



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 398 – FRIDAY 21 OCTOBER 2022

**BROLGA ROOM
NOVOTEL DARWIN CBD
100 THE ESPLANADE
DARWIN CITY**

MEMBERS PRESENT: Suzanne Philip (Chair), Marion Guppy, Mark Blackburn, Peter Pangquee and Mick Palmer

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Amit Magotra, Monica Pham and Breanna Lusty (Development Assessment Services)

COUNCIL REPRESENTATIVE: Apology

Meeting opened at 10.15 am and closed at 12.05 pm

THE MINUTES RECORD OF THE EVIDENTIARY STAGE AND THE DELIBERATIVE STAGE ARE RECORDED SEPARATELY. THESE MINUTES RECORD THE DELIBERATIVE STAGE. THE TWO STAGES ARE GENERALLY HELD AT DIFFERENT TIMES DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.

ITEM 1 **ROOF-TOP FOOD PREMISES-RESTAURANT AND ALFRESCO DINING AREA**
PA2022/0328 **ADDITION TO AN EXISTING COMMERCIAL BUILDING**
LOT 6573 (5) WESTRALIA STREET, STUART PARK, TOWN OF DARWIN
APPLICANT One Planning Consult

Applicant: - Mr Israel Kgosiemang (One Planning Consult) attended.

RESOLVED That the Development Consent Authority reduce the car parking requirements
66/22 pursuant to Clause 5.2.4.2 (Reduction in Parking Requirements outside of Zone CB)
and vary the requirements of Clause 5.5.2 (Plot Ratios in Commercial Zones) of the
Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the
Planning Act 1999, consent to the application to develop Lot 09255 (305) Bagot
Road and Lot 6753 (5) Westralia Street for the purpose of rooftop food premises-
restaurant and alfresco dining area addition to an existing commercial building,
subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must generally be in accordance with the plans submitted with the application but modified to clarify:
 - (a) The treatments to the demountable structures as visible from Presley Street and adjoining land.
2. Prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.
3. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with the City of Darwin's Waste Management Guidelines, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.
4. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.

GENERAL CONDITIONS

5. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
6. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, electricity and telecommunication networks to the development on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
Please refer to notations 1 and 2 for further information.
7. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
8. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
9. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
10. Upon completion of any works within or impacting upon existing road reserves, the infrastructure within the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin and returned to the condition as documented in the dilapidation report.
11. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view, located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority.
12. All pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the consent authority.
13. Before the use of the development starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
14. The treatments to the demountable structures and screening shown on the endorsed plans must be completed within six months from the date of issue of permit.
15. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.

16. Prior to the issue of an occupancy permit under the Building Act 1993, lodgment of a variation application is required to address the existing on-site car parking arrangements for the existing building, having regard to the previous determinations of the consent authority and the development permits issued under the *Planning Act 1999*.

NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (powerdevelopment@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. If you choose nbn to service your development, you will need to enter into a development agreement with nbn. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered nbn will be in contact to discuss the specific requirements for the development. Nbn requires you to apply at least 3 months before any civil works commence. All telecommunications infrastructure should be built to nbn guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/builders-designers.html>
3. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
4. Notwithstanding the approved plans, any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin Policy Number 42 – Outdoor Advertising Signs Code.
5. In accordance with City of Darwin By-Laws, prior to occupation, the applicant shall ensure that a building number is displayed in a position clearly visible from the street. The number must be visible against the background on which it is placed, to the satisfaction and at no cost to City of Darwin
6. The development and use hereby permitted must be in accordance with Northern Territory legislation including (but not limited to) the *Building Act 1993*, the *Public and Environmental Health Act 2011* and the *Food Act 2004*.

REASON FOR THE DECISION

1. Pursuant to section 51(1)(a) of the *Planning Act 1999*, the consent authority must take into consideration the planning scheme that applies to the land to which the application relates.

The NT Planning Scheme 2020 applies to the land and food premises-restaurant and demountable structures require consent under Clause

1.8 (When development consent is required). It is identified as *Merit Assessable* under Clause 1.8(1)(b); therefore, the zone purpose and outcomes of Clause 4.11 Zone C (Commercial), Clause 5.2.4.1 (Parking Requirements), Clause 5.2.5 (Loading Bays), Clause 5.2.6 (Landscaping), Clause 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR), Clause 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC), Clause 5.5.1 (Interchangeable Developments in Zones CB and C), Clause 5.5.2 (Plot Ratios in Commercial Zones), Clause 5.5.3 (Commercial and other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, and T), Clause 5.5.11 (Food Premises) and Clause 5.8.7 (Demountable Structures), need to be considered.

The proposal is to utilise the roof of an existing commercial building for a food premises-restaurant plus an outdoor seating area and children's play area. The built-up form comprises of 1 x 40 foot shipping container (demountable structure) placed adjacent to Presley Street frontage and 1 x 20 foot shipping located within the centre of the rooftop of the building. The ground level includes covered off-street parking for 8 vehicles accessed from Presley Street, including one shared 10 minute car parking/loading space, which is shared with the existing two-storey building.

The site is identified within a 'Specialist and Secondary Centre', and is also shown as the 'retail heart of the precinct enhancing Westralia Street shops' within the 'Stuart Park Concept Plan'. The proposal generally aligns with the objectives and principles, including centres being characterised by a mix of compatible uses, as detailed within the technical assessment. The principles also state that uses not compatible with residential uses should be limited, with the use not assessed as being incompatible.

The primary purpose of Zone C is to provide for a range of business and community uses. The principles state that the zone applies to shopping areas ranging from neighbourhood convenience shopping to regional centres and that development should be of a scale and character appropriate to the service function of a particular centre, respect the amenity of adjacent and nearby uses, and promote community safety in building design, having regard to adjacent and nearby uses. Overall the use aligns with the primary purpose statement and the broader intent of Zone C. The development is consistent with the low scale character of the existing buildings in Zone C in the area. Whilst the buildings visible from Presley Street are single-storey, many include a second storey component closer to Westralia Street.

The assessment has found that the proposal complies with the relevant Part 5 requirements of the Planning Scheme except for Clauses 5.2.4.1 (Parking Requirements) and 5.5.2 (Plot Ratios in Commercial Zones).

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NT Planning Scheme 2020, the consent authority may consent to a proposed development which is not in

accordance with a requirement set out in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:

- (a) The purpose and administration clauses of the requirement; and
- (b) The considerations listed under Clause 1.10(3) or 1.10(4).

The proposal has been found not to be in accordance with for Clauses 5.2.4.1 (Vehicle Parking) and 5.5.2 (Plot Ratios in Commercial Zones).

5.2.4.1 Parking Requirements

The purpose of the clause is to ensure that sufficient off-street car parking, constructed to a standard and conveniently located, is provided to service the proposed use of a site.

The net floor area of the restaurant (demountable structures) plus alfresco dining areas is calculated as 215m². As such, the proposal requires 13 spaces (12.9 rounded). As no new car parking is provided on site, the applicant seeks a reduction under Clause 5.2.4.2 (Reduction in Parking Requirements outside Zone CB in Darwin).

A reduction in parking by Clause 5.2.4.1 (Parking Requirements) through the provision of Clause 5.2.4.2 (Reduction in Parking Requirements outside of Zone CB) is considered appropriate in recognition of the following:

- The site is adjacent and close to existing car parking facilities identified within Westralia Street and Presley Street. The plans identify on-street car parking spaces within walking distance from the development along Westralia and Presley Streets.
- The land is located within an established commercial area with various businesses. The operation hours 6pm – 11pm, Tuesday to Saturday, are outside the regular peak demand times for existing car parking facilities servicing the commercial area. As a result of less parking use from 6pm – 11pm, and the extensive street car parking available in the area, it is anticipated that there will be adequate car parking available for patrons.
- Many bus routes service the area, and the bus stops for these routes are located a short walk from the site, including the services running along Stuart Highway.
- The assessment has found that the City of Darwin has not raised any concerns with the reliance on-street parking proposed in the application.

At the hearing, the Authority made an observation that the onsite car parking is also reduced from 11 spaces to eight spaces including one shared 10 minute car park / loading bay. In response to this, the applicant (Mr Israel Kgosiemang from One Planning Consult) clarified that the three car parks were lost due to the provision of a lift and staircase in the existing development. The applicant further stated that the current application is seeking to maintain the same number of car parks on site with reasons for the reduction granted under the previous approval granted under DP19/0137 (roof-top community market).

The Authority noted the applicant's comments and acknowledged that a reduction to on-site car parking spaces was granted under DP19/0137. The Authority further notes that DP19/0137 expired in June 2021 and the current application seeks reduction for the roof-top food premises-restaurant only. The Authority considered that the applicant should seek a separate approval by lodging a variation application to capture the current on-site parking for the existing development, and is required by a condition included on the permit.

5.5.2 (Plot Ratios in Commercial Zones)

The purpose of this clause is to provide for development that will, in terms of building massing, be compatible with adjacent and nearby development.

The clause provides that the development of sites within Zone C should not exceed a plot ratio of 1. Plot ratio means the floor area divided by the area of the site, and floor area in relation to a building includes all wall thicknesses of the external walls and all roof areas used as floors but does not include verandahs, balconies or areas set aside for car parking or access thereto.

The existing floor area of the building is measured at 1771m² (as per the previous approval), which already exceeds the site area of 1550m², providing a plot ratio of 1.14. The increased floor area is calculated at 107m², which increases the plot ratio to 1.21.

The relevant Administration of this clause is:

The consent authority may consent to a use or development that is not in accordance with sub-clauses 3 and 4 only if it is satisfied the development is appropriate to the site having regard to the purpose of this clause, the amenity of the streetscape, and the potential impact on the amenity of the locality and adjoining property.

The Authority notes the assessment of the Development Assessment Services (DAS), which concludes that all existing buildings visible from Presley Street are single-storey; however, a number of buildings include a second-storey component closer to Westralia Street, such as those exist on the subject site. The assessment further notes that the Darwin Inner Suburbs Area Plan intending for mixed use buildings, and specifically in the 'Stuart Highway, Stuart Park Concept Plan' for 'medium rise, mixed use buildings', in commercial zones, which suggests that future expansions of plot ratios/retail floor space may generally occur in the future, such that the scale and massing of the development may be considered compatible with that reasonably anticipated in the future.

The Authority considered that expansions of plot ratios/retail floor space might generally occur in the future, such that the scale and massing of the development may be considered compatible with adjacent and nearby development (including that development reasonably anticipated in the future), despite the variation to Clause 5.5.2.

5.8.7 Demountable Structures

The purpose of the clause is to ensure that demountable structures do not detract from the visual amenity of an area.

The relevant Administration is:

the consent authority may consent to the placement of a demountable structure on land only if it is satisfied that:

- (a) there will be landscaping or architectural embellishments to the demountable structure that will enhance the appearance of the structure; and*
- (b) the demountable structure will be visually consistent with adjoining or nearby development.*

The plans provided by the applicant show treatments, including a 1.2m high perimeter fencing with plants and decorative screening. This response is considered acceptable such that the demountable structures will be visually consistent with adjoining or nearby development. A condition is included to confirm the treatments to the demountable structures as viewed from the adjacent land and Presley Street as these details were not confirmed on the submitted plans.

3. Pursuant to section 51(1)(j) of the *Planning Act 1999*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development. Also, pursuant to section 51(m) of the *Planning Act 1999*, the consent authority must take into account the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

No land capability issues have been identified as part of the application. Comments were received from service authorities during the exhibition of the application, and conditions are appropriately included to address servicing requirements.

4. Pursuant to section 51(1)(n) of the *Planning Act 1999*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated

The impact on amenity should be considered in the context of the site and its surrounds. The use is generally considered consistent with the broader intent of Zone C, being for a range of business and community uses. The use is expected to provide a positive improvement on the amenity of Presley Street through increased activation and passive surveillance opportunities.

Any additional parking generated by the proposal is also expected to be adequately accommodated within existing available public car parking

along Presley and Westralia Streets without undue impact on the existing uses in the locality.

The plan show treatments show a 1.2m high perimeter fencing with plants and decorative screening to screen the demountable structures from public view. A condition is included to confirm the treatments to the demountable structures as viewed from the adjacent land and Presley Street.

The Authority noted the retrospective nature of the application and determined that the treatments to the demountable structures and screening shown on the endorsed plans must be completed within six months from the date of issue of the permit.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

**ITEM 2
PA2022/0323**

**DWELLING-SINGLE WITH A REDUCED SETBACK TO THE SIDE BOUNDARY AS REQUIRED BY DP18/0089
SECTION 7985 (107) PANQUEE BOULEVARD, BERIMAH, HUNDRED OF BAGOT**

APPLICANT

MPZ Builders Pty Ltd

DAS tabled:- a response from the submitter to further information provided by the applicant and correspondence from the Lovette Olusioji (landowner).

Applicants: - Peter Zaroufis and Manuel Zaroufis (MPZ Builders) attended.

Landowner:- Gbenga Olusoji attended

Submitter: Shan Summers attended.

**RESOLVED
67/22**

That, pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Section 7985 (107) Panquee Boulevard, Berrimah, Hundred of Bagot for the purpose of dwelling-single with a reduced setback to the side boundary as required by DP18/0089, subject to the following conditions:

GENERAL CONDITIONS

1. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
2. All works approved by the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics in its letter dated 9 August 2022 are to be completed to the requirements of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics to the satisfaction of the consent authority.

NOTES

1. Should any changes be required to the approved design dated 9 August 2022, the proposed is required to seek approval from the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics.
2. This development permit is not an approval to undertake building work. You are advised to contact a Northern Territory registered building certifier to seek a building permit approvals as required by the Northern Territory *Building Act 1993*.

REASONS FOR THE DECISION

1. Pursuant to section 51(1)(a) of the *Planning Act 1999*, the consent authority must take into consideration the planning scheme that applies to the land to which the application relates.

The Northern Territory Planning Scheme 2020 (NTPS 2020) applies to the land and the proposed development requires consent under Clause 1.8 (When development consent is required). It is identified as *Merit Assessable* under Clause 1.8(1)(b)(ii)(2); therefore, Clause 5.2.1 (General Height Control), 5.2.4 (Vehicle Parking), Clause 5.2.6 (Landscaping), Clause 5.4.1 (Residential Density Limitations), Clause 5.4.2 (Residential Height Limitations) and Clause 5.4.6 (Private Open Space), needs to be considered.

These clauses have been considered, and it is found that the proposal complies with the relevant requirements of the NTPS 2020. The Authority notes that generally, the setback of a dwelling-single should comply with Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) under the NTPS2020; however, in this instance, the setback plan endorsed through DP18/0089 is considered as the plan imposes specific setbacks for dwelling-single.

The proposal has been found not to be in accordance with the setback plan endorsed under DP18/0089 because the development proposes a side setback of 0.8m where 0.9m required.

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NT Planning Scheme 2020, the consent authority may consent to a proposed development which is not in accordance with a requirement set out in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:
 - (a) The purpose and administration clauses of the requirement; and
 - (b) The considerations listed under Clause 1.10(3) or 1.10(4).

Generally, the setback of a dwelling-single are assessed against Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) under the NTPS2020 provided below:

Purpose

Ensure that residential buildings and ancillary structures are located in a manner that:

- (a) is compatible with the streetscape and surrounding development including residential buildings on the same site;
- (b) minimises adverse effects of building massing when viewed from adjoining land and the street;
- (c) avoids undue overlooking of adjoining properties; and
- (d) facilitates breeze penetration through and between buildings.

Administration

3. the consent authority may consent to a development that is not in accordance with sub-clauses 6-8 only if it is satisfied that the reduced setback is consistent with the purpose of this clause and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.
4. if a building setback in schedule 9 does not establish a specific setback to a nominated boundary, residential buildings and ancillary structures are to be setback from that boundary in accordance with sub-clause 6(a) or clause 5.4.3.3 as appropriate (underline emphasis added).

The Authority notes that the setback plan endorsed under DP18/0089 is not listed in Schedule 9 of the NTPS 2020. To assess the impacts and determine whether the proposed variation is appropriate, the report prepared by the Development Assessment Services has considered the purpose and administration of Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures). The Authority is satisfied with this approach as the setbacks established for the lot under Development Permit DP18/0089 were also assessed against the purpose of Clause 5.4.3.

Having regard to the purpose of Clause 5.4.3 of the NTPS 2020, the garage avoids undue overlooking of adjoining properties as it is a non-habitable structure and has no openings along the southern side of the structure. Furthermore, the non-compliant setback to the garage along the western side boundary only exists for 6m of the entire 30m western boundary, which is approximately 20% of the boundary length. The remaining portion of the west boundary meets the minimum requirement of 1.5m, therefore the effects of building massing from adjoining lots will likely be minimal. Also, the non-compliance garage structure is partly obscured by the 1.8m high colour bond neighbour fencing, and no openings are proposed to the garage wall facing the side boundary.

At the hearing, Manuel Zaroufis from MPZ Builders (applicant) gave an overview of the proposed development and spoke about the purpose of the application. Mr Zaroufis submits that the error is the result of a drafting error on the architectural plans, and as a result, the site was 'set out' incorrectly. Construction on the dwelling was almost completed before the builder discovered the issue; therefore, the

application is seeking retrospective approval. Mr Zaroufis stressed that the 'Covenant approval' has been obtained from the developer for the reduced setback.

The Authority carefully considered the circumstances announced by the builder. The Authority determined that the setback variation is minor and unlikely to impact the streetscape and surrounding development. Whilst the proposal has a reduced side setback, it meets the purpose of Zone LMR (Low Medium Density). Furthermore, it minimises the adverse effects of building massing, avoiding undue overlooking and any impact on breeze penetration.

The considerations listed under Clause 1.10(3) or 1.10(4) do not apply to this application because the application became *Merit Assessable* under Clause 1.8(1)(b)(ii)(2), and under Clause 1.10(2), the consent authority only must consider the requirements in Part 5 that are not complied with for such applications.

5. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent must take into consideration any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application.

The application was referred to the owners of the affected adjoining Lot 7986 for a period of two weeks. One public submission were received under section 49(1) of the *Planning Act 1999*.

The formal submission from the affected neighbour, Mr Summers, raised concerns in relation to the impact of property value and future saleability, as well as concerns in relation to the reduction in fire separation between properties. Mr Summers also raised concerns that Northcrest building setbacks have been reduced from what's normally required by the NTPS 2020, and to request a further variation seems unreasonable. In addition, Mr Summers indicated that the actual boundary setback is 0.75m and not 0.8m, as stated in the application.

At the meeting, Mr Summers addressed his concerns as stated above and added concerns relating to his safety, particularly from the encroachment of the solar panel inverter and power switchboard. Mr Summers provided further information to his formal submission, including photos of the measurement from building to fence and distance between buildings tabled at the meeting.

The Authority noted the submitters further concerns and confirmed with the applicant that the correct setback being sought is 0.8m and not 0.75m as suggested by the submitter. The Authority clarified with the applicant the possibility of moving the solar panel inverter to another building wall to reduce any further impact from the reduced setback. The applicant advised that considering it is already installed; it could cause an unwanted financial burden to the future landowner. The Authority noted the applicant's response and noted that the safety

implications of having the solar panel inverter on the affected building wall will be covered through other processes, such as building approval.

The Authority acknowledged the very strongly worded and deeply held concerns of the submitter, who took the time to make detailed written submissions and appear at the hearing. However, the Authority is left to consider the proposal in the context of its current zoning and compliance with the NT Planning Scheme requirements. The Authority notes that while the proposal results in reduced side setback, it meets the purpose of Zone LMR as discussed previously in reason 1 (above). A note has been included on the permit to seek separate approval and comply with the requirements of the *Building Act 1993*.

6. Pursuant to section 51(1)(j) of the *Planning Act 1999*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development.

The land has been identified and developed for low-medium density residential purposes and is therefore considered capable of supporting the use. Comments from service authorities do not identify any land capability concerns.

7. Pursuant to section 51(1)(n) of the *Planning Act 1999*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated

The land is zoned appropriately for the development, with a dwelling-single and ancillary structures ordinarily permitted in the zone. The design and nature of the development are considered unlikely to have a significant effect on the existing and future amenity of the locality. Despite the variation sought, the proposed development is consistent with the purpose of Zone LMR. It is considered compatible with the residential amenity and character of the surrounding development. Provided the development proceeds in accordance with the conditions included on the permit, the proposed development is unlikely to have amenity impacts on the surrounding area.

FOR: 5

AGAINST:0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

**ITEM 3
PA2022/0268
APPLICANT**

**SUBDIVISION TO CREATE TWO LOTS
LOT 4677 (33) GRAHAM STREET, STUART PARK, TOWN OF DARWIN
Earl James and Associates**

Applicant: - Kevin Dodd (Earl James and Associates) attended.

Mr Dodd tabled:-

- a submission from the landowners as they are currently overseas and unable to attend the meeting; and
- a submission from the applicant in response to issues raised in the DAS report.

**RESOLVED
68/22**

That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse to consent to the application to develop Lot 4677 (33) Graham Street, Stuart Park, Town of Darwin for the purpose of subdivision to create two lots, for the following reasons.

REASONS FOR THE DECISION

1. Pursuant to section 51(1)(a) of the *Planning Act 1999*, the consent authority must take into consideration the planning scheme that applies to the land to which the application relates.

The NT Planning Scheme 2020 (NTPS 2020) applies to the land and subdivision to create two lots requires consent under Clause 1.8 (When development consent is required). It is identified as *Impact Assessable* under Clause 1.8(1)(c)(ii) therefore the strategic framework (Part 2 of the Scheme, including the Darwin Inner Suburbs Area Plan 2016), zone purpose and outcomes of Clause 4.2 (Zone LR – Low Density Residential) and Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR), 6.2.3 (Site Characteristics in Zones LR, LMR, MR and HR) and 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR), need to be considered.

These clauses have been considered and it is found that the proposal complies with the relevant requirements of the NTPS 2020 except for sub-clause 8 of Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR) as the proposal includes a battle-axe lot where the requirement is for no battle-axe lots. Furthermore, the proposed battle-axe arrangements also conflict with the zone purpose and outcomes of Zone LR – Low Density Residential and the Planning Principles of the Darwin Inner Suburb Area Plan (DISAP), as discussed below.

Part - 2: Darwin Inner Suburban Area Plan (DISAP)

The Darwin Inner Suburbs Area Plan 2016 (DISAP) provides a framework to guide progressive growth and development within the Inner Suburbs of Darwin. The Residential Land Use Plan identifies the subject land as residential-low density. Furthermore, Clause 3.1 provides the Planning Principles, including objectives and acceptable responses, for residential areas as below:

- *Limit the impact of new dwelling-single development on the established neighbourhood character; and*
- *Limited change in build form and neighbourhood character.*

While the DISAP does not provide specific guidance on subdivision within established residential areas, consideration is to be given regarding the future development of land. The Authority notes that the proposed subdivision

would likely impact on the above objectives as it will enable each lot to be developed in accordance with the minimum development requirements within Zone LR. The Authority considered that the configuration of proposed lots and dwelling-single subsequently on these lots would likely need to take advantage of the minimum setbacks. Whilst compliant, such development may not be sympathetic to neighbours and the character of surrounding development.

The Authority notes that the existing mix of lot sizes in Zone LR (Low Density Residential) includes lots exceeding the minimum size for the zone. These larger lots are unique, forming part of the character and amenity of those locations. The larger lots provide the opportunity for generous setbacks, consistent with the typical built form in the area, and sustainable building design through maximising opportunities for passive cooling through breeze penetration, tree planting for shade, and orientation to reduce solar heat gain.

Part 4: Clause 4.2 - Zone LR - Low Density Residential

The Authority notes the purpose of Zone LR is to *provide predominantly for low rise urban residential development comprising individual houses and uses compatible with residential amenity, in locations where full reticulated services are available*. The relevant Zone LR outcomes include:

- *Dwellings-single and associated dwellings-independent predominantly two storeys or less, on individual lots on a range of lot sizes that respond to changing community needs.*
- *Dwellings and outbuildings are set back in a manner sympathetic to neighbours, the streetscape and scale and character of surrounding development.*
- *Building design, site layout and landscaping provide a sympathetic interface to the adjoining public spaces and between neighbours, provides privacy and attractive outdoor spaces.*

The Authority notes that future permitted uses that may occur in Zone LR are Caravan Accommodation, Dwelling-Community Residence, Dwelling-Independent, Dwelling-Single and Home Based Business.

While the proposal will enable each lot to be developed in accordance with the minimum development requirements within Zone LR, the configuration of proposed Lot A will not enable dwellings and outbuildings to be setback in a sympathetic manner with respect to the neighbours and character of surrounding development.

The Authority notes that the existing battle-axe lot at 27A Graham Street provides an example of what could occur on this site. The lot appears to be developed with two structures on the site where there is limited setback distance between the structures, and it is noted that 27A Graham Street has an area of 1030m², whereas proposed Lot A is only 802m².

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NTPS 2020, the consent authority may consent to a proposed development which is not in accordance with a requirement set out

in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:

- (a) The purpose and administration clauses of the requirement; and
- (b) The considerations listed under Clause 1.10(3) or 1.10(4).

The assessment has found that the proposal generally complies with the relevant Part 6 (Subdivision and Consolidation) requirements of the NTPS 2020, except for sub-clause 8 of Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR) as the proposal includes a battle-axe lot where the requirement is for no battle-axe lots.

The relevant Administration of the clause is:

The consent authority may consent to a subdivision that is not in accordance with sub-clauses 5-12, only if it is satisfied the subdivision is consistent with the purpose of this clause and the zone purpose and outcomes.

The matters related to the zone purpose and outcomes is discussed previously in reason 1 (above). The relevant purpose of the clause is:

Ensure that subdivision of land for urban residential purposes creates lots of a size, configuration and orientation suitable for residential development at a density envisaged by the zone.

The Authority notes that the requirements in Clause 6.2.1 are minimum requirements, not maximums. A departure from those requirements requires the exercise of a discretion by the Authority. If an application does not meet the requirements set out in Parts 3, 5 or 6, the Authority is given a discretion by sub-clause 5 Clause 1.10 of the NTPS to consent to a variation to those requirements. That discretion can only be exercised if the Authority is satisfied that the variation is appropriate having regard to:

- (a) the purpose and administration clauses of the requirement; and
- (b) the considerations listed under Clause 1.10(3) or 1.10(4).

The requirement that the Authority be satisfied is the threshold for the exercise of the Authority's discretion. It informs the Authority that an application could be approved. Having decided that there is power to vary a development requirement, the Authority must determine whether it is appropriate to exercise its discretion to do so.

Mr Kevin Dodd (applicant) spoke to the application on behalf of the land owners. Mr Dodd noted the land owner's submission and spoke to the existing on-site arrangement. Mr Dodd spoke to his tabled submission, responding to issues raised in the Development Assessment Services (DAS) report. Mr Dodd commented that the landowners do not anticipate an impact on the amenity of the adjacent neighbours as they are looking to formalise a functional arrangement that has existed since 2016 and there is landscaping on the site which provides screening. Mr Dodd noted that the land owners have spoken to the neighbour at 31 Graham Street regarding the proposal.

Mr Dodd commented on details in the DAS report including that the building envelope will comply with the NTPS 2020 setback requirements, no public submissions were received for the proposal, the existing battle-axe lot in

Stuart Park contributes to the character of the neighbourhood and the proposal is not out of character. Mr Dodd referred to the Darwin Town Plan 1990 requirements for residential subdivision.

Mr Dodd noted that lot sizes in Stuart Park range in size and the site is in excess of 1600m², where the proposed subdivision results in lots over 800m² that can provide opportunity for setbacks and building design. Mr Dodd noted that the battle-axe lot is consistent with the purpose of Clause 6.2.1 as it is already in place with the driveway and will not impact on the amenity of neighbours due to the site being heavily vegetated.

Mr Dodd noted that the land owners of the lot are aware of the cost of servicing and noted that no objections were raised by service authorities or the public.

Mr Dodd commented that the subdivision allows for an underutilised land resource to be utilised in a central part of Darwin, the subdivision can work in the context of the Stuart Park area and is not out of character as there is an existing battle-axe lot south of the site.

The Authority has considered all comments and carefully considered the applicant's response to the matters raised. The Authority is not persuaded to exercise its discretion to approve a variation because the proposed subdivision does not satisfy the purpose of Clause 6.2.1 as it results in an unfavourable lot size and configuration.

Table A to Clause 6.2.1 outlines the lot size and configuration in residential subdivisions and lists that the minimum lot size required is 800m² in Zone LR (other than greenfield areas identified for compact urban growth in the strategic framework). The Authority notes that the proposed battle-axe driveway (Lot A) is about 200m², equating to the site's useable area measuring approximately 600m². The Authority considers that its layout would likely result in a limited separation between future dwellings on the site.

The Authority further notes that subdividing the lot would result in the existing dwelling-independent (at Lot A) becoming a dwelling-single. The dwelling-independent and dwelling-single arrangement that currently exists requires that services are shared. However, subdividing the lot would mean separate services such as water, sewerage, power and stormwater drainage would be required.

In addition, there are a number of future permitted uses that could occur on each site without consent including a dwelling-single, dwelling-independent, outbuilding (shed, etc.). While the proposal will enable each lot to be developed in accordance with the minimum development requirements within Zone LR, the Authority notes that the configuration of proposed Lot A will not enable dwellings and outbuildings to be setback in a sympathetic manner with respect to the neighbours and character of surrounding development.

3. Pursuant to section 51(1)(n) of the *Planning Act 1999*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated.

The NTPS 2020 defines amenity in relation to a locality or building, as any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable.

The Authority notes that the potential loss of amenity will largely be determined by the future development of the land, it is considered that where the future development is designed in accordance with Zone LR, the future amenity of the area will negatively impact on future residents and neighbours.

The Authority notes that the impact on amenity of surrounding lots is more apparent in the urban context as the minimum lot sizes and setback requirements are less than in rural areas, as such occupants are more likely to be affected by privacy, noise and building setbacks, therefore battle-axe lots are not a favourable outcome.

The neighbouring property to the south would be faced with the potential for four dwellings (two dwellings-single and two dwellings-independent) abutting the common side boundaries. Each lot will be capable of being developed with a dwelling-single two storeys in height, dwelling-independent and outbuilding (e.g. shed), where each structure can be 1.5m from the side boundaries. A home-based business is also a permitted use in the zone that may result in increased activity to the site.

The proposed battle-axe driveway has the potential to generate increased noise for residents at proposed Lot B and 35 Graham St located northeast of the site as a result of increased vehicle movements along the driveway.

The proposed lot configuration of proposed Lot A provides little frontage to Graham Street resulting in increased barriers for future occupants of proposed Lot A for waste bins, mail collection, deliveries, visitors, etc.

Furthermore, the precedent this subdivision would set could threaten the particular amenity enjoyed by all residents of the area and other old Darwin suburbs in which similar large lots exist, as it would likely create expectations from land owners that lots of a similar size would also be suitable for similar applications.

FOR: 4

AGAINST: 1

ABSTAIN: 0

ACTION:

Notice of Refusal

NOTE: Member Mick Palmer, supported the development application and considers that future development on the proposed battle-axe lot can provide adequate setbacks between buildings and to the neighbouring properties.

RATIFIED AS A RECORD OF ATTENDANCE AND DETERMINATIONS MADE AT THE MEETING

SUZANNE PHILIP
Chair

27 October 2022