out the criteria for the two types of collector roads:

- **Secondary collectors** typically cater for catchments of up to 250 residences and provide access to one or more local access roads. Generally, secondary collector roads servicing more than 125 residences should have more than one access outlet. Typically, no schools, shops or bus routes are established on secondary collectors.
 - 21 metre Road Reserve – 7.2 to 8.0 metre pavement with footpaths.
- **Primary collectors** have the same definition and criteria as a secondary collector but have a stronger connectivity between suburbs and the distributor road system. Schools and shops may access the road and the cross section is wide enough to accommodate a bus route. Direct residential lot frontage access to primary collectors needs to be assessed in terms of impacts on the function of the road.
 - 21 metre Road Reserve – 8.0 to 11.0 metre pavement with footpaths.
 - 21 metre Road Reserve – 11.2 to 12.0 metre pavement with footpaths and parking.

For Stage One specifically a conventional urban style internal road network is proposed, utilising a kerb and channel road width of 16 metre with underground stormwater drainage. The requirement for 16 metre road reserves as established in the Draft City of Palmerston Development Guidelines for 'local access roads' has been applied to the local minor road providing the main circulation in the subdivision. The 16 metre road reserve is designed to allow for a 7.0 metre carriageway, with 4.5 metre verges either side to provide for landscaping, footpath and service provision including stormwater, water and sewer reticulation, plus street lighting. The street alignment will assist in maintaining suitable residential speed levels, as stated in the guidelines as follows:



*"a **local access road** consist of loops and through roads between collector roads. They provide lot frontage and generally give access to up to 60 residences. Local access roads are single lane with a maximum speed limit of 50 km/hr."*

The 16 metre local road reserve, including a 7.0 metre carriageway is considered suitable to provide for the number of dwellings proposed.

A 15 metre Minor Road reserve is also provided for with a 6.0 metre carriageway width. These roads will carry less traffic and service a fewer number of lots at any given time. Minor roads are defined as:

***Minor Roads** include short loops and cul-de-sacs which provide direct access to residential lots. Minor roads typically service no more than 25 residences and should generally not exceed 200 metres in length.*

Overall, the proposed road hierarchy within the subdivision is considered appropriate to provide for access to future dwellings and safe and efficient traffic flow and management through the development. The Road Hierarchy as attached to the Engineering Services Report has been developed in consultation with the City of Palmerston and complies with the CoP design guidelines.

The Traffic Impact Assessment included in the Engineering Services Report identifies there will be two major access routes into the Zuccoli development. The entry points will be from the north and west via Lambrick & Roystonea Avenues respectively. These access points have been identified due to the individual abilities to facilitate safe vehicle movement including horizontal and vertical geometry, sight distances and turning movements. Access to Zuccoli 3 & 4 will be provided by collector roads, named South Loop Road, West Loop Road and Centre Road.

Vehicle access to the development site is proposed via a number of access points as follows:

- Four primary site access/egress points will be provided onto Zuccoli Parade via newly constructed roundabouts at the following locations:
 - West Loop Road, to the north of the site;
 - Centre Road;
 - South Loop Road;
 - Road 13 (which will ultimately connect the Zuccoli Stage 4 development to Zuccoli Stage 5 development).
- One primary site access/egress point will be provided to Zuccoli Southern Connector Road from West Loop Road.



The Traffic Impact Assessment Report prepared by SMEC, December 2014 concluded that:

- The Zuccoli 3 and 4 Master Plan provides satisfactory access/egress to the external road network, via five site access/egress points;
- The proposed road reserves and cross sections as discussed in Section 4.5 are consistent with the City of Palmerston Development Guideline, for the function and anticipated traffic volumes for each road type;
- The proposed road hierarchy will ensure that appropriate integration with future roads surrounding the site can occur;
- The road hierarchy as shown in Appendix C of Attachment J to this report should be adopted in order to adequately handle the estimated traffic volumes within the site;
- The turn warrant assessment shows that a channelized right turn would ultimately be required at West Loop Road/Centre Road.
- The Master Plan layout has allowed for a permeable network of formal and informal open spaces linked by shared pedestrian and cycle path access.
- West Loop Road and South Loop Road layouts have catered for buses, with the primary bus route linking these roads to Zuccoli Parade and the Stage 2 development.

It is thus clear that the surrounding areas will not be negatively impacted by the development of Zuccoli 3 & 4 and that there is adequate road capacity to deal with the traffic generated through this development.

3.4.2 Pedestrian Walkways & Cycle Paths

Street widths are designed to provide for adequate sidewalks to at least one side of the road for pedestrians to conveniently move around the suburb. A shared walking trail and cycle path is provided through the open space network for pedestrian and cyclist to enjoy the outdoors and to transit within the suburb through a loop pathway around the edge of the inner residential area. Retention ponds are to be provided along this shared walkway and cycle track to not only form part of the stormwater management regime but also provide some amenity features. Playgrounds and sporting equipment are proposed to not only support a healthy lifestyle but also provide for amenity. The bushland in the north western corner are also proposed to be developed with a pedestrian and cycle trail.

The Master Plan layout has allowed for a permeable network of formal and informal open spaces linked by shared pedestrian and cycle path access, including cycle trails along the Mitchells Creek corridor. The Master Plan promotes a sense of walkability, cycling and accessibility throughout the Zuccoli development, and also provides connectivity to parks, commercial precincts, schools and adjacent neighbourhood communities.



3.4.3 Public Transport

West Loop Road and South Loop Road layouts have catered for buses, with the primary bus route linking these roads to Zuccoli Parade and the Stage 2 development, as agreed with Northern Territory Government (NTG). NTG also confirmed the walkability requirement has been increased from 400 metres to 600 metres, to comply with the bus route specified. Bus stops will be nominated in consultation with the Department of Transport, including the provision of a bus stop in the central Commercial precinct (southern side of shops). It is noted a bus stopping area for the future schools site will be provided on Zuccoli Parade by NTG.

3.5 Open Space and Landscaping

The property is bound by Mitchells Creek to the north western side. Mitchells Creek has natural features and plays an important role in the health of surrounding ecological catchments and downstream environments. The values and complexity of the ecosystem of Mitchells Creek has been recognised and several initiatives for the protection, enhancement and management for Mitchells Creek have been identified for implementation:

- Creation of an ecological zone for protection.
- Creation of a significant buffer between residences and the riverine habitats
- Specific retention of connected corridors between Mitchells Creek and Brookings creek to maintain home range and habitat resources.
- Retention of existing vegetation in the open space system with minimum disturbance to create grassed activation areas and ensure CPTED principals are applied to a 'Bush suburb'
- Significant whole of catchment weed management program with Greening Australia.
- Significant propagation of local native plants for re-vegetation of the open space areas with Greening Australia.
- Significant WSUD for the whole catchment including the creation of open water basins to increase habitat richness and manage water quality and flow dynamics.
- Development of an educational program around Mitchells Creek with Greening Australia for the University, new school and local residents.

The NTPS requirement for a minimum of 10 percent open space to be provided in subdivision developments is well exceeded and is in excess of 20%. Through the design principles of Water Sensitive Urban Design, adequate natural landscape is retained and the proposal to provide for active useable bushland adds to the provision of open space.

A 100 metre buffer area to Mitchells Creek has been provided for in the Master Plan for the area. Sediment ponds/open basins, irrigation and retention ponds are provided, with 100mm rising mains to reticulate the basins. These features are subject to further detailed investigations and feasibility in



consultation with Council. An interface with Mitchells Creek is also provided for, enhancing the protection of the Mitchells Creek values and adding to the amenity created in the subdivision design of Zuccoli.

Open space is provided as a connected or linked open space corridor to provide amenity and localised play and exercise areas for residents. The open space corridors make provision for the management of stormwater through open basin retention ponds which can be used for activities such as fishing, walking and picnicking. The landscaping features include tree-lined boulevards for shade and shelter along the arterial roads. The potential for the development of fields where residents could play active formal sports such as tennis, basketball and netball are all potential features that are being considered as part of the landscaping features. All of these propositions are the subject of detailed investigations to determine their practicality and feasibility.

Figure 5, extracted from the Concept Master Plan and Design Philosophy provided at Attachment C, shows indicative open space and landscaping across future stages of Zuccoli 3 & 4.



Figure 5: Open Space and landscaping
*from Page 9 of the Concept Master Plan and Design Philosophy at Attachment C.



The open space is within walking distance of all residential lots and an integrated network of local and district parks is provided and designed to provide passive recreation opportunities with retained natural vegetation and landform. More formal recreation areas are provided in conjunction with the town square and activity centre designed to accommodate a range of uses and provide an additional community resource to the town square for markets and civic activities.

Open space is provided as follows:

- Natural Bushland that includes the areas around the creek (excludes two ponds and future urban development); and
- natural urban open space includes ponds and surrounding green space and small open spaces.

A Landscape Master Plan has been prepared by SMEC and is contained in **Attachment I**.

3.6 Site Constraints

There are no physical site constraints preventing the development of the land.

Biting Insects have been identified to be located in the western portion of the site and impacts Sub-stage Four of the subdivision area. The Department of Health and Families has certain guidelines that need to be adhered to and these requirements will be complied with at the stage of subdivision application for Sub-stage Four.

3.7 Servicing and Infrastructure

An Engineering Services Report detailing the proposed stormwater, water, sewer, and electricity arrangements has been prepared by SMEC, and is enclosed at **Attachment J**.

3.7.1 Stormwater

In accordance with CoP guidelines and standard drawings, a piped network has been provided for the developed Stormwater catchment. The preliminary stormwater layout for Sub-stage One is provided as an Appendix to the Engineering Report, provided at Attachment J.

The key components of stormwater management for Sub-stage One of the Zuccoli 3 and 4 project are as follows:

- Stormwater quality management including temporary water quality control (construction phase) and permanent water quality control (operational phase).
- Stormwater quantity management.

To achieve the stormwater quality and quantity objectives of the CoP Development Guidelines for the construction phase of the project we propose the implementation of a sediment basin.



For the operational phase of the project (developed site) we propose the following stormwater treatment:

- Trash racks to remove gross pollutants;
- Grass swales;
- Adapting the sediment basin to form a separate detention basin; and
- Artificial retention lake. The artificial lake will not be constructed during Sub-stage One; it is intended the lake will be constructed in future stages of the development.

SMEC is currently in discussion with CoP to determine the acceptable water quality reduction targets for the developed Site. Until, we have confirmed water quality reduction targets we cannot demonstrate compliance with CoP's water quality objectives or finalise the sizing of the proposed detention basin and artificial lake. Suffice to say that adequate land is available to accommodate the anticipated requirement.

When the water quality reduction targets are confirmed the performance of the proposed treatment train will be modelled using a MUSIC model to demonstrate pollutant removal.

To demonstrate that the proposed stormwater treatment train will not increase the peak stormwater runoff flow from the site, three scenarios have been modelled using the XPRAFTS rainfall-runoff software:

- Existing undeveloped site.
- Developed site with no stormwater treatment devices in place (unmitigated).
- Developed site with stormwater treatment devices in place (mitigated).

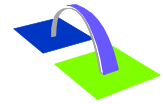
Simulations were run for the 1, 2, 5, 10, 20, 50, and 100 ARI design storm events. The storm event durations modelled ranged from 15 minutes to 6 hours.

The volume of the detention basin and retention lake modelled in XPRAFTS was the minimum requirement to achieve the stormwater quantity objectives only. The detention basin and lake parameters will be optimised when the water quality objectives for the developed Zuccoli 3 and 4 site are confirmed. The results of the XPRAFTS model indicate that the stormwater treatment train proposed for the development.

The finalised detention basin and artificial lake parameters (including MUSIC modelling results) will be presented in the overarching CSMP for Zuccoli 3 and 4, which will be submitted to CoP for approval.

3.7.2 Sewer

The internal sewer reticulation servicing the individual lots will be designed and constructed in accordance with Power and Water Corporation and CoP guidelines and standard drawings, including provision of gas traps.



The Zuccoli sewerage network detailed to service Stages 3 & 4 of the development, are required to discharge to the Zuccoli West Sewer Pump Station (SPS); which has recently been constructed by the NTG. The Zuccoli West SPS has the capacity to service the final Zuccoli Development and additional flow generated by some of the low lying areas in the neighbouring suburbs, such as Mitchell.

As part of Sub-stage One civil works, it is planned to construct Zuccoli South SPS and a rising main to connect to the Zuccoli West SPS to service the immediate needs for this Sub-stage One. The construction of Zuccoli South SPS will also service the needs for Stage Two, and parts of Stages 3 and 4. Sewer can thus be provided for the development of the entire Zuccoli 3 & 4, but more so for Sub-stage One.

A detailed description of the sewer strategy is outlined in the Engineering Services Report provided at **Attachment J**.

3.7.3 Electricity

Provision for the utility is provided for in the road reserve in accordance with the CoP and other authority guidelines and standard drawings. Design is being undertaken by Aurecon in consultation with SMEC.

3.7.4 Water

The proposed Sub-stage One development is intended to be supplied by the existing 375mm diameter water main located along Zuccoli Parade to the east. The design and construction of the water supply will be undertaken in accordance with the standard requirements of the Water Supply Code of Australia (WSA 03-2002), and the PWC Part 1 supplement to this code, dated April 2010.

A preliminary modelling exercise has been undertaken for the Sub-stage One development. This assessment determined the necessity for a secondary connection to the existing DN375 water main located along Zuccoli Parade. Therefore, the internal water reticulation will be supplied via connections at South Loop Road and at the eastern extremity of Road 3. Providing this secondary connection enables the minimum pressure during firefighting flows of 10 metres of head to be achieved throughout the network. It is likely to achieve the minimum pressure of 15 metres of head based on advice from PWC.

The potable water infrastructure for Zuccoli forms part of a new reduced pressure zone with connections to an elevated tank constructed by Power Water Corporation (PWC) in the North-East corner of the Zuccoli suburb. The internal system within Zuccoli will form an integral part of the low pressure zone system, conveying water from the connection point at Lambrick Avenue to Roystonea Avenue at the Southern Zuccoli Connector intersection and hence to the southern portion of Palmerston in parallel with existing and proposed mains in Lambrick Ave and Roystonea Ave.

The Stage 3 & 4 potable water service network has been designed in accordance with PWC requirements and CoP guidelines.

Further detail and a water reticulation plan are provided in the Engineering Services Report at **Attachment J**.



3.7.5 Earthworks

The bulk earthworks design for the site is proposed to follow the natural contours of the land to minimise the cut and fill requirement. Allotments will be designed to ensure that the properties fall towards the road reserve in accordance with local authority requirements. It is envisaged that all fill materials required to re-profile the development will be sourced from within the site, with the intention that the net earthwork operations on the site will be balanced. A detailed earthworks plan for Sub-stage One is provided in the Engineering Report **at Attachment J**.

Upon the completion of any earthworks, the subject site will be stabilised by the redistribution of stockpiled topsoil, hydro mulch stabilisation or landscaping, as appropriate and in accordance with the requirements of City of Palmerston (CoP).



4.0 COMPLIANCE WITH NORTHERN TERRITORY PLANNING SCHEME, NTEPA AND AAPA

4.1 Planning principles

Clause 4.1 of the Northern Territory Planning Scheme (NTPS) provides planning principles and sets out the administration of the planning scheme and states:

"is to contribute to a built, rural and natural environment supporting the diverse lifestyle and the social, cultural and economic development of the Territory promoting amongst others safe communities, housing choice, public infrastructure including a coordinated integrated and efficient transport network, recreational and cultural opportunities and best practice environmental management."

It further references sustainable use and development of land and water resources, the supply of sufficient use for all types of uses, promotes climatic response in urban design and the conservation of sensitive areas in terms of environment, culture and heritage. All the above mentioned principles were considered in detail and the proposal facilitates urban development consistent with the planning principles.

At the stage when the response to the "Request for Proposal" was prepared through the Master Plan design for Zuccoli 3 & 4 a detailed analysis was undertaken in terms of compliance with the Darwin Land Use Framework and the Palmerston Eastern Suburbs Planning Principles and area Plans. The design response and compliance with the objectives of the planning principles were assessed. This assessment is outlined in **Attachment K** attached to this application.

In summary, it indicates that the design of the proposed development complies with all the objectives of the NTPS.

4.2 Environmental Protection Authority – Notice of Intent

In 2012, the then Department of Construction and Infrastructure applied to the then Division of Environment and Heritage whether a Notice of Intent (NOI) was required to further the development of Zuccoli Stage Two. The Department was informed that a NOI was not required. As Zuccoli 3 & 4 forms part of the Stage Two Zuccoli Suburb it also does not require an NOI. A copy of the letter from Environment and Heritage Division is attached at **Attachment L**.

Further enquiries were made to the Environmental Protection Authority which identified they will provide detailed comment once more information regarding the proposal is provided. This report and the associated documents will be provided to the EPA.



4.3 AAPA Certificates

Attachment M holds the AAPA certificates 2009/23 and 2009/24 issued for the development of the Zuccoli Suburb, and a confirmation letter. The AAPA confirmed as follows:

"As this Authority certificate (C2009/024) is issued to the Department of infrastructure (DOI), only contractors acting on their behalf are covered under this certificate. If your client is not a contractor of DOI, then they will need to seek their own Authority certificate. If your client is a contractors acting on behalf of DOI then there is a few points they need to be aware of;

- *As stated in the authority certificate if no works have commenced within 24 months of this certificate being issued then this certificate will be expired.*
- *If works have commenced and been completed then this certificate is expired and a new certificate is needed.*
- *If works have commenced and are still ongoing then this certificate is still valid until such works are complete.*
- *If the works they are proposing now do not fall within the scope of proposed work stated in C2009/024 then they will need to seek a new certificate.*

Please also note that if your client is not a contractor acting on behalf of DOI, there is possibility that we can issue them with their own Authority certificate without the need to re-consult. We would need approval from our CEO first but once approve we would be able to issue an authority certificate based on recent consultations which will be in there name".

The developer has received the signed agreement and will be providing this to the AAPA shortly.



5.0 STATUTORY REQUIREMENTS - SECTION 46(3) OF THE NT PLANNING ACT

5.1 Section 46(3)(a) – Compliance with the Planning Scheme

The site is located across the FD (Future Development) Zone of the Northern Territory Planning Scheme. The intent is to nominate zones across the MD (Multiple Dwelling Residential) Zone for single and multiple dwellings and MR (Medium Density Residential) Zone to the newly created lots. The following has regard to the relevant provisions of the Planning Scheme for the proposed subdivision within those zones.

Clause 5.26 - Zone FD (Future Development)

- "1. Zone FD is an interim zone identifying an area that is intended for future rezoning and development in accordance with an Area Plan (where applicable) and its purpose is to:
 - (a) limit uses and development within the zone to a level that will not prejudice the future development; and (b) provide for development in accordance with the Area Plan (where applicable) once services are (or can be) made available to the land.
2. Subdivision is not to prejudice the intended ultimate subdivision and future use or development of the land."

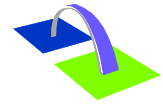
The initial subdivision in two stages will facilitate the development of Zuccoli 3 & 4 to be developed in six different stages over a period of six years. The subdivision into two will not prejudice the ultimate subdivision and future use or development of the land, but rather facilitate it.

Clause 5.2 provides the purpose of the MD Zone:

- "1. The primary purpose of Zone MD is to provide for a range of housing options to a maximum height of two storeys above ground level.
- '2. The scale, character and architectural style of infill development should be compatible with the streetscape and surrounding development.
3. A single dwelling on a lot less than 600m² should be integrated in terms of design and site layout with adjacent development and street infrastructure."

Clause 5.3 provides for the development of the MR Zone:

- "1. The primary purpose of Zone MR is to provide for a range of housing options to a maximum height of four storeys above ground level.
2. The availability or future availability of services, size of lots and proximity to major roads, schools and other community facilities should be sufficient to support multiple dwelling residential development.
3. The scale, character and architectural style of infill development should be compatible with the streetscape and surrounding development."



The subdivision will facilitate the development of the land for urban residential purposes in accordance with the MD and MR Zones. The proposal is considered consistent with the primary purpose of the relevant zones. The majority of lots would be in the MD zone and developed with single dwellings. All these dwellings will be integrated in terms of design and site layout. The MR zoned sites are close to a school that will be developed in Sub-stage Six as well as other community facilities like a neighbourhood centre proposed in Sub-stage Three.

Zuccoli 3 & 4 is currently vacant land with Stage Two to the north under construction. There is thus no surrounding development that needs to be taken into consideration. However, building envelope plans are developed to ensure future developments have appealing streetscapes, are harmonious in design and provides for a "sense of place" and character.

At the time of physical development, consent will be sought and the development plans will be compliant with all the requirements under the Scheme as well as the variations granted through the approval of the building envelope and setback plans.

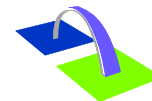
Clause 6.13 and **Clause 11.1.3** restricts and/or allows for some development of land zoned FD in so far as development should be consistent with the intended future use or development of the land. Where a development permit for subdivision in Zone FD has been granted the Development Consent authority may permit development of land in Zone FD only if the development is consistent with any Area Plan in Part 8 applicable in the circumstances; the development is consistent with the intended ultimate zoning; and services (in particular reticulated services including water and sewerage) are, or can be, made available to that land. The Consent Authority furthermore may permit subdivision into lots of a size and configuration consistent with the ultimate zoning of the land.

The Palmerston Eastern Suburbs Area Plan (June 2013) provides for the development of Zuccoli and nominates urban residential land uses together with a primary neighbourhood centre and a community purpose site for educational and sport facilities within the ambit of Zuccoli 3 & 4. The neighbourhood centre is within Sub-stage Three and the community purpose site in Sub-stage Six.

The entire Zuccoli development will be serviced per stage to provide for power and water, sewer, and a road network in accordance with the Engineering Report. The engineering services will be provided per stage as per the Concept Master Plan with Staging at **Attachment H**. Road networks will be in accordance with the design guidelines of City of Palmerston and the Road Hierarchy Structure. The system is designed to provide for the safe and efficient movement of internal traffic within the proposed development and the interaction of expected site generated traffic with surrounding road networks.

Clause 11.1.1 provides minimum lot sizes and requirements to ensure lots are of a size capable of accommodating future uses. Table to Clause 11.1.1 provides:

- In Zone MD: a minimum lot size of 300 square metres.
- In Zone MR: a minimum lot size of 800 square metres.



Sub clause 4 furthermore prevents the consent authority to consent to a subdivision in Zone MD that is not in accordance with the table to this clause.

The minimum lot size proposed in zone MD is 300 square meters for single dwelling development and 600 square meters for multiple dwelling development. In zone MR the minimum lot size is far more than the required 800 square meters for four storey developments, in accordance with Table 11.1.1.

Clause 7.1.1 provides for a density compatible with the existing and planned provision of reticulated services and community facilities and consistent with land capability. The density table to the clause limits dwelling density in Zone MD to 1 per 300 square meters and in Zone MR as per the table B to Clause 7.1.1

Table B to Clause 7.1.1

Number of Storeys AGL	1 or 2 Bedrooms	3 Bedrooms	4 Bedrooms
1	155 m ²	180 m ²	215 m ²
2	125 m ²	170 m ²	210 m ²
3	95 m ²	130 m ²	180 m ²
4 (maximum)	85 m ²	130 m ²	140 m ²

The maximum number of dwellings per multiple dwelling lots will be compliant with the one per 300 square metre requirement in Zone MD as well as with the density and setback requirement for lots within Zone MR.

Clause 7.3 provides for the minimum setback requirements for residential buildings. The proposed building envelope and setback plan is thoroughly discussed in section 3.2 of this report. The purposed of this clause however is to ensure residential buildings and structures without external walls are located so:

- they are compatible with the streetscape and surrounding development including residential buildings on the same site;
- as to minimise any adverse effects of building mass when viewed from adjoining land and the street;
- as to avoid undue overlooking of adjoining properties; and
- as to encourage breeze penetration through and between buildings.

Zuccoli 3 & 4 is currently vacant and there is thus no streetscape or residential buildings on the same site that needs to be considered, nor are there any adverse effects of building massing or undue overlooking of adjoining properties. However in preparing the building envelope and setbacks plan Bennett Design has carefully considered the stated criteria and made sure that the variations to the setbacks are such that it would not negatively impact on the neighbouring property. Zero metre setbacks or zero lot line development specifically prevent overlooking as opposed to creating opportunities to prejudice privacy.



The setbacks to the front are well planned and are designed to be appealing and varied, adding interest and movement to the streetscape pattern. Building design at development stage will be dealt with to ensure sensitivity to the streetscape and to provide for adequate separation distances to allow for breeze penetration through and between buildings.

It is considered that the building envelope and setback design complies with the purpose of this clause.

The purpose of **Clause 11.2.1** is to ensure residential subdivisions respond to the physical characteristics of the land. Sub-clause (2) requires that residential subdivision design should:

- "(a) avoid the development of land of excessive slope, unstable or otherwise unsuitable soils (e.g. seasonally waterlogged) and natural drainage lines;*
- (b) retain and protect significant natural and cultural features;*
- (c) avoid development of land affected by 1% AEP flood or storm surge event; and*
- (d) retain and protect natural drainage lines and any distinctive landform features or stands of natural vegetation and incorporate them in public open space."*

The site has been identified to be gently undulating terrain with no excessive slope. Natural drainage lines exists which naturally direct runoff into Mitchells Creek on the eastern side and to the south into Brookings Creek.

The principles of water sensitive urban design are applied to create a suburb that celebrates the natural features and drainage lines. The open space system in concept incorporates open basin ponds, which are reticulated through the installation of 100mm rising mains. In the dry season the basins are proposed to be topped-up via on-site bores. Retention ponds to support in the treatment of stormwater to meet water quality objectives for discharge into the receiving creeks are proposed. The proposed irrigation basins will support in the management and maintenance of the existing natural vegetation. The concept is the subject of detailed analysis and feasibility assessment. The natural drainage lines are protected and the natural vegetation is retained in the public open space area, whilst an active interface is created with the natural features of Mitchells Creek.

The Engineering Report, provided at **Attachment J**, provides further details as to Storm Water Management, Sewerage Network, Water Supply and Lake Management. All measures are put in place to protect the natural environment very evident in Zuccoli 3 & 4.

Clause 11.2.2 ensures that residential subdivisions are integrated with infrastructure, community services and facilities. Sub-clause 2 requires that residential subdivision design in relation to connectivity should:

- "(a) provide a high level of internal accessibility and external connections for pedestrian, cycle and vehicle movements"*
- (b) provide links to schools, commercial facilities and public transport services;"*



- (c) *provide traffic management to restrain vehicle speed, deter through traffic and create safe conditions for all road users;*
- (d) *incorporate street networks capable of accommodating safe and convenient bus routes with stops within a 400m radius of a majority of dwellings;"*

The Zuccoli Master Plan is specifically designed to provide for circulation and integration both externally and internally. It allows for a network of formal and informal open spaces with shared pedestrian and cycle path access, including cycle trails along the Mitchells Creek corridor. The proposed Master Plan layout promotes walkability, cycling and accessibility throughout the Zuccoli suburb, and also provides connectivity to parks, commercial precincts, schools and adjacent neighbourhood communities.

A pedestrian footpath network is proposed through every stage within the road reserve to allow for ease of movement and connectivity, Stage One will eventually be connected to the school in Stage Six as well as the neighbourhood centre in Stage Three. Apart from pedestrian access on the sidewalks, specific pedestrian and cycle trails are planned within the natural bushland areas. A 2.5 metre wide cycleway/shared path is also proposed along the main arterial connector roads to provide for external connectivity to the surrounding areas.

Public transport will be available on West Loop Road, South Loop Road and Zuccoli Parade, allowing easy access for all stages to public transport. Stage One will have access to an existing bus stop in Zuccoli Parade less than 400 metres away. Bus stops will be nominated in consultation with the Department of Transport.

In relation to reticulated services:

- "(e) provide for connection to reticulated services;"*

Each lot will be reticulated with electricity, water and sewer services as described in Section 3.5.

In relation to open space:

- "(f) provide a minimum of 10% of the subdivision area as public open space which:*
 - i. ensures the majority of dwellings are within 400m walking distance of a neighbourhood park;*
 - ii. incorporates recreational open space in larger units available for active leisure pursuits;*
 - iii. is unencumbered by drains and has sufficient flat area for informal recreation;*
 - iv. is designed to provide a safe environment for users by allowing clear views of the open space from surrounding dwellings or passing vehicles."*

The natural landscape in Zuccoli 3 & 4 provides for more than 10 percent open space. Zuccoli 3 & 4 covers 132 hectares. The natural bushland area surrounding the creeks, exclusive of the two Water



Sensitive Urban Design (WSUD) ponds and future development (hashed area) covers 92,556 square metres or 7.0 percent of land. The Natural Urban Open Space areas referring to the WSUD Ponds and surrounding green space and small open spaces cover 176,649 square metres or 13.37 percent of land.

The area indicated with some hatching on the Concept Master Plan with Staging at **Attachment H** and labelled "investigation of urban development" and will be the subject of further analysis to determine its development potential.

It is thus clear that the subdivision design of Zuccoli 3 & 4 complies with the 10 percent open space requirement, although Stage One specifically at this time does not provide for any open space but forms part of the greater proposal within which significant open space is provided in a coordinated and integrated manner.

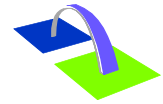
The Landscape Concept Plan, provided at **Attachment I**, provides for active multipurpose recreation facilities, parks and play areas. Active recreation is also provided within the stormwater management areas through fishing in the open basin water ponds and fishing decks. The extent and nature of these facilities will be the subject of assessment and discussion with Council.

The purpose of **Clause 11.2.3** is to ensure residential subdivisions contain lots of a size, configuration and orientation suitable for residential purposes. Sub-clause 2 provides that residential subdivision should satisfy the following:

- "(a) lots have sufficient area and appropriate dimensions to provide for the proposed density of developments including dwellings, vehicle access, parking and ancillary buildings;*
- (b) lots conform with the building envelope requirements in the table to this clause;"*

Table to Clause 11.2.3 provides the following requirements:

Lot Size	Minimum Building Envelope Requirement
300 m² to 450 m²	7m x 15m (exclusive of any boundary setbacks or service authority easements)
450 m² to 600 m²	10m x 15m (exclusive of any boundary setbacks or service authority easements), or 11.5m x 15m where there is a common building boundary.
> 600m²	17m x 17m (exclusive of any boundary setbacks or service authority easements).



The dimensions of all lots are shown on the Allotment Mix Plan at **Attachment N** and Building Envelope Plan. This shows that lots are of a dimension and shape that provides flexibility for building design and location and the achievement of useable outdoor private open space. Figure 6 depicts the utilisation of a 300 square metre lot accommodating a three bedroom dwelling, noting that all necessary services and facilities are also readily accommodated on the site. These include service areas for waste bins, a tool shed, clothes drying and car parking. In addition the site in this configuration can accommodate the required private open space area. This includes paved outdoor space, a plunge pool, and a grassed or landscaped area which together with the service facilities totals 66 square metres within which the minimum dimensions for private open space are readily met.



Figure 6: Site Utilisation



Lot sizes in Zone MD for single dwelling purposes range from a 300 square metres to 600 square metres and provides for the required 7 metre by 15 metre building envelope with open space provision of a minimum of 50 square metres with a minimum dimension of 6.0 metres by 6.0 metres.

All lots of 450 square metres to 600 square metres achieve a minimum building envelope requirement of 10 metres x 15 metres to accommodate common building boundaries, and all lots larger than 600 square metres accommodate a minimum building envelope of 17 metres x 17 metres. By complying with the minimum building envelope requirements, all lots provide sufficient area for dwellings, landscaping, car parking and open space achieving the required dwelling setbacks.

“(c) there are no battleaxe lots;”

No battleaxe lots are proposed as part of the subdivision.

“(d) lots are orientated to allow dwellings to take advantage of environmental conditions such as prevailing breezes and sunlight;”

The subdivision of Zuccoli 3 & 4 has been designed to maximise the provision of east-west orientated lots to enable future dwellings with the long axis of buildings east-west to reduce heat gain, with the northern exposure intended to be shaded with eaves. It is also anticipated that due to dwellings closer to each other and smaller lot sizes, that the houses will cast shade onto each other.

There are however instances where north-south lots are required, especially within Sub-stage One due to the fall of the land and the requirement to plan for stormwater to drain towards the roads and into the existing drainage lines.

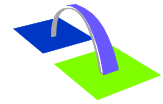
Future building design and separation will allow breeze penetration to the extent that single and two storey dwellings can afford. Landscaping and the minimisation of hardstand areas can assist in minimising heat reflection as will the size and location of the open space. The roads connect to the open space areas and the prevailing breezes in both the wet and dry season will allow for breezes to draw cooler air into the development area.

“(e) lots are connected to reticulated services;”

Each lot will be reticulated with electricity, water and sewer services as described in Section 3.7.

“(f) potential land use conflicts are minimised by taking account of the visual and acoustic privacy of residents;”

The subdivision comprises the development of urban residential uses in accordance with nominated zones. The entire Zuccoli 3 & 4 represents a greenfield development of vacant land and it is argued that there would not be any amenity impact on existing residential areas. Zuccoli Stage Two to the north is in a development phase and to the south is the new Zuccoli Stage Five which has not commenced. To the west are existing new developments inclusive of Johnston, however it is separated by major roads and Mitchells Creek also providing for natural separation that prevents any amenity impacts.



In addition, adequate management of dust and erosion potential during site works through approved management plans will assist in reducing the construction impacts to surrounding developed areas. Noise resulting from the development once occupied will be restricted to that generated by residential uses.

- “(g) where there are lots for medium and higher density residential development, those lots are:*
- i. distributed in small groups serviced by public transport;*
 - ii. in close proximity to public open space and with adequate access to community facilities and services; and*
 - iii. not located in a cul-de-sac.”*

The subdivision creates a range of MD and MR (multiple dwelling) zoned sites as well as commercial and community purposes sites. The majority of the lots have ready access to public open space, within 400 metres and are close to a proposed school as well as a neighbourhood centre. All lots will be within 600 metres from public transport. The location of bus stops are still to be negotiated with the Department of Transport, however stops are planned to be on the ring roads i.e. West Loop and South Loop roads as well as on Zuccoli Parade. Stage One will have access to the bus stop on Zuccoli Parade.

Overall, the proposed subdivision is considered consistent with the objectives, intent and technical requirements of the MD and MR Zones.

5.2 Section 46(3)(b) – Interim Development Control Order

There are no Interim Development Control Orders currently applying to the land.

5.3 Section 46(3)(c) – Public Environmental Report/Environmental Impact Statement

In 2012, a Notice of Intend (NOI) was submitted to the then Environment and Heritage Division responsible for the *Environmental Assessment Act*, informing of the intent to develop the second stage of the Zuccoli suburb. The Department advised at that stage that the proposed development does not require formal assessment under the Environmental Assessment Act, however once an application is received a formal comment will be provided as to the requirements of the Authority. This has also been discussed in Section 4.

5.4 Section 46(3)(d) – Merits of Proposed Development

The principal merit of the proposal is the creation of a subdivision within the Future Development (FD) Zone which is consistent with the principles and design direction set by the Planning Scheme. The project will assist in meeting the demand for dwellings within the greater Darwin area and in providing for housing choice in the greater Palmerston area.



The subdivision incorporates a range of MD (single dwelling and multiple dwelling) lot sizes to facilitate housing diversity and affordability. A reasonable number of MR sites are also provided to further enhance housing choice in the form of apartment living. These housing choices will be provided at an affordable price in accordance with the development agreement between the Northern Territory Government and the developer.

The overall subdivision of Zuccoli 3 & 4 in accordance with the Master Plan presented to the Government and on which this development was awarded, provides for an integrated, connected, walkable, “lifestyle” development, with active recreation in an attractive open space area. It is planned around a neighbourhood hub with an open space network that is accessible to the entire suburb. The road network provides for easy access to all facilities like the neighbourhood centre, schools, public transport, as well as to the broader network. It also provides for shared pathways making pedestrian access and cycling more practical and available.

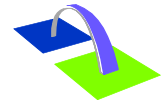
The natural landscape is retained as part of the integration with Mitchells Creek and to add to the woodland character of the site. The natural landscape is protected through the subdivision design and the application of Water Sensitive Urban Design. A liveable, walkable and affordable neighbourhood is created where Territorians can live the lifestyle they desire, and although the minimum lots size is smaller than the traditional lot sizes the quality of the amenity and open space in the area will make up for the reduced private open space on the lots, but will also provide for lots that are more readily maintainable and affordable in a time where “life style” has become more important.

Lots are orientated to enable future dwellings with the long axis of buildings facing east-west to reduce heat gain as far as possible, with other north/south lots required to maximise views across the open space area and in response to and reflecting the shape of the land. Overall the subdivision is compliant with the provisions of the Planning Scheme and has significant merit in providing increased opportunities for living in Zuccoli in proximity to existing facilities and services.

5.5 Section 46(3)(e) – Physical Characteristics of the Subject Land, Suitability of the Proposed Development and Effect on Locality

For a description of the subject land and locality, refer to Section 2.0. There are no physical site constraints preventing the development of the land. Biting Insects have been identified to be located in the western portion of the site and impacts Sub-stage Four of the subdivision area. The Department of Health and Families has guidelines that need to be adhered to and these requirements will be complied with at the stage of subdivision application for Sub-stage Four.

It is clear from the Engineering Services Report that the site is suitable for its intended use and that stormwater management, road infrastructure and utilities can be provided in an appropriate manner. The traffic impact assessment also confirms that the surrounding network is capable of receiving the traffic that will be generated through this development.



5.6 Section 46(3)(f) – Public Facilities/Open Space

The open space area is proposed in accordance with the requirements of the Planning Scheme and will provide for both passive and active recreation opportunities, allowing for drainage infrastructure, and readily accessible shared pedestrian/cycle paths which are interconnected with the proposed road network.

The provision of open space is outlined in Sec 3.5. Although no open space is provided in Sub-stage One, ample and more than the required open space is provided throughout the entire development. The Landscape Master Plan is at **Attachment I**.

5.7 Section 46(3)(g) – Public Utilities/Infrastructure

An Engineering Services Report has been prepared by SMEC and is enclosed at **Attachment J**, which details the proposed approach to the delivery of water, sewer and electricity services. This information is summarised in Section 3.5 of this Report. The proposed arrangements demonstrate the land can be suitably serviced to accommodate the proposed development.

5.8 Section 46(3)(h) – Impact on Amenity

A high level of residential amenity will be achieved within the subdivision, as it is a fully integrated and designed scheme in terms of the proposed lot orientation and street network, open space, and proposed landscaping treatments.

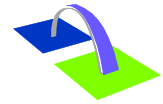
As addressed in the assessment of Clause 11.2.3 of the Planning Scheme, the subdivision comprises the development of urban residential uses nominated to be MD and MR for the purposes of single dwellings and multiple dwellings up to a maximum of two storeys and unit development up to a maximum height of four storeys. The potential for amenity impacts as a result of the development of the site is not considered an issue due to Zuccoli 3 & 4 being a greenfield infill development of vacant land almost on the periphery of Palmerston.

5.9 Section 46(3)(j) – Benefit/Detriment to Public Interest

The proposal will benefit public interest by providing a range of lots at a price range making it affordable for the broader community. More broadly it will assist in catering to the high levels of demand for residential land in the Darwin region.

5.10 Section 46(3)(k) – Compliance with the Building Act

Section 46(3) (k) of the Planning Act refers to subdivision ensuring compliance with the Building Act. Since it is a greenfield development on vacant land this requirement is not applicable.



6.0 CONCLUSION

The proposal comprises the subdivision of Zuccoli 3 & 4 into two portions, Portion One (Sub-stage One) and the Remainder of Lots 12433 & 12432 (Sub-stages Two to Six in the future) and the further subdivision of Sub-stage One into 164 individual MD (single dwelling) residential lots ranging from 302 to 953 square metres, 10 MD (multiple dwelling) lots ranging from 600 – 4,167 square metres and five MR (multiple dwelling) lots at a height of four storeys, ranging from 2,586 to 3,303 square metres.

The subdivision incorporates a range of MD (single dwelling) lot sizes to facilitate housing diversity and affordability. In addition a fewer number of MD (multiple dwellings) lots are also provided as is MR zoned lots to add additional housing choice. The aim is also to provide all these lots at an affordable price range, as is outlined in the development agreement with the Northern Territory Government. Lots are orientated as far as possible to enable future dwellings with the long axis of buildings facing east/west to reduce heat gain, with other north/south lots only provided where the topography requires the orientation of lots and street design is such a way that stormwater are directed off the lots into the street to drain in a southern direction following the main drainage lines.

Although no open space is provided in Sub-stage One the entire Zuccoli 3 & 4 master planning provides for more than the required 10 percent open space. The open space will assist in management of the micro climate and provide for the development of a high amenity community environment. The MD (multiple dwelling) sites as well as the MR zoned sites will at DA stage provide the required communal open space and private open space. The requirement for sensitive design and protection of the Mitchells Creek are complied with and an interface with the creek forms the basis for the creation of a high amenity for residents, but also the protection of the creek through the provision of a 100 metre buffer area. All residential lots have access to the open space within 600 metres.

Internal access roads, and infrastructure and servicing provision are provided in accordance with the design guidelines of the City of Palmerston. The requirement for 16 metre internal road reserves to provide in a 7.0 metre black top and 4.5 metre pavement area on both sides as established in the City of Palmerston development guidelines are adhered to and provides the main circulation in the subdivision. All other higher order roads are provided in accordance with the design guidelines of the City.

Particular regard has been given to the Master Plan subdivision design to provide adequate internal circulation. All open space areas are accessible within 400 to 600 metres of all dwelling lots. There is a 2.5 metre shared pathway throughout the development for the use of pedestrians and cyclists. All roads provide pedestrian walkways on at least one side of the road, and in some instances on both sides of the road. The School site in Sub-stage Six and the neighbourhood centre in Sub-stage Three will be accessible through all practical modes of travel. Further connectivity and amenity is provided through open space areas as indicated on the site connectivity plan.



As noted earlier on in this report, this application is for the detailed subdivision of Sub-stage One and the subdivision design will be complied with once a development permit is issued. The provision of the Master Plan serves the purpose of providing background and context information to guide future subdivision design. However the overarching planning principles as outline in the Palmerston Eastern Suburbs Area Plan forms the basis of this Master Plan and will be complied with through each stage. The subdivision design for each stage will furthermore be compliant with the requirements under the NTPS. The detailed design of the subdivision and number of lots are subject to further investigations and change, however the broader principles of Water Sensitive Urban Design, sensitive treatment of Mitchells Creek and the provision of the 100 metre buffer area, connectivity and provision of open space are fixed and will be applied throughout the development of all six stages.

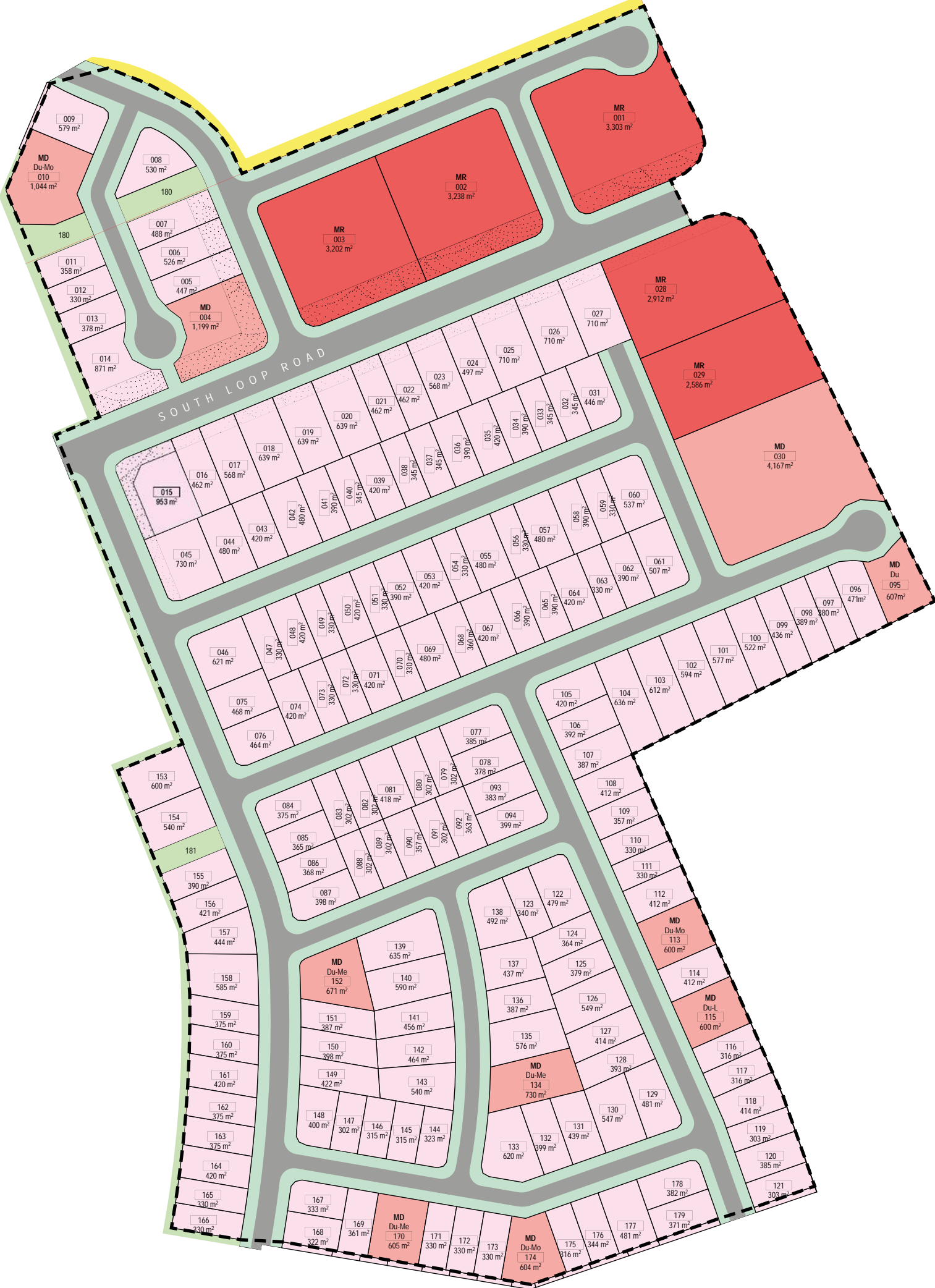
The proposal is entirely appropriate and consistent with the NTG objectives for affordable housing, and meets the appropriate land use, design and functional requirements to create an attractive high amenity and accessible community as an integral component of the Zuccoli development.

The proposal is consistent with the requirements of the planning scheme and given its merits is considered to warrant the authority's most favourable consideration and approval.

Linda Henning
MasterPlan NT

19 December 2014

Lots 14232 & 14233

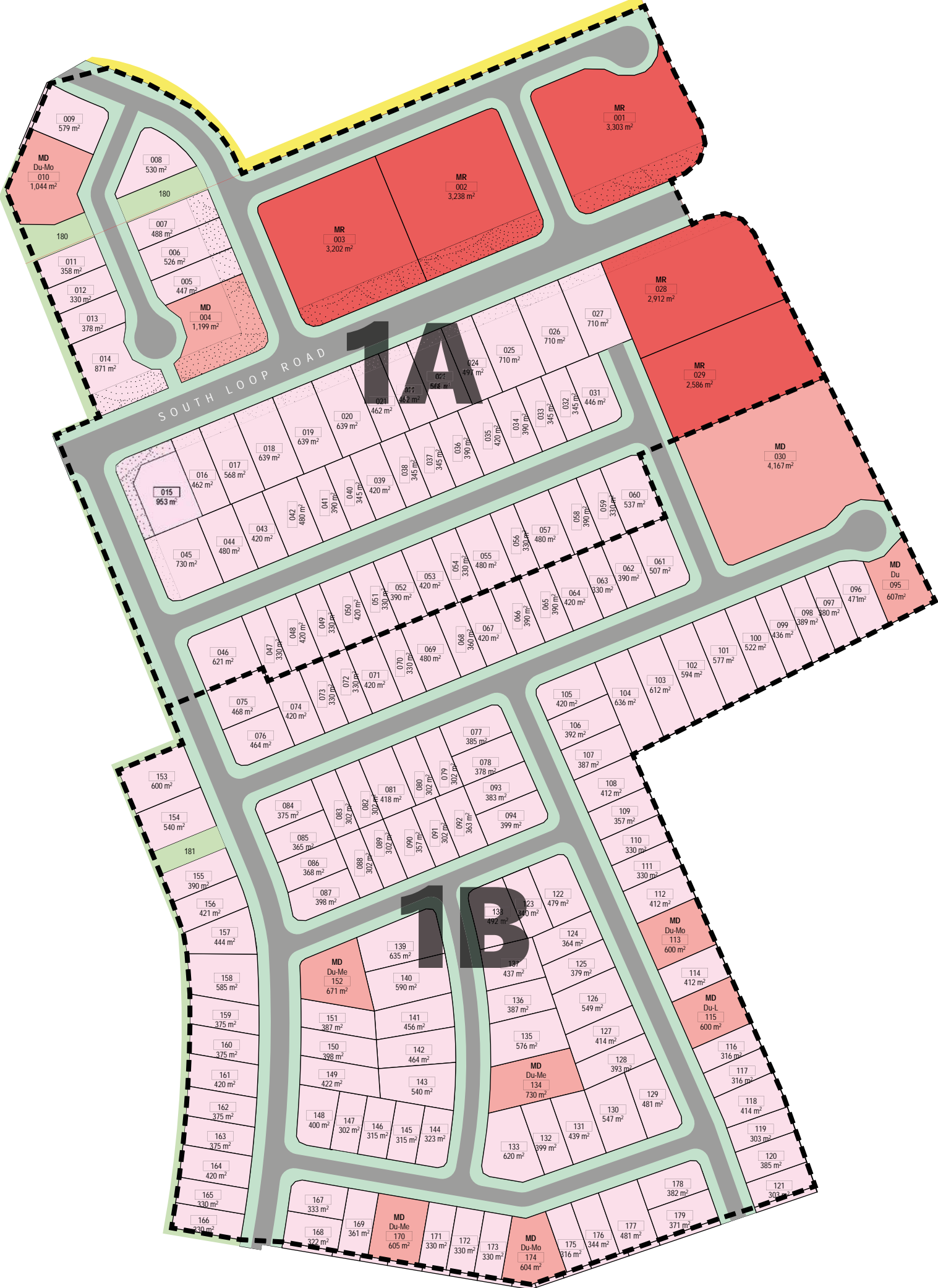


- Staging boundary
- Zone MD (Multiple Dwelling Residential)
Use: Single dwelling
- Zone MD (Multiple Dwelling Residential)
Use: Multiple dwellings
- Zone MR (Medium Density Residential)
Use: 4 storeys
- Designated open space within allotment
- Public open space
- Road reserve

Subdivision concept
and layout design
by Bennett Design



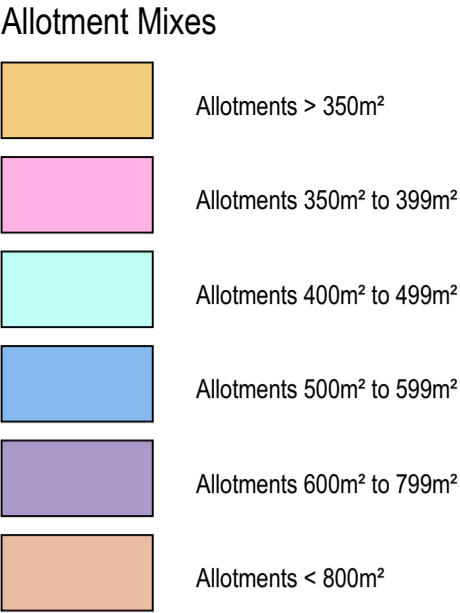
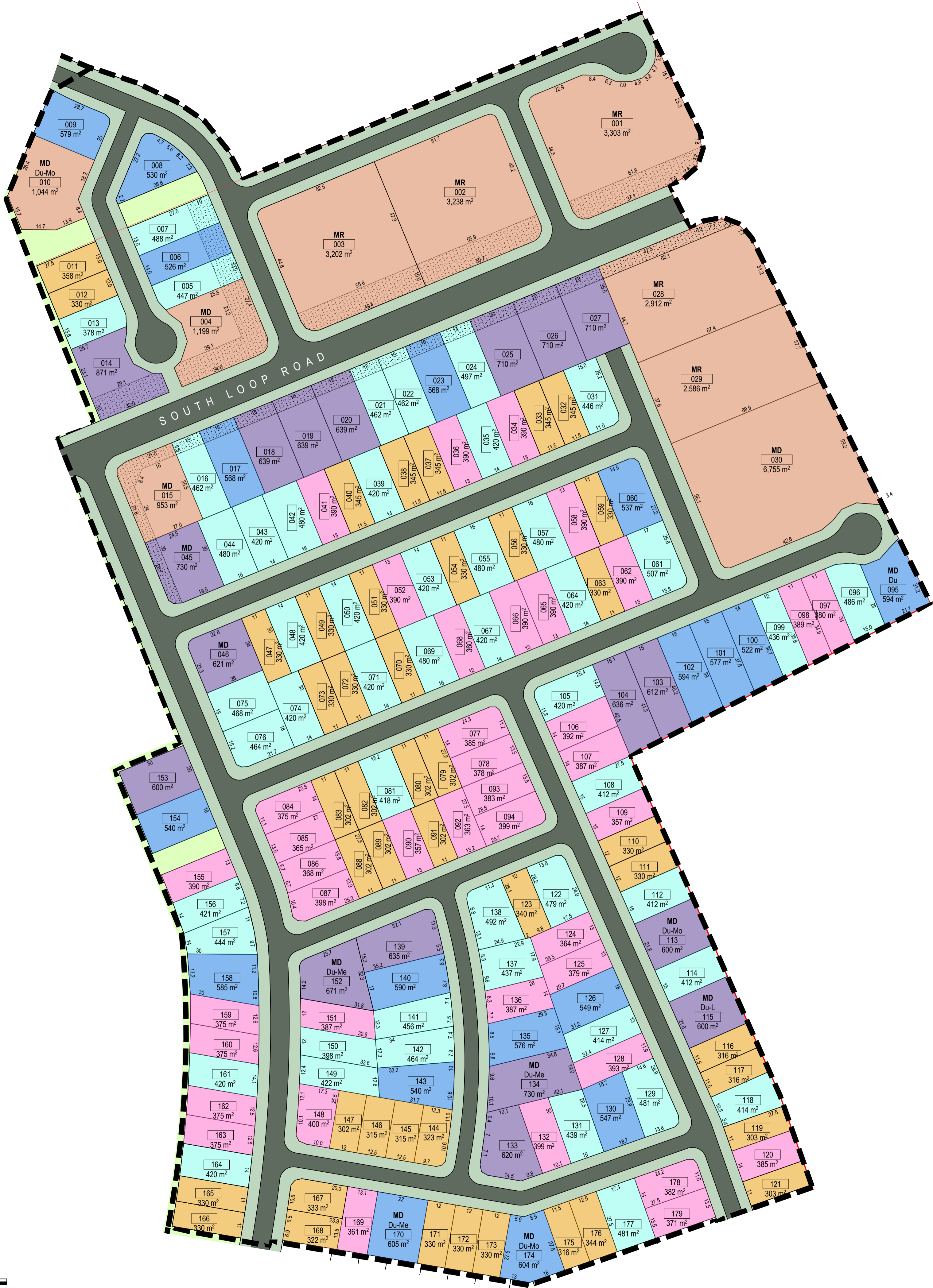
Lots 14232 & 14233



- Staging boundary
- Zone MD (Multiple Dwelling Residential)
Use: Single dwelling
- Zone MD (Multiple Dwelling Residential)
Use: Multiple dwellings
- Zone MR (Medium Density Residential)
Use: 4 storeys
- Designated open space within allotment
- Public open space
- Road reserve

Subdivision concept
and layout design
by Bennett Design





Key Plan
NTS



A R C H I T E C T

P 08 8948 4607 | F 08 89481912 | ABN 51 083050024
www.bennettdesign.com.au | contact@bennettdesign.com.au



Zuccoli Stage 3 and 4 Master Planning

Costojic Pty Ltd
Stage 3 and 4 Zuccoli
Darwin NT

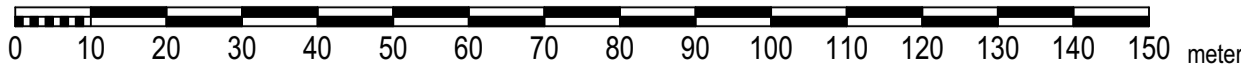
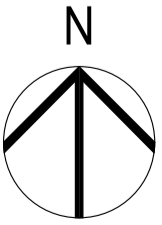
STAGE 1 ALLOTMENT MIXES

db2197

Date: Dec 2014	Drawn: LI/NL	Checked: DB
Scale: As Shown	Sheet 11 of 19	Revision: 5

© Copyright & Liability Notice
These designs and drawings and the Copyright thereof are the property of Bennett Design P/L and are not to be used, retained or copied by either physical or electronic means without written or expressed permission. Bennett Design P/L accepts no responsibility for the completeness, accuracy or compatibility of electronically transferred documents. If necessary, recipients should request a hardcopy version for verification.

DO NOT SCALE OFF THESE DRAWINGS



Allotment Mixes
Scale 1:1000



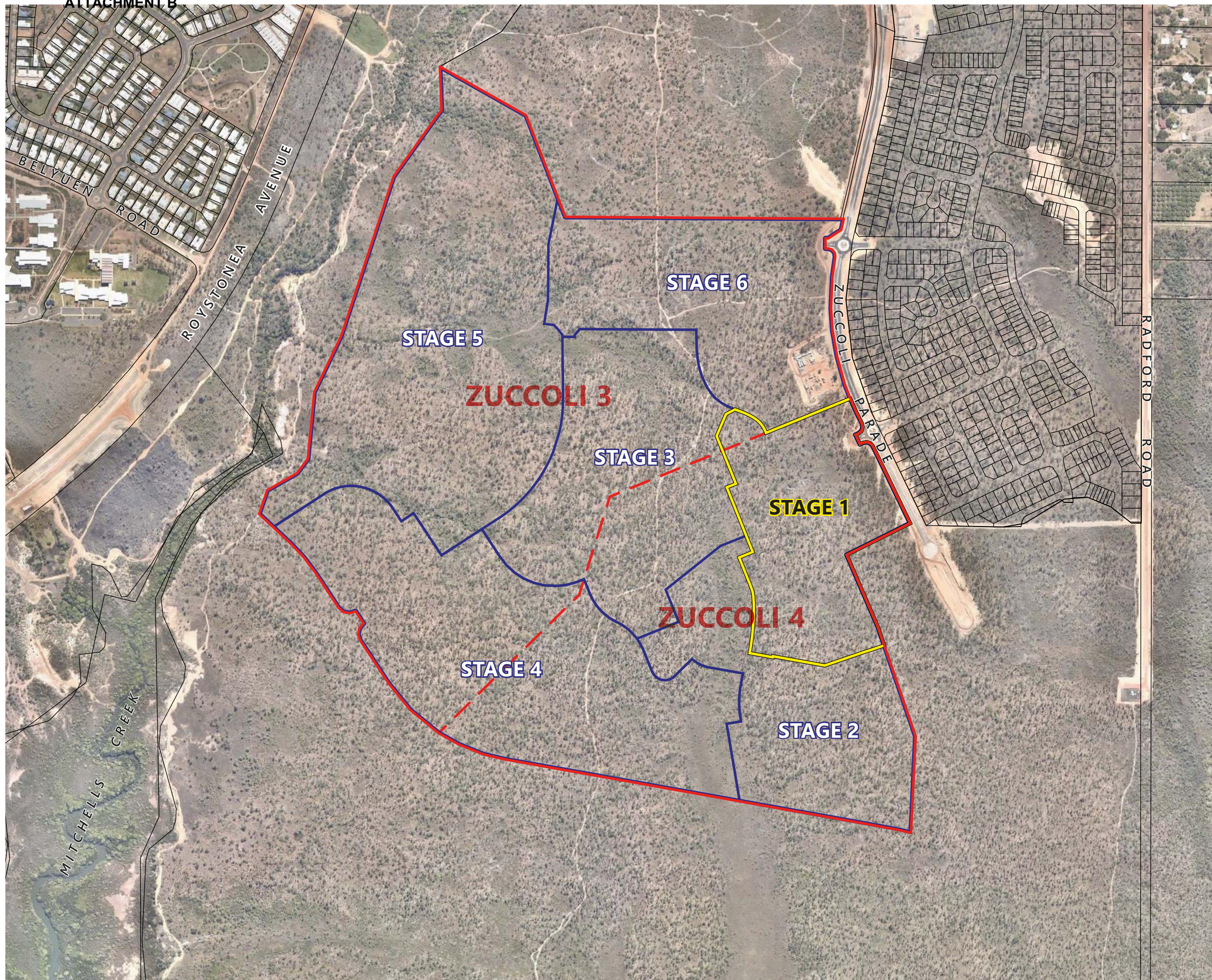
- Staging boundary
- Zone MD (Multiple Dwelling Residential)
Use: Single dwelling
- Zone MD (Multiple Dwelling Residential)
Use: Multiple dwellings
- Zone MR (Medium Density Residential)
Use: 4 storeys
- Zone HR (High Density Residential)
Use: 4-8 storey (to be determined)
- Zone RR (Rural Residential $\geq 4000\text{m}^2$)
- Zone C (Commercial)
- Zone CP (Community Purpose)
Use: Education establishment (school)
- Zone MD (Multiple Dwelling Residential)
Use: Potential senior housing (subject to further investigation)
- Designated open space within allotment
- Public open space
- WSUD ponds
- Road reserve
- Investigation of urban development of this area under planning and regulatory framework
- Bus stop
- 100m buffer zone
- Biting insect area

Subdivision concept
and layout design
by Bennett Design



Lots 14232 & 14233
ZUCCOLI

- Zuccoli 3 & 4
- Stage 1 boundary: subject to this application
- Staging Boundary



Our Ref: GB:RS: 20150060

30 January 2015

Attention: Ben Dornier and Ricki Bruhn

City of Palmerston
PO Box 1
PALMERSTON NT 0831

Dear Ben and Ricki,

Town Planning and the application of FD Zoning

You have instructed us to advise City of Palmerston in relation to the Development Consent Authority's ("DCA") practice of granting subdivision approvals for land zoned Future Development ("FD").

Thank you for these instructions and please consider our advice below.
In this advice:

"Act" means the Planning Act;

"clause" means a clause of the Scheme;

"DCA" means the Development Consent Authority as defined in the Act;

"Scheme" means the Planning Scheme as defined in the Act;

"section" means a section of the Act ;

EXECUTIVE SUMMARY

Under the Scheme, various land in the municipality of Palmerston is zoned "FD" or "future development". The Scheme¹ provides that, in respect of FD-zoned land, certain uses are prohibited, certain uses are permitted, and certain uses are only permitted if the DCA, in its *discretion*, grants approval. Likewise, the DCA is given *discretion* to approve subdivision of FD-zoned land.

Various provisions of the Scheme (referred to in the body of this advice) make clear that the DCA is only permitted to exercise its discretion to grant development and subdivision applications where the application is consistent with the "*intended ultimate zoning*". For the reasons set out in the body of this advice, we consider that in order to identify an "*intended ultimate zoning*" (if any), one must look to the relevant Area Plan in Part 8 of the Scheme.

The Area Plan for the eastern suburbs of Palmerston provides only general guidance as to intended

¹ Refer to the Zoning Table in clause 5.26, page 3-53

and *use* (eg “residential”) without specifying an ultimate intended zoning (i.e. the “residential” areas are not divided into, for example, SD, MD, etc). Given that the Area Plan does not specify an “intended ultimate zoning” with any reasonable particularity, we consider that there is a cogent argument that no “intended ultimate zoning” exists. It would follow that the DCA is not permitted to exercise discretion to grant development and subdivision applications in those circumstances. However, there is a level of uncertainty in the operation of the provisions, and while this contention is reasonable, it is not necessarily infallible.

If, after consideration of the issues and our advice City of Palmerston wish to ventilate the issues of concern with Government and with a view to stopping the DCA’s current approach, then we recommend the following approach:

1. We suggest that executive representatives from City of Palmerston familiar with the issues (Ricki Bruhn, Ben Dornier and/or Mark Spangler) meet with executive representatives from Development Assessment Services, since that is the body that makes recommendations for ministerial and departmental action (and we assume informs the Planning Commission). We recommend that City of Palmerston instruct us to prepare a summary of the matters discussed in this letter, which can be provided to Development Assessment Services without losing the confidentiality of this advice. If the discussions are successful that may lead to the Commission providing recommendations to the Minister as is their role.
2. If those suggested discussions are unsuccessful, then the issue could be brought up in the course of a development application before the DCA and for example by the two council nominees. When the DCA is presented with a development application over FD-zoned land, City of Palmerston’s two DCA representatives could query the validity of proposed developments on FD-zoned land, on the basis that clause 6.13(2)(b) of the Scheme expressly requires rejection where the Area Plan fails to specify an ultimate intended zoning. The developer could be asked to provide further information to establish that the area has an *intended ultimate zoning*, rather than just a loosely defined intended ultimate use as found in the current area plans. Absent clear evidence as to the *intended ultimate zoning* in our opinion the DCA would be justified in finding that it cannot be satisfied that clause 6.13(2) generally or sub clause (b) specifically is satisfied..

We look forward to discussing this matter after City of Palmerston has had an opportunity to consider this advice. Please confirm if you would like us to draft the summary referred to in paragraph 1 above.

BACKGROUND

The NT Planning system is established under the Planning Act (“**the Act**”). It includes the following offices or entities:

- (a) The **Minister** has a pivotal role and with a range of Powers including to establish the DCA The role of the DCA is generally explained by section 4 “*Meaning of consent authority*”.
- (b) The **Planning Commission** is established by Part 7A of the Act and with a role explained

in section 81 to provide strategic guidance and input into the Scheme and to provide advice to both the Minister and the DCA in relation to issues associated with the objects of the Act. The Minister may request the Commission to address particular issues and topics associated with the Act or the Scheme. The Commission may engage appropriately qualified persons to assist it in relation to the performance of any particular function. The requirement that the Commission must perform its functions in an independent manner is set out in section 81D.

- (c) The **DCA** is established by section 82. Individual Divisions of the DCA may be established by the Minister. The functions and powers of the DCA are set out in section 84. The Minister has broad powers to direct the DCA set out in section 85 and may direct the authority that the Minister will be the consent authority for a particular development application.
- (d) The Minister may appoint the **Chairman and a Deputy Chairman of the DCA** under section 88. We understand that the current chairman is Dennis Bourke, and that he is accompanied by two permanent members.
- (e) The Minister may also appoint **members of a particular Division** of the DCA linked to a council area. City of Palmerston has two such appointees, meaning that there are five members in total of the Palmerston division of the DCA.

The procedure of the DCA in the course of discharging its functions is set out in Division 3 of Part 8 of the Act.

Section 7 establishes the Northern Territory Planning Scheme ("Scheme"). The Minister has the power to make other specific planning schemes.

Section 9 sets out what is to be included in a planning scheme. The content may include the following (paraphrased):

- (a) policy statements in respect of the use or development of land;
- (b) provisions which serve to permit, prohibit, restrict or impose conditions on the use or development of land;
- (c) provisions that provide instructions, guidelines or assessment criteria to assist the DCA in its assessment of development applications;
- (d) other provisions in relation to planning for or control of the use and development of land;
- (e) other provisions necessary or convenient to give effect to the Scheme;
- (f) maps, plans, designs and diagrams.

Division 2 of Part 1 of the Act sets out how the Minister may amend any planning scheme, obviously including the Scheme. Division 2A explains how the strategic input from the Commission will be viewed when considering any proposed amendment of the Scheme.

Section 12 sets out that the Minister may amend the Scheme in his or her discretion where a proposed amendment is within a declared class of amendments or is not so significant as to require exhibition. In that event the Minister may amend the Scheme without regard to Divisions 3,4 or 5.

Section 13 sets out in addition that a person may request the Minister to amend the Scheme. After considering any such request the Minister may, if he/she is satisfied that the proposed amendment is within a declared class of amendments or is not so significant as to warrant exhibition, decide to either:

- (a) amend the Scheme without requiring the proposal to be exhibited;
- (b) continue his/her consideration of the application and to require it to be exhibited; or
- (c) refuse the application.

In that event the Minister may amend the Scheme without regard to Divisions 3,4 or 5. Division 3 of Part 1 of the Act deals with the exhibition of proposals.

Section 14 sets out definitions that apply in the exhibition division.

The definition of “**proposal**” which will require “exhibition” is any of the following:

- (a) a proposal for an amendment of the Scheme that the Minister *has, under Division 2, decided* (our emphasis) to place on exhibition: or
- (b) a proposal to grant or to vary an exceptional development permit that the Minister has *decided to place on exhibition (our emphasis)*; or
- (c) an altered proposal within the meaning of section 27 .

Simply if the Minister decides that he/she does not see it necessary to require exhibition as permitted under sections 12 and 13 of Division 2 then Divisions 3, 4 and 5 are bypassed. Our following analysis of sections 14 to 27 of Divisions 3, 4 and 5 must be understood in that context.

Section 15 sets out the period of exhibition is 28 days from the date the notice of a *proposal* is first published in a newspaper under section 17.

Section 16 explains the means by which notice of a *proposal* to amend a planning scheme by establishing or changing a zone) is sought and (and extends to include a proposal to grant or vary an exceptional development permit). The posting of notices on the particular land is provided for in section 16(2) but can be waived by the Minister in limited circumstances mentioned in section 16(3).The content of the notice is specified in section 16(4).

Sections 17 and 18 set out that the *proposal* for amendment must be publicised.

Section 19 stipulates that the Minister must give the local authority for the council area in which any such *proposal* for amendment to the Scheme falls written notice of the *proposal*. From City of Palmerston perspective having regard to sections 12 and 13 if the Minister has decided not to exhibit a proposal to amend the zoning then (for example) section 19 has no relevance.

Division 4 of Part 1 of the Act sets out how a person or the particular Division of the DCA must consider submissions, undertake consultation and report to the Minister as to the issues raised in the consideration of a *proposal* to amend the Scheme.

Section 20 sets out definitions for the interpretation of Division 4, which include a repeat of the definition of “proposal” mentioned in section 14 (above). It is clear that if the Minister has decided that an application for an amendment to the Scheme does not require to be exhibited for any of the reasons set out in sections 12 or 13 that Division 4 can also be bypassed. It is only if the Minister has decided that a proposal for amendment of the Scheme must be exhibited that the DCA will be required to consider the proposals in support of the rezoning and to discharge the prescribed functions defined in section 20.

Division 5 of Part 1 of the Act stipulates that, following receipt of the report(s) under Division 4, the Minister may take one of four courses (including to amend the planning scheme or to reject the proposed amendment). However, Division 5 commences with section 25, which makes clear that section 25 is dependent on the Minister considering the Division 4 reports. It is only if the Minister has required a proposal to be exhibited such that the DCA has discharged its functions under Division 4 that its reports will be delivered to the Minister.

In any situation where the Minister has decided not to require an application for amendment of the Scheme to be exhibited the Minister is only required to give notice that he/she has amended the Scheme in accordance with section 28 and must publish his/her reasons in the manner described in section 29.

Part 2A of the Act sets out how “concurrent applications” are managed, meaning applications which seek both an amendment of a planning scheme and approval of a development proposal; ie leading to a Development Permit. Concurrent applications are required to be assessed in a more detailed manner than is required in a simple amendment application outlined above. The process leads to a hearing before the DCA. The DCA is required to make a preliminary determination as to whether it would approve the development proposal **if** (our emphasis) the Minister were to approve the amendment of the Scheme proposal. A report from this process is given to the Minister, who then undertakes an assessment of the proposed amendment to the Scheme. The provisions relating to concurrent applications are intricate.

Section 44 of the Planning Act stipulates that Development Permits are required:

- (a) if a provision of the Scheme allows development only with consent of the DCA;
- (b) if the proposed development is the subdivision or consolidation of land; and
- (c) if an interim development control order allows for development only with consent of the DCA.

As of November 2014, the **Northern Territory Civil and Administrative Tribunal** has jurisdiction to review certain decisions of the DCA relating to “concurrent applications” and “development applications”.

Section 117A excludes the Minister from any such appeals to the Tribunal relating to specific issues and gives the Minister power to exclude him/herself from any such appeals in other limited circumstances.

ANALYSIS

1. An important reality to be aware of when seeking to interpret the Scheme is that it has been

developed by town planners whereas all NT legislation (including the Planning Act and Regulations) have been drafted by the Parliamentary draftsman and a legally skilled “Policy Unit”. Understanding this reality often assists interpretation when the Scheme seems to be inconsistent with the Act, ambiguous or uncertain.

2. There is a clear mechanism in Division 2 of Part 1 as to the power of the Minister to make an amendment to the Scheme or any other planning scheme that has been created. Clearly the Scheme is subordinate to the Planning Act. A logical conclusion is that the Scheme should not be interpreted in a way that contradicts the Act.
3. As noted, some amendments to a planning scheme can be made without the need to exhibit the proposed amendment or to take any of the required actions under Divisions 3, 4 or 5 (refer sections 12 and 13). Note, however, that if the Minister has required a proposal to be exhibited that section 16 specifically deals with amendments that would serve to effect a re-zoning of an area referred to in a planning scheme (and as well an amendment of an exceptional development permit). In the event of (relevantly) an amendment that would serve to effect a rezoning the procedure set out in sections 16 to 29 must be followed.
4. Your email explains that:
 - (i) Some parcels of land in the eastern areas of Palmerston have been re-zoned “FD” or Future Development;
 - (ii) The DCA has accepted development applications for the subdivision of such parcels of FD land in accordance with clause 11.1.3 of the Scheme (in part 5 of the Scheme); further, the DCA has accepted related development applications for construction on those parcels falling within the scope of various uses stipulated by the Planning Scheme as “discretionary” (that is to say, the specified use is only permitted if the DCA consents);²
 - (iii) Such applications on their face seem to conflict with the requirements as to how the Scheme may be amended which are set out in sections 16 to 29 referred to above and with a result that subdivisions relating to land zoned FD have been (or may be) approved without City of Palmerston having any direct say as would ordinarily be the case under section 19 . It is implicit from your email that you understand that such subdivisions are being approved for what are referred to in clause 5.26 as the *intended ultimate subdivision* (or, at least, what the DCA considers to be the *intended ultimate subdivision*)..
5. We address in this paragraph those parts of the Scheme that relate to the issues you have directed us to consider. In this paragraph *clause* has the defined meaning and *Part* means a Part of the Scheme (which comprises Parts 1 to 8). We have paraphrased the meanings of clauses for the sake of brevity:

² Refer to the Zoning Table in clause 5.26, page 3-53

Clause 2.1: The zones referred to in the Scheme are those shown on “the zoning maps”.

Clause 2.2 sub clause 4: A use or development of land within a zone requires consent if it is shown on the relevant table as discretionary OR it is not shown on the relevant zoning table OR it does not fully comply with the requirements of the Scheme as to the use within that zone OR a provision of the Scheme expressly requires consent (for the use).

Clause 2.5: explains how the Consent Authority may consider its discretion as to any consent use that is sought.

Clause 2.6: land may only be subdivided or consolidated with consent and subject to Part 5. Clause 2.6 serves to reinforce section 44.

Clause 2.7: The Scheme must be interpreted having regard to the policies and planning concepts expressed in those documents appearing in Part 8 or Schedule 2 and ensure that any use is consistent with those policies and planning concepts. Clause 2.7(2) however states that in the event of any inconsistency between any applicable policy and the Scheme, the Scheme will prevail.

Clause 2.8: Applications for a use or development must have regard to the guidelines set out in Schedule 3 and be consistent with those guidelines. If any inconsistency arises as between the Scheme and the guidelines the Scheme will prevail.

Part 2 and clause 4: set out in a big picture sense that the interpretation of the Scheme and determinations of a consent authority must have regard to the “planning principles” set out in this Part and the “relevant framework drawings”. The Darwin Region Land Use Framework includes Palmerston.

Part 3: contains an index of zones. These are divided into *Residential Zones; Commercial Zones; Industrial Zones; Recreation Zones; Rural Zones; Other Zones and Infrastructure Zones*. It is relevant that FD (Future Development) is categorised as falling within the category of “*Other Zones*”. There are many zones that fit within all of these categories.

Clause 5.26 (found at part 3-52): explains that FD is an interim zone that is intended for future re-zoning and development in accordance with an Area Plan (where applicable) and its purpose is to limit use and development so as not to prejudice the future development AND to provide for development in accordance with the Area Plan (where applicable) once provisions for services is made or can be safely predicted. It explains in clause 5.26(2) that “*Subdivision is not to prejudice the intended ultimate subdivision and future use or development of the land.*” A margin note draws the readers attention to clauses 11.1.1, 11.2.1, 11.3.3 as to relevant further parts of the Scheme that relate to permitted subdivisions.

The zoning table-Zone FD (found at part 3-53): Having regard to the content of clause 5.26 referred to above it seems remarkable that many uses are set out in Zone FD and whether as *Prohibited* (15 of the uses); *Discretionary* (31 of the uses); *Self Assessable* (1 of the uses) and Permitted (5 of the uses). It is reasonable to observe that Zoning table FD does not suggest that FD is aimed at limiting use to keep the land available for future uses

of that land. Rather it seems the future uses can be any of those uses set out in the Zoning table.

Part 4 deals with General Performance Criteria:

Clause 6.13-(found at part 4-21) states that the “*purpose of the clause is to provide for the development and use of land in Zone FD (which would typically be urban development) consistent with the intended future use or development of the land.*”

Sub clause 6.13(2): states words to the effect that where a development permit has been issued for subdivision of the land in Zone FD the consent authority may only permit development of that land if three requirements are satisfied. These three requirements are:

- (a) The development is consistent with any Area Plan in Part 8 applicable in the circumstances;
- (b) The development is consistent with the intended ultimate zoning; [*We note that in one sense, this suggests that at some point rezoning must follow; however, the Scheme does not operate to retrospectively invalidate development approvals if rezoning never transpires – and this gives rise to one of the fundamental tensions in the provisions*]; and
- (c) Services (in particular reticulated services including water and sewerage) are, or can be made available to that land.

Reference is made in the margin adjacent clause 6.13 to clauses 11.1.1 and 11.1.3.

Part 5 Subdivisions

Clause 11.1: states its purpose to be that it is to ensure that unzoned land and lots in certain zones (including materially FD) will be of a size capable of accommodating potential future uses. The Table to this clause includes the various zones provided for and the “Minimum Lot Size and Requirements”. In this clause FD is grouped with *RD (restricted development)* and *WM (water management)*. The minimum lot size is 50 hectares. A note in the margin reads “Clause 11.1.3 allows the subdivision of land zoned FD.”

Clause 11.1.3 (found at Part 5-2) is headed “Subdivision of Land Zoned FD” and provides as follows:

1. *The purpose of this clause is to provide for the subdivision of land in Zone FD in a manner that will not prejudice the intended ultimate subdivision and future use or development of the land.*
2. *Land in Zone FD may be subdivided generally in accordance with any relevant Area Plan for urban (typically residential or mixed use) development once services are, or can be, made available to that land.*

3. *Despite anything to the contrary in this Planning Scheme, the consent authority may permit subdivision into lots of a size and configuration consistent with the intended ultimate zoning of the land.* [our emphasis added]

Part 8 Area Plans: This part commences with the statement: “*The interpretation of this Planning Scheme and the determinations of a consent authority are to be consistent with any Area Plan and any associated planning principles in this Part applicable in the circumstances*”.

Clause 14.5 deals with Palmerston: It provides general description as to the applicable principles. These are followed by three plans which seem to us to provide only general guidance as to “intended land use” (eg “residential”) in and around Palmerston without specifying an ultimate intended zoning (i.e. the “residential” areas are not divided into, for example, SD, MD, etc).

6. If the DCA receives an application to sub-divide an FD lot it must have regard to clauses 5.26 and 11.1.3 and any other applicable parts of the Scheme. From these mentioned clauses the DCA must be satisfied that:
- (i) the subdivision is “*consistent with the intended ultimate zoning of the land*.”;
 - (ii) that the provision of services to the land exist or are assured.
7. When considering a subdivision application the permitted subdivision of the FD land should not be assumed to be of a size and configuration that is the same as the *intended ultimate subdivision*. For example a 50 hectare lot that would ultimately be zoned residential with say minimum 800 square metre lots could first be subdivided into 3 lots of say 16 hectares plus each in order to permit the owner or developer to stage a development of 3 smaller residential subdivisions. Only those theoretical further subdivisions would have minimum lots sizes as referred to in clause 11.1.1 of the Scheme.
8. Further, clause 11.1.3 of the Scheme does not indicate *whose intention* is being referred to when assessing the ultimate zoning of the land (paragraph 6 above), and at least two alternative interpretations may arise:

First, given that the Minister has the ultimate power to rezone land if he/she amends the Scheme whether under sections 12 or 13 or (after exhibition) follows the procedure described in sections 16 to 29, it may be that the intention could be understood to mean an intention expressed by the Minister in that process. However, one of the difficulties with this interpretation is that a mere expression of intention by the Minister may or may not transpire into a future rezoning once the above mentioned procedure (sections 16 to 29) has been followed.. Further, the Minister might express unclear or even contradictory intentions from time to time. We do not consider that this way to assessing “intended ultimate zoning” is appropriate.

The **second interpretation** (which we consider to be credible) requires clause 11.1.3 to be read in conjunction with Clause 5.26 of the Scheme mentioned above. Clause 5.26 states:

Zone FD is an interim zone identifying an area that is intended for future rezoning and development in accordance with an Area Plan (where applicable) and its purpose is to:

- (a) limit uses and development within the zone to a level that will not prejudice the future development; and*
- (b) provide for development in accordance with the Area Plan (where applicable) once services are (or can be) made available to the land.*

9. Clause 5.26 of the Scheme indicates that land should only be zoned FD if an Area Plan provides that the land is intended for future rezoning. We assume in this regard the intended rezoning would be specified in the Area Plan by one of the coloured areas set out in the 3 relevant Area Plans and associated legends in part 8 of the Scheme.
10. We consider the second interpretation of clause 11.1.3 above to be preferable because the “intention” (to which the DCA must refer) is readily identifiable in the Area Plan. Further, the inclusion of an Area Plan in the Planning Scheme would itself require the assent of the Minister.³ From our discussions with you and our informal discussions with representatives from the Department, that the DCA purports to grant development and subdivisions approvals based on this interpretation. However the DCA has not formally confirmed that this is their position (and we have not sought such formal confirmation from them).
11. If City of Palmerston considers that the DCA’s decisions are clearly at odds with the relevant Area Plan(s), then this would heighten the cause to question the validity of the subdivision consents to which you have referred. By way of example, the current three plans in the Scheme relating to Palmerston are not specific as to zonings. They only refer to general uses. The new plan for Alice Springs, in contrast, is more specific as to uses from which particular zoning categories could be inferred. If City of Palmerston is aware of FD-zoned land which is not slated for ultimate rezoning in an Area Plan, then this would exacerbate the difficulties in the DCA attempting to permit subdivisions under Clause 11.1.3 in an ultimate configuration, and the validity of any such subdivisions may be questionable.
12. As to your question of “whether the subdivision of FD-zoned land derogates from the requirement for ministerial consent for rezoning and the public submissions process?” we offer the following answer below.
13. In order to effect a subdivision of FD-zoned land, it is necessary to obtain a development

³ S 11, 12 Planning Act

permit from the DCA.⁴ No ministerial approval is needed. However, we do not consider that this mechanism derogates from the Minister's ultimate power to rezone land. We are of this view because the subdivision of FD-zoned land does not change its zoning, and the development of subdivided FD-zoned land will not necessarily require the land ever to be rezoned, due to the discretionarily permitted uses set out in the zoning table in clause 5.26. Further, although it may have not been clear from the outset, reporting and consultation processes *were* required in order to originally zone land FD, and in order to amend or create an Area Plan (which may in some sense indicate the "intended ultimate zoning" of an area) the Minister would have to comply with the consultation and reporting requirements of Division 3, 4 and 5 of Part 2 of the Planning Act. City of Palmerston would have been invited to make submissions under sections 19 and 22 of the Planning Act.

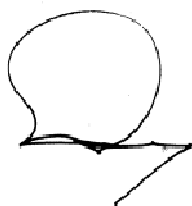
14. However, we appreciate that the DCA's current practices were not foreseen by City of Palmerston, and it is not clear whether the DCA's liberal interpretation of the Area Plans was envisaged by the Minister when the FD provisions and the Area Plans were originally included in the Scheme. In a practical sense, the DCA is treating FD-zoning as somewhat of a wildcard zone, constrained only by the loosely defined uses set out in Area Plans.
15. Further, since the Area Plans do not specify intended ultimate *zoning* and only specifies intended ultimate *uses* in a general sense, it would have been impossible to raise relevant objections when the Area Plans were originally proposed. For example, if City of Palmerston was content with an area being earmarked generally for residential uses, but considered the area unsuitable for medium density housing (i.e MD zoning), it would not have been appropriate for City of Palmerston to object to the Area Plan which merely slated the area as residential in a general sense.
16. These observations return us to the question of how one is to identify an "intended ultimate zone". **If** it is accepted (A) that the "intended ultimate zone" must be determined by reference to the Area Plan, and (B) that currently relevant Area Plans do not specify any "intended ultimate zoning", then it can likely be concluded that there is no ultimate intended zoning in existence for those areas. If that conclusion and those premises are correct, then it would follow that the DCA is not entitled to permit development on that land, as Clause 6.13(2)(b) states that development approvals can be granted over FD-zoned land only if consistent with ultimate intended zoning.
17. However, there is a level of uncertainty associated with that line of reasoning, because (as discussed above) it is unclear whether the "intended ultimate zoning" must be ascertained by reference only to an Area Plan, or whether other circumstances can give rise to an "intended ultimate zoning". Further, the DCA might counterpose that the intended ultimate *uses* specified in the Area Plans are tantamount to intended ultimate zonings.
18. As noted, an alternative approach to the situation where FD-zoning exists is found in the concurrent application procedure set out in Division 2A of Part 1. That procedure allows for applications both for rezoning (by amendment of the Scheme) and the development permit for

⁴ Section 44(b) Planning Act

subdivision to be dealt with in tandem. If the problematic FD-zone approvals were not available to developers, then it is likely that they would need to adopt this approach in order to achieve their desired outcomes. We understand that City this conventional avenue would be preferable from of City of Palmerston's perspective, since it requires a greater level of engagement and consultation.

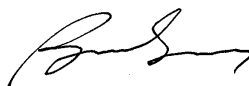
19. It is not possible to draw any definitive conclusions regarding how the provisions of the Planning Scheme should properly be interpreted. The provisions have been drafted by experts in planning rather than experts in legislative drafting, and they comprise inherent uncertainties – first, how one is to ascertain an “intended” zone, and second, what should happen if the “intention” to rezone (whatever that might be) does not result in actual rezoning.
20. Further, the provisions of the Planning Scheme are ultimately a matter of policy, controlled by the Minister and the government generally. Hence, even if City of Palmerston succeeds in showing that the current Scheme does not allow the DCA to grant such approvals, it would be open to the Minister to seek to amend the Scheme to give the DCA such powers. For that reason, we understand that City of Palmerston will wish to approach the issue diplomatically and emphasise the undesirability (rather than just the potential unlawfulness) of the DCA's current practices.
21. Having regard to the issues and our opinion it may be possible for City of Palmerston to formally seek to overturn invalid approvals by running a test case in the NT Civil and Administrative Tribunal or the Supreme Court. However, we are inclined against these options, as it will probably agitate the decision makers in power including the Minister. Further, it may lead to policy changes which further curtail City of Palmerston's control over development in its division.
22. We look forward to discussing this matter after City of Palmerston has had an opportunity to consider this advice including our recommendations set out in the Executive Summary. Please confirm if you would like us to draft the summary referred to in paragraph 23(b) above.

Yours faithfully
CRIDLANDS MB



Graeme Buckley
Partner

Contact: 08 8943 0400
Facsimile: 08 8943 0499
Email: graeme.buckley@cridlandsmb.com.au



Ryan Sanders
Associate

Contact: 08 8943 0452
Facsimile: 08 8943 0499
Email: ryan.sanders@cridlandsmb.com.au

Our Ref: 529996

Your Ref:

3 February 2015

Attention: Ben Dornier and Ricki Bruhn

City of Palmerston
PO Box 1
PALMERSTON NT 0831

Dear Ben and Ricki,

Town Planning and the application of FD Zoning

This letter sets out a summary of our opinion regarding development approvals for FD-zoned land. This letter is intended to take the form of a submission which City of Palmerston may disclose to third parties, without affecting the legal professional privilege of any advice provided to City of Palmerston.

Introduction

In this letter:

“**Act**” means the Planning Act;

“**Clause**” means a clause of the Scheme;

“**DCA**” means the Development Consent Authority as defined in the Act;

“**Scheme**” means the Northern Territory Planning Scheme as defined in the Act.

We are instructed that the DCA has, on several occasions, purported to exercise its discretion to grant approvals for subdivision and development of land in the municipality of Palmerston zoned "FD"(future development) particularly in the land covered by the Area Plan for the Eastern Suburbs of Palmerston included in Part 8 of the Scheme. We are further instructed that City of Palmerston is concerned that such subdivisions and developments may not be in the best interests of the municipality, and that the application process does not provide the proper opportunity for consultation and input by City of Palmerston and the community generally.

Adelaide
Alice Springs
Brisbane
Canberra
Darwin
Melbourne
Norwest
Perth
Sydney

Essential preconditions for development and subdivision applications

Under the Scheme, various land in the municipality of Palmerston is zoned "FD" or "future development". The Zoning Table in clause 5.26 of the Scheme provides that, in respect of FD-zoned land, certain uses are prohibited, certain uses are permitted, and certain uses are only permitted if the DCA, in its discretion, grants approval. Likewise, the DCA is given discretion to approve subdivision of FD-zoned land.

Clause 6.13 makes clear that the DCA is only permitted to exercise its discretion to grant development and subdivision applications where the application is consistent with the "**intended ultimate zoning**". Hence, in order for the DCA to exercise its discretion to grant development approvals, it is essential that the DCA first identify the "intended ultimate zoning" (if any) of the land in question.

Further, clause 5.26(2) precludes the exercise of the DCA's discretion if subdivision would prejudice the "intended ultimate subdivision and future use or development" of the land. That is to say, both the **intended ultimate subdivision** and the intended ultimate future use or development must exist and must be identified in order for the DCA to have the power to grant a subdivision application.

These considerations are essential preconditions (that is to say, *jurisdictional facts*) which must be satisfied before the DCA can consider the merits of any development or subdivision application on FD-zoned land. If a development or subdivision is not objectively consistent with the intended ultimate zoning and intended ultimate subdivision, then it would be beyond the power (that is to say, *ultra vires*) of the DCA to grant the application. Likewise, in the absence of an intended ultimate zoning or intended ultimate subdivision for a parcel of land, then the condition can not not be satisfied and granting applications would be beyond the DCA's power.

The Planning Scheme does not define the terms "intended ultimate zoning" and the "intended ultimate subdivision and future use or development". However, in light of the reference to "Area Plans" in clause 6.13(2)(a), it is clear that one must refer to the relevant Area Plan in Part 8 in order to identify the "intended ultimate zoning" and/or "intended ultimate subdivision and future use or development" (if any).

The Area Plan for the eastern suburbs of Palmerston provides only general guidance as to intended land use (eg "residential") without specifying an ultimate intended zoning or an ultimate intended subdivision (for example, the areas denoted as "residential" are not divided into the residential zones set out in the Planning Scheme, being SD, MD, MR, HR, CV and CL). That Area Plan expresses no intention as to whether land is earmarked for development as, say, a caravan park or as a high rise apartment building. Likewise, the Area Plan says nothing of the intended size or shape of subdivisions.

It follows that no "intended ultimate zoning" or "intended ultimate subdivision" can be seen to exist. Therefore, it is not possible for an applicant to the DCA to meet the essential preconditions for subdivision and/or development applications over Palmerston's FD-zoned land. Accordingly, it is beyond the power of the DCA, in those circumstances, to purport to exercise a discretion to grant development and subdivision applications.

Subversion of process contemplated by the Act

Applications to rezone land by amending the Planning Scheme are subject to a rigorous assessment, including public exhibition, a hearing by the reporting body, and final determination by the Minister for Lands, Planning and the Environment. Clearly, these requirements are designed to guard against haphazard developments without proper community consultation. There is much tension between these underlying objects and the DCA's purported application of the Scheme's provisions.

Clause 5.26 of the Scheme describes FD-zoning an "interim zone". The Scheme's usage of the terms "intended ultimate zoning" and "intended ultimate subdivision", in relation to FD-zoned land, suggests that at some point actual rezoning must follow. However, the Scheme does not operate to retrospectively invalidate development approvals if rezoning never transpires. Effectively the granting of applications relating to FD-zoned land, in the absence of clearly expressed intended zoning and intended subdivision, treats that zoning as somewhat of a wildcard, constrained only by the intended usage nebulously defined in the east Palmerston Area Plan as "residential".

One must seriously question whether the authors of the Act and the Scheme intended to confer power on the DCA to choose whether land (earmarked in an Area Plan merely as "residential") should be used for high density apartments, caravan parks, single detached dwellings et cetera. We are instructed that that process was not foreseen by City of Palmerston when the Scheme was amended to include FD-zoned land in its municipality (and had it been foreseen, City of Palmerston may well have objected to that zoning). Similarly, City of Palmerston may not have had reason to object to an Area Plan slating land for residential use, in circumstances where City of Palmerston considered the land to be theoretically suitable for uses consistent with, say, SD or CV zoning, but less suitable for higher density residential use.

If the DCA refused to consider applications over FD-zoned land with no intended ultimate zoning and intended ultimate subdivision, developers would need to rely on the concurrent application procedure set out in Division 2A of Part 1. That procedure allows for applications to be dealt with in tandem, for both rezoning (by amendment of the Scheme) and the development permit for subdivision. That process allows for the proper public consultation and input from interested parties such as the City of Palmerston.

The granting of development and subdivision applications over FD-zoned land in Palmerston entirely subverts that process, resulting in outcomes which we understand City of Palmerston considers to be undesirable and at odds with established town planning principles.

Conclusion

In summary, we consider that:

1. It is beyond the power (*ultra vires*) for the DCA to grant development and subdivision approvals for FD-zoned land if it can not be shown that an "intended ultimate zoning" and/or "intended ultimate subdivision" exists and is consistent with the application. The Area Plan for eastern Palmerston does not set out "intended ultimate zonings" or "intended ultimate subdivisions" with any reasonable particularity, and it is not possible to infer such intentions. Therefore, the Scheme does not provide the DCA with

discretion to approve development and subdivision application in FD-zoned land within the land set out in the Area Plan for Palmerston's eastern suburbs.

2. The granting of approvals in those circumstances serves to subvert the exhibition and consultation processes which would otherwise be required by the Act, thus depriving City of Palmerston and the community generally of the opportunity to be heard in relation to development and subdivisions in the area.


We trust that City of Palmerston will be able to successfully engage with the departmental representatives in order to find a solution to the issues outlined in this letter. If it is considered that our input would be of assistance, we would be more than happy to meet in order to discuss the matter.

Yours sincerely



Tony Morgan
Partner
HWL Ebsworth Lawyers

+61 8 8943 0478
tmorgan@hwle.com.au



Ryan Sanders
Associate
HWL Ebsworth Lawyers

+61 8 8943 0452
rsanders@hwle.com.au