

Department of Infrastructure, Planning and Logistics  
Level 1 Energy House  
18-20 Cavenagh Street  
Darwin NT 0800

15 August 2021

Dear Sir /Madam

**RE: Proposed Exceptional Development Permit  
Subdivision of Lots 1257, 1258 and 1259 Town of Nightcliff**

Please find attached a report that relates to a proposed Exceptional Development Permit specifically relating to f Lots 1257, 1258 and 1259 Town of Nightcliff.

The proposed Exceptional Development Permit is submitted in accordance with Sec 38 of the NT Planning Act.

If you have any queries in respect to this submission or the information supplied, please feel free to contact me directly on the details provided in the application material.

Yours faithfully,

**Gerard Rosse** MPIA MAICD

**Managing Director** | Tropics Consultancy Group

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# PLANNING REPORT

Sec 38 NT Planning Act

Proposed Exceptional Development Permit

For

Subdivision (3 lots into 11 lots) and Right of  
Way Easement

on

Lots 1257, 1258 and 1259 Town of Nightcliff

August 2021

**CONTACT:**

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# 1. Introduction

The proposed Exceptional Development Permit (EDP) seeks to facilitate the redevelopment of the site in accordance with Zone Low-Medium Density Residential (LMR), respond to flood and storm surge mitigation requirements as required by the NT Planning Scheme and deliver a contemporary housing product via a unique freehold best practice “terrace home” subdivision.

In accordance with 38 of the Planning Act, Tropics Consultancy Group, on behalf of Rapid Creek Terrace homes and with consent of the landowners has been engaged to submit a proposed Exceptional Development Permit Application over Lots 1257, 1258 and 1259 Town of Nightcliff. The proposed EDP seeks to enable development consistent with the zone and Area Plan for the site, albeit delivered via a contemporary and unique subdivision for the site.

## ***Reason For Exceptional Development Permit (EDP)***

The reason and requirement for this EDP is largely to achieve the freehold lots on the LMR lots that provide for a terrace home-built form.

Although the proposed lots average approximately 300m<sup>2</sup> and comply with the density for the Low-Medium Density Residential Site, the lots range in size from approximately 248m<sup>2</sup> to 426m<sup>2</sup> and the Planning scheme prevents LMR lots from below 300m<sup>2</sup>, regardless of the average density being in compliance with the zone. Furthermore, the nature of the development (Terrace home) proposes a specific building envelop to be established on each lot, and for 8 of the 11 lots, these include a 0m setback on both side boundaries, and again this cannot be achieved under the NT planning scheme provisions.

It is envisaged that once the EDP is approved, each dwelling becomes a permitted “dwelling-Single” land use on each lot, subject to the relevant covenant and building envelope requirements and certification as per requirements.

This report addresses statutory requirements and planning considerations in relation to the proposed application in accordance with the Northern Territory Planning Act and NT Planning Scheme.



## 2. Background

Rapid Creek Terrace Homes Pty Ltd (RCTH) has been established by local Territorians with the technical ability and statutory fortitude to assist the homeowners in resolving an ongoing flooding risk to their properties.

The above lots are identified as flood affected lots under the Darwin Mid-Suburbs Area Plan. Specifically, these lots are identified as lots subject to “zone change” and are identified in the area plan as “Residential areas affected by Riverine Flooding and Primary Storm Surge from Rapid Creek”. The area plan highlights that the objectives for these lots are to result in “a built environment that mitigates against flood water inundation of private property” and an acceptable response is to “support the rezoning of lots to facilitate development consistent with the height, density and other performance criteria that apply to development within Zone MD (Multiple Dwelling Residential)”. As a result, in February 2021 an application was lodged to rezone the subject properties from zone LR (low Density Residential) to Zone LMR (low-medium Density Residential) to enable re-development of the site to occur in accordance with the Darwin Mid Suburbs Area Plan and result in flood immunity being incorporated into a re-development of the lots.

The properties are limited in realising commercially viable redevelopment outcomes in isolation; however, a best practice and contemporary outcome can be facilitated across the three lots – when a design philosophy incorporated all three lots. The redevelopment strategy therefore focusses on providing for a development consistent with the density outcomes sought for the Zone LMR (Low-Medium Density Residential) to create architecturally designed 2-storey Tropical Terrace style homes, albeit delivered via a contemporary freehold subdivision model.

To seek inspiration for this development, RCTH has reviewed best practice, award winning terrace home developments from across Australia and by using local designers, town planners and builders has formulated a true Top End inspired design outcome that seeks to capture Darwin’s tropical living at its finest through the delivery to tropical design and constructed contemporary 2 storey terrace homes. The RCTH team has overlaid the density envisaged for the Zone LMR site and the aesthetic outlook of the Rapid Creek conservation area to formulate a design that captures the Top End lifestyle via an industry leading freehold delivery model used in other states and territories.

### 3. Site Description

The subject site for the proposed EDP includes Lots 1257, 1258 and 1259, Town of Nightcliff. The site in its entirety is located along Rapid Creek Road and was recently rezoned to Zone LMR (Low-Medium Density Residential). Each of the lots is subject to flood inundation and storm surge from the adjacent Rapid Creek Creek and the Planning Scheme sets out requirements for development to mitigate flood impacts on the site.



Figure 1 – Site Location and Zone

Lot	Address	Area	Current Zone
1257	1 Brooks Place, Millner	1,120m <sup>2</sup>	LMR (Low-Medium Density Residential)
1258	37 Rapid Creek Road, Millner	1,150m <sup>2</sup>	LMR (Low-Medium Density Residential)
1259	14 Aldridge Place, Millner	1,020m <sup>2</sup>	LMR (Low-Medium Density Residential)

Figure 2 – Specific Lot location and attributes

## 4. Proposed Exceptional Development Permit (EDP)

The proposed EDP seeks to facilitate the redevelopment of the site in accordance with Zone LMR (low-Medium Density Residential), respond to flood and storm surge mitigation requirements as required by the NT Planning Scheme and deliver a contemporary housing product via a unique freehold best practice "terrace home" subdivision.

*The proposed EDP will enable the following:*

- *A subdivision approval of the site with lot size ranging from 248.9m<sup>2</sup> to 426.6m<sup>2</sup> with an average lot size of 299.1m<sup>2</sup> that includes proposed Building Envelope plan attached to the permit.*
- *Civil works to achieve flood immunity as per the requirements of the Rapid Creek Flood Response overlay and Area plan Requirements.*
- *A registered vehicle access (Right of way) and sewer easement with an associated title registered covenant agreement between lots to manage access and long-term maintenance of the easement; and*
- *A registered covenant agreement for lots that stipulates built form, building envelopes and facade requirements.*

It is envisaged that once the EDP for subdivision is approved, each dwelling becomes a permitted "Dwelling-Single" land use on each lot, subject to the relevant covenant and associated design guidelines, building envelope plans and certification as per requirements.

Although it is envisaged the applicant will deliver the proposed built form on the lots, a statutory covenant that is interlinked with a design guideline that clearly sets out the built form and site requirement for each lot to ensure high quality-built form occurs on each lot will be attached to the future lots created as part of this subdivision.

**It is proposed that the EDP permit will contain the following approved plans and documents that will be attached to the future lots:**

- *Subdivision plan including right of way easement (to be registered).*
- *Building Envelope plans for each lot - Noting this can be included as a building setback plan in the scheme, should the Minister see fit.*
- *Statutory covenant (to be registered) with associated design guideline document.*

*It is noted that the "Right of way Easement" and interlinked covenant proposes that each future lot owner will be responsible for the area of easement on each lot, to meet the requirements of the covenant on the site for access.*

### **Subdivision Details**

The proposed subdivision seeks to subdivide the lots into freehold titles with an average lot size of 299.1m<sup>2</sup>. This occurs via a layout that responds to the site, development form and provides access to 10 of the proposed 11 lots via a title registered right of way easement that occurs along the rear of the lots. The concept of the subdivision will enable built form to be positioned over the Rapid Creek Road frontage enabling pedestrian access and passive surveillance and best practice terrace home design to occur.



The form of the subdivision proposes a title registered right of way easement, and this is designed to safely manage traffic, remove direct vehicle access from Rapid Creek Road and results in overall improved traffic management and pedestrian safety for the locality.

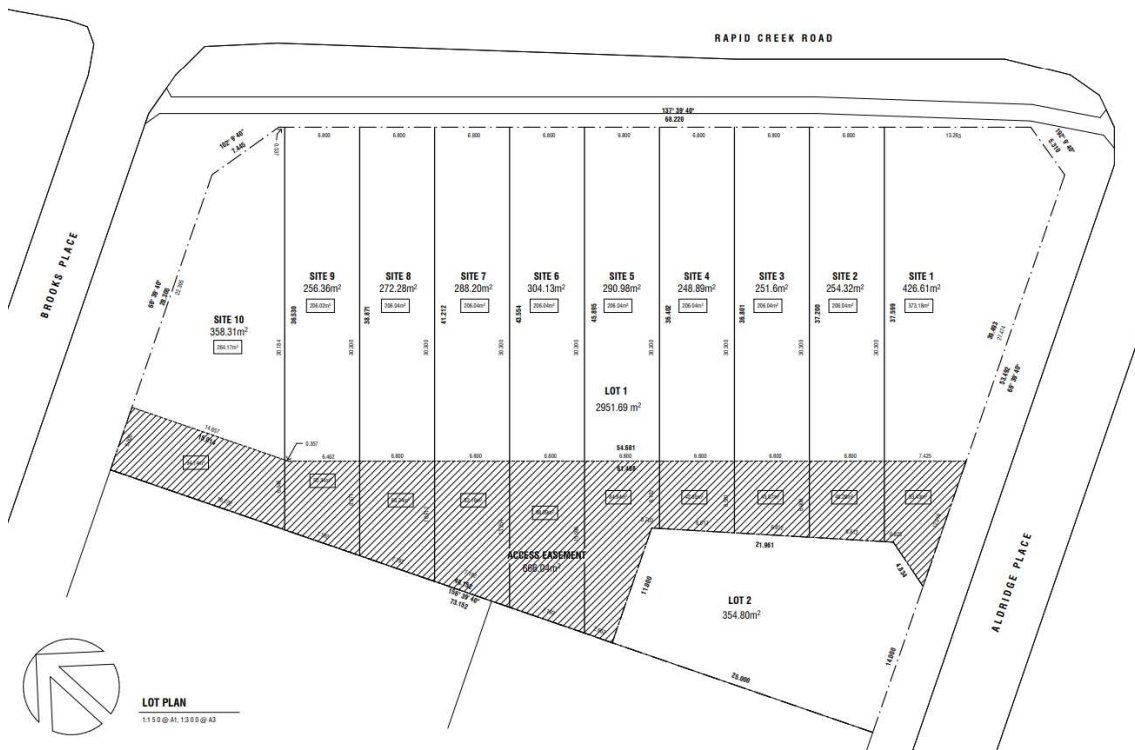


Figure 3 – Proposed subdivision

The Subdivision works also proposes civil works to achieve flood immunity as per the requirements of the Rapid Creek Flood Response overlay and Area Plan Requirements. In addition, detailed earthworks and servicing plans propose:

- Site levels have been set to meet the 300mm free board above the Q100 flood level.
- Sewer infrastructure to service the rear of each lot.
- Water, electrical and NBN all serviced from the street frontage of each lot.
- Retaining walls as required to meet site levels and flood immunity.
- Sewer plan nominating individual property connections, their offsets and invert levels.

Detailed civil drawings, earthworks plans, and servicing plans are attached to this proposal.

**Zone LMR (Low-medium Density Residential)**

The proposal essentially proposes a development concept for the site that seeks to establish a built form similar to that of a two storey Dwellings-Multiple land use, albeit by a freehold subdivision that is designed around specific built form for each Lot. Under the current NT Planning Scheme, the Development in its entirety largely complies with the density envisaged for the LMR zone with an average density of 1 lot per 299.1m<sup>2</sup> (99.7% of the 300m<sup>2</sup> LMR Density) across the greater site. Although the proposed lots average approximately 300m<sup>2</sup> (299.1m<sup>2</sup>) and comply with the density for the Low-Medium Density Residential Site, the lots range in size from approximately 248m<sup>2</sup> to 426m<sup>2</sup> and the Planning scheme prevents LMR lots from below 300m<sup>2</sup>, regardless of the average density being in compliance with the zone, hence the need for the EDP for subdivision of the site.

## Building Envelopes, Right of way easement and Covenant

The nature of the development (Terrace home) proposes a specific building envelope to be established on each lot, and for 8 of the 11 lots, these include a 0m setback on both side boundaries, and again this cannot be achieved under the NT planning scheme provisions relating to setbacks for residential buildings of this nature, which will be a new type of residential development for the NT, hence the need for specific building envelopes to complement the EDP for subdivision of the site.

The proposed building envelopes will apply to both the ground and first floor. These have been designed to be clear and concise for a builder and certifier to clearly interpret and will enable the build form as proposed to occur on each new lot.

A title registered right of way easement is proposed for safe and serviceable vehicle access to service the proposed lots, for which the costs and responsibilities of maintenance and repairs are bound to each lot owner and their respective easement areas. These responsibilities are outlined in the covenant documentation and design guidelines which will apply to future lots on the site.

Although it is envisaged the applicant will deliver the proposed built form on the lots, a covenant that sets out the built form and façade requirement for each lot will ensure high quality-built form occurs on each lot and this will attach via statutory means to each new lot created. A copy of the covenant, design guideline and easement documentation are attached to this report.

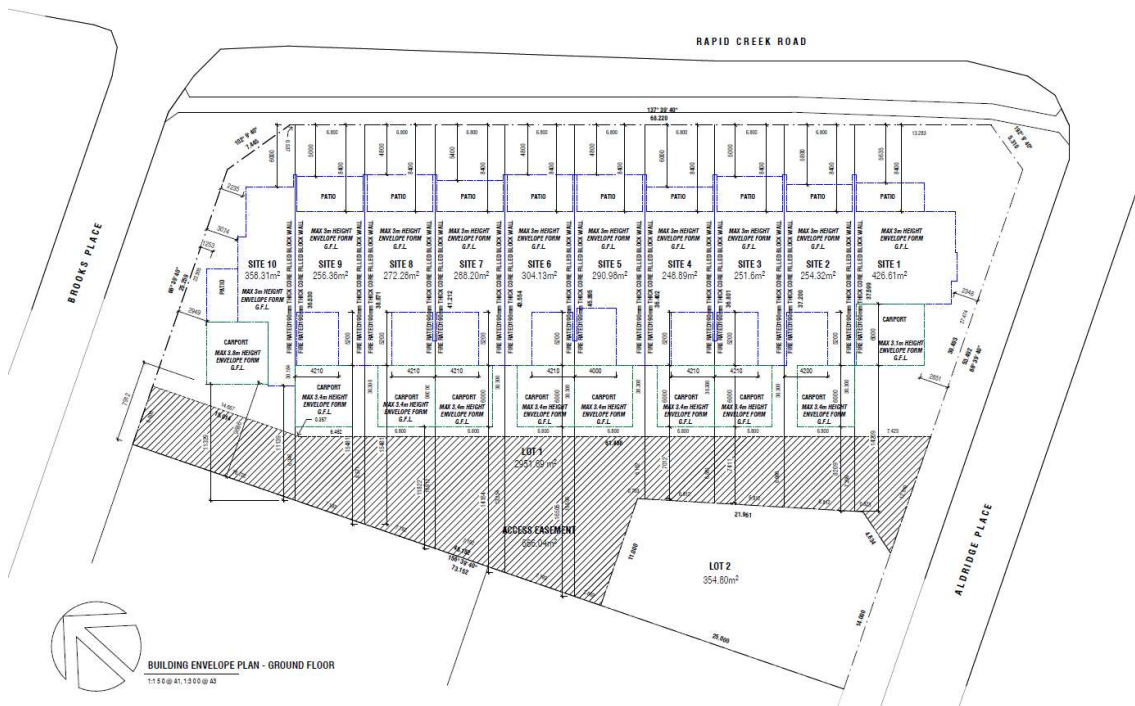


Figure 4- Ground Floor Building Envelope Plan

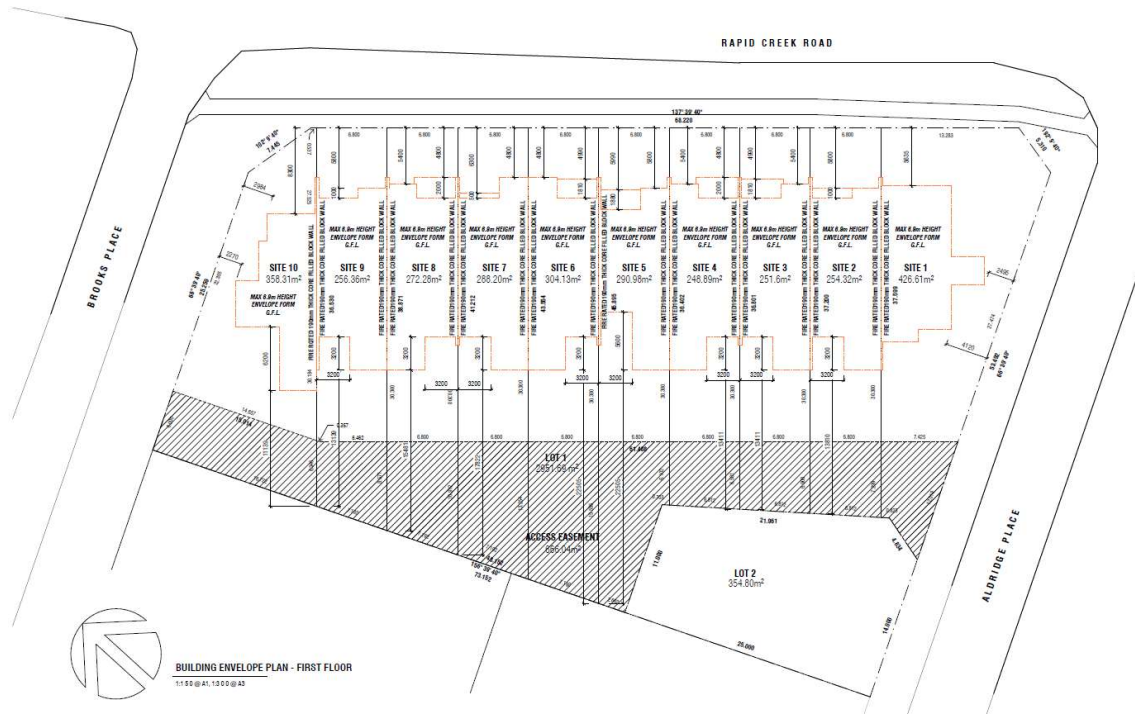


Figure 5 - First Floor Building Envelope Plan

## 4.1 Statutory Considerations

The application for an Exceptional Development Permits (EDPs) made under section 38 of the Planning Act 1999. The provided statement details and addresses, but need not be limited to, those matters required to be considered by the consent authority under section 51 of the Planning Act 1999 and listed below.

**51(d) an environment protection objective within the meaning of the Waste Management and Pollution Control Act 1998 that is relevant to the land to which the application relates;**

Not Applicable in this instance.

**51(h) The merits of the proposed development as demonstrated in the application;**

The proposal has merit and seeks to achieve the outcomes sought by the Darwin Mid Suburbs Area Plan. The proposal will ultimately result in the redevelopment of the site to mitigate flooding and storm surge impacts and have vast improvement on the locality by providing new, contemporary development to the area.

The proposed subdivision will result in lots that provide for alternative housing choice and achieve envisaged density of the LMR zone, albeit via a unique subdivision concept to enable contemporary best-practice built form to occur.

The subdivision plan is interlinked with title building envelopes and statutory covenant and right of way easement for safe and serviceable vehicle access to service the proposed lots.

**51(j) A description of the physical characteristics of the land and a detailed assessment demonstrating:**

**i. the land's suitability for the purposes of the proposal; and**

The subject site for the proposed EDP includes Lots 1257, 1258 and 1259, Town of Nightcliff. The site in its entirety is located along Rapid Creek Road and was recently rezoned to Zone LMR (Low-Medium Density Residential). The development of the site seeks to achieve the intent of LMR zone density envisaged via a unique subdivision proposal.

**ii. the effect of the proposal on that land and other land;**

The subject site is subject to flood inundation and storm surge from the adjacent Rapid Creek Creek and the Planning Scheme sets out requirements for development to mitigate flood impacts on the site. The development of this site for subdivision will remediate the site by providing flood immunity as per the requirements of the Planning Scheme. The form of the subdivision proposes a rear right of way easement and this is design to safely manage traffic, remove direct vehicle access from Rapid Creek Road and result in improved traffic management and pedestrian safety for the locality.

**51(k) A statement specifying:**

- i. the public facilities or public open space available in the area in which the land is situated; and**

The site is adjacent to the Rapid Creek conservation area and the public open space it provides. The design of the lots and intended built form seek to capture views and orientate passive surveillance towards the open space for future residents to utilise and enjoy.

- ii. whether land for public facilities or public open space is to be provided by the applicant/developer; and**

No land for public facilities or open space is proposed by the applicant. The site is adjacent to the Rapid Creek conservation area and the public open space it provides.

- iii. whether it is proposed that facilities or open space be developed by the applicant/developer;**

No facilities or open space are proposed to be developed by the applicant. The site is adjacent to the Rapid Creek conservation area and the public open space it provides.

**51(m) A statement specifying:**

- i. the public utilities or infrastructure provided in the area in which the land is situated; and**

The proposed lots will be connected to reticulated power, water and sewer which is available in the area as per the below servicing plan. The proposed easement to the rear of the lots will provide vehicle access to 10 of the 11 lots and allow sewer to be connected to each lot. A copy of the civil drawings and servicing plan is attached to this report.

- ii. any requirement for public facilities and services to be connected to the land; and**

As Above (i)

- iii. whether public facilities or infrastructure are to be provided by the applicant/developer; and**

As Above (i)

- iv. whether land is to be provided by the applicant/developer for the provision of public utilities or infrastructure;**

No land is proposed or required to be provided for the provision of public utilities. It is noted that proposed easement to the rear of the lots will provide vehicle access to 10 of the 11 lots and allow sewer to be connected to each lot.

**51(n) An assessment of the potential impact on the existing and future amenity of the area in which the land situated;**

The proposal essentially proposes a development concept for the site that seeks to establish a built form similar to that of a two storey Dwellings-Multiple land use, albeit by a freehold subdivision that is designed around specific built form for each Lot. Under the current NT Planning Scheme, the Development in its entirety complies with the density envisaged for the LMR zone with an average density of 1 lot per 299.1m<sup>2</sup> (99.7% of the 300m<sup>2</sup> LMR Density) across the greater site. However, the significant benefit to the amenity of the area is via the proposed built form to be positioned over the

Rapid Creek Road frontage enabling pedestrian access and passive surveillance and best practice terrace home design to occur.

In this particular case, it is envisaged the proposed subdivision will have a positive impact on the existing and future amenity of the area in which the land is situated.

**51(p) An assessment of the benefit or detriment to the public interest of the development, including (if relevant), how the following matters are provided for in the application:**

**i. community safety through crime prevention principles in design;**

The proposed subdivision and development will have significant benefits to the public interest, specifically to improving the amenity of the area via improved community safety through crime prevention principles in the design whereby the proposed built form will be positioned over Rapid Creek road frontage. This concept enables safe pedestrian access and increased passive surveillance to occur along the Rapid Creek frontage.

**ii. water safety;**

Not Applicable

**iii. access for persons with disabilities;**

The proposed subdivision seeks to enable built form and design considerations for access for persons with disabilities.

**51(r) An assessment of any potential impact on natural, social, cultural or heritage values, including for example, the heritage significance of a heritage place or object under the Heritage Act 2011;**

Not Applicable in this instance as the site does not have any identified or recognised natural, social, cultural or heritage values.

**51(s) Any beneficial uses, quality standards, criteria, or objectives, that are declared under section 73 of the Water 1992;**

Not Applicable in this instance.

**51(t) Any other matters**

Not Applicable in this instance.