



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 402 – MONDAY 5 DECEMBER 2022

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

MEMBERS PRESENT: Suzanne Philip (Chair), Marion Guppy, Peter Pangquee and Mick Palmer (not present for item 1)

APOLOGIES: Mark Blackburn

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary) and Ann-Marie Reynolds, Emily Hardy and Monica Pham (items 1 & 2 only), Amit Magotra (items 3 & 4 only) (Development Assessment Services)

COUNCIL REPRESENTATIVE: Conneil Brown and Emma Struys (Item 2 only)

Meeting opened at 10.15 am and closed at 2.55 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

PA2022/0287 RECONSIDERATION: ROOMING ACCOMMODATION WITH 72 ROOMS (INCLUDING 1 STAFF ACCOMMODATION ROOM) IN A NINE STOREY BUILDING WITH GROUND LEVEL CAR PARKING

APPLICANT LOT 1380 (7) SHEPHERD STREET, DARWIN CITY, TOWN OF DARWIN
Peter McMillan

Pursuant to section 97 of the *Planning Act 1999*, Mick Palmer, Community member of the Darwin Division of the Development Consent Authority disclosed an interest and was not present during, contributed to or took part in the deliberation or decision of the Division in relation to Item 1.

Applicant: Peter McMillan attended.

Submitters in attendance: John Blockey, Tony O'Neill and Peter Clee.

RESOLVED
92/22

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 1380 (7) Shepherd St, Darwin City, Town of Darwin for the purpose of rooming accommodation with 72 rooms (including 1 staff accommodation room) in a nine storey building with ground level car parking to require the applicant to provide the following additional information that the Authority considers necessary to enable the proper consideration of the application:

- further information to demonstrate how the use will be limited to students and associated academics;
- amended plans showing additional car parking spaces and a drop-off zone; and
- details of proposed share car arrangements.

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 applies to the land and rooming accommodation with 72 rooms (including 1 staff accommodation room) in a nine storey building with ground level car parking requires consent under Clause 1.8 (When development consent is required). It is identified as *Merit Assessable* under Clause 4.10 Zone CB (Central Business), therefore Clauses 5.2.3 (Buildings in Central Darwin), 5.2.4 (Vehicle Parking), 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC), 5.4.7 (Communal Open Space) and 5.4.8 (Building Design for Dwelling-Group, Dwelling-Multiple, Rooming Accommodation and Residential Care Facility), need

to be considered.

These clauses have been considered and it is found that the proposal complies with the relevant requirements of the Planning Scheme except for Clauses 5.2.3.2 (Volumetric Control in Central Darwin), 5.2.3.3 (Urban Design Requirements in Central Darwin) and 5.2.4.4 (Parking Layout).

Further information is required for the reasons given below.

The application was previously considered by the Authority on 07 October 2022, where consideration was deferred to allow the applicant to provide further information:

- amended plans showing more car parking spaces akin to hotel/motel use;
- amended plans showing a drop-off zone within the site; and
- further information and/or amended plans addressing concerns raised by the City of Darwin regarding waste management, including waste collection and compliance with the City of Darwin's Waste Management Guidelines.

On 07 November 2022, the applicant provided a response to the deferral which outlined why additional car parking was not provided. The deferral response also indicated that a drop-off point can be provided from the Woods Street driveway or from the access on Shepherd Street, however amended plans were not provided clarifying the proposed location of the drop-off point. In response to waste management the deferral response indicates that waste will be compacted and sorted on site and that the on-site manager will be responsible for disposing of the waste.

At the hearing Mr Peter McMillan (applicant) spoke to the application and noted the demand for affordable accommodation in the Darwin Central Business District (CBD) and provided examples including the Charles Darwin University (CDU) campus is likely to attract more international students and projected City of Darwin growth from census data. Mr McMillan noted the international training agreements, shortage of key workers in the CBD and shortage of residential supply in the CBD as another factor for demand.

Mr McMillan provided his opinion of the background behind the rooming accommodation definition in the NTPS 2020 and referenced the Casuarina Unilodge Development which was an undefined use under the previous Scheme.

Mr McMillan commended the inclusion of the rooming accommodation definition in the NTPS 2020 and noted that the proposal for rooming accommodation is similar to co-living models in other jurisdictions and is designed for students.

The Authority noted that rooming accommodation as defined in the NTPS 2020 differs to the use of that term in other jurisdictions. The Authority considered the background information provided by the applicant and clarified that neither the demand for affordable accommodation nor the funding of such proposals are factors that inform the Authority's decision making as they are not relevant elements of the NTPS 2020.

The Authority noted that the key issue in determining the application is its classification within the NTPS2020 definitions. That classification determines the applicable clauses including matters such as the number of car parking spaces to be provided. This is particularly relevant given the concerns of the public submitters relating to the impact on amenity of car parking and traffic congestion.

The NTPS 2020 defines **hotel/motel** to mean *premises primarily used for the short term accommodation of travellers. The use can include where ancillary, meeting and function rooms, food premises-restaurant, a bar-small, and recreation facilities, but does not include a bar public, club, or nightclub entertainment venue.* The Authority noted that the definition refers to "travellers" not tourists. While the NTPS 2020 does not include a definition for short term accommodation, such accommodation can potentially include occupancy of 3 or even 6 months in various contexts. Hotels commonly include such facilities as guest laundries, communal eating spaces etc.

On the other hand, the definition of rooming accommodation means - *premises such as hostels, guest houses, student and worker accommodation used for the accommodation of unrelated persons which may include:*

- (a) the provision of food or other services and facilities, and/or*
 - (b) on-site management or staff and associated accommodation, and where each guest/resident:*
 - (c) has a right to occupy one or more rooms; and*
 - (d) does not have a right to occupy the whole of the premises in which the rooms are situated; and*
 - (e) may have separate facilities for private use or share communal facilities or communal space with other residents*
- The use can include where ancillary, bar-small, food premises-café/take away, office, and shop.*

There is a clear overlap in these definitions which was the basis of the previous deferral of this application, requiring, inter alia, amended plans showing more car parking spaces akin to hotel/motel use. As the applicant is not willing to increase the amount of onsite car parking, the question of which is the applicable definition must be determined. One of the key points of difference is found in the introductory words - premises such as hostels, guest houses, student and worker accommodation. Rooming Accommodation is also dealt with in Clause 5.4.8 Building Design for Dwelling-group, Dwelling-multiple, Rooming Accommodation and Residential Care Facility which may give some

guide as to the type of accommodation that would be covered by the term.

A hostel is a budget-oriented overnight lodging place, with dormitory accommodation and shared facilities. A guest house is a private house offering accommodation to paying guests. Neither amounts to the type of accommodation on offer in this application. The accommodation, as described in the application, is open to the general public, not limited to students or specified group of workers as would be expected for “workers” accommodation. All hotels will have visiting workers stay from time to time yet would not be considered “workers accommodation”.

For the purposes of this application, the Authority notes the key difference in the definitions relates to the categories of people entitled to use the accommodation.

Mr McMillan clarified their intent is for students, including post-graduate students, dance students, hospitality students and academics and they have no intention to provide short term accommodation to workers or travellers.

The Authority noted that the original application was not limited and queried whether the proponent was now proposing to restrict the intended occupants to students as this provides a point of difference between the rooming accommodation and hotel/motel definitions. Mr McMillan confirmed that he did not have any issues with limiting the occupants of the development to students and academics.

The Authority noted the purpose of Clause 5.4.8 (Building Design for Dwelling-group, Dwelling-multiple, Rooming Accommodation and Residential Care Facility) is to promote site-responsive designs for dwelling-group, dwelling-multiple, rooming accommodation and residential care facility, which provide a pleasant living environment for the occupants and a sympathetic interface with adjoining lots, to minimise unreasonable impacts on the privacy and amenity of surrounding residents. As such the proposal would need to ensure that the impact on amenity to surrounding residents is minimised.

Mr McMillan outlined measures that will be taken to ensure that any associated vehicles do not park on the street and indicated this would be managed through the occupancy agreements issued. The Authority noted that matters of enforcement within a public street are beyond the scope of what the Authority can consider and unenforceable by it.

Mr McMillan advised that although additional car parking has not been provided, the proposed development will include three shared car parking spaces, five car parking spaces, one manager’s car parking space and 48 secure bicycle car parking spaces. The Authority notes that detail of the proposed shared car parking spaces is not provided on the plans and require further details be provided on the arrangement and layout

of the shared car parking.

The Authority also notes that the original proposal did not specify a particular user i.e. students and included a range of people including students, workers and the like. The Authority queried the applicant whether it would be acceptable to include details on the permit limiting the development to students and listing the maximum number of occupants as this directly relates to the number of car parking spaces required. Mr McMillan confirmed that he did not have any issues with this.

The Authority queried the applicant regarding the occupancy agreements proposed to be for a minimum of one month and on average up to three months, while students undertaking their studies would likely require an occupancy agreement for longer periods. Mr McMillan clarified that the intent of the proposed rooming accommodation is to offer accommodation to students as they transition into finding more long term accommodation. The Authority queried whether occupants could extend their stay by renewing their occupancy agreement. Mr McMillan further advised that the proposed operation of the rooming accommodation does not allow occupants to book their stay online. They will need to call, tour and be interviewed to see if they are a suitable occupant.

The Authority notes the applicant's comments regarding a caveat however, the matters proposed to be covered by a caveat do not amount to caveatable interests. As such they would be un-registerable or enforceable and are beyond the scope of what the Authority can consider.

The applicant's deferral response was circulated to the public submitters for comment and four further submissions were received. In addition, Development Assessment Services (DAS) received four new submissions in support of the development. The Authority also heard from submitters present at the hearing.

Mr Blockey, reiterated the concerns raised in his written submissions with the car parking requirements required for rooming accommodation in the NTPS 2020. Mr Blockey opined that students are likely to have cars and therefore would need somewhere to park, noting that even if only 20% of residents had cars there is not enough car parking spaces available. Mr Blockey indicated that he had no issues with the variation to the volumetric controls but that he would like more car parking spaces to be provided as he resides in the area and believes it would result in increased amenity.

Mr O'Neill agreed with the proposal being limited to student accommodation, noting the initial application referenced workers. Mr O'Neill accepted the fact that students would require less car parking space but noted that eight car parking spaces is still too few and that the leasing of car parking space in the Dragon Fly Car Park would be

ineffective and result in occupants parking on the street anyway due to its location. Mr O'Neill advised that he would like this development to go ahead but thinks the development provides a very low number of car parks. He is not concerned over rubbish removal proposed.

The Authority queried the applicant as to whether more car parking spaces can be provided. Mr McMillan advised that it is difficult to provide affordable accommodation and in the case of Unilodge they received money from the federal government to help fund the development. Mr McMillan noted that the proposal provides share cars, however cannot add any additional parking. No detail in relation to the share car arrangement was provided, although the Authority notes that such share car spaces will further reduce the amount of parking generally available to residents.

Mr Clee spoke to his submission and noted his support for the development and thinks it's important to provide this type of accommodation.

The Authority has taken all comments into account and carefully considered the submitters' concerns and the applicant's response to the matters raised.

In order to determine this application as "rooming accommodation", the Authority requires further information to demonstrate how the use will be limited to students and associated academics. Further, if the Authority is satisfied that this development can be properly characterised as "rooming accommodation", due to the location and nature of the proposed development and taking into account a number of concerns raised by submitters, the Authority, pursuant to Clause 1.10.6, is able to require a higher standard than is set out in a requirement in relation to car parking. Accordingly, the Authority requests details of any share car arrangement and amended plans reorganising the site to provide several more car parking spaces.

The Authority further considers that the nature of the development and its siting requires a drop-off zone accessible at all times to accommodate guests arriving by bus or dropped-off by taxis and requests amended plans in that regard.

FOR: 3	AGAINST: 0	ABSTAIN: 0
ACTION:	Notice of Deferral	

ITEM 2

PA2022/0392 **MIXED USE COMMERCIAL DEVELOPMENT IN A 10 STOREY BUILDING WITH TWO LEVELS OF BASEMENT PARKING LOT 1519 (66) SMITH STREET & LOTS 1521 & 1522 (4 & 6) SEARCY STREET, DARWIN CITY, TOWN OF DARWIN**

APPLICANT Cunnington Rosse Town Planning and Consulting

Applicant: Brad Cunnington and Julian Gueho (Cunnington Rosse Town Planning and Consulting) attended.

Mr Cunnington tabled perspectives of the proposed development.

RESOLVED
93/22

That, the Development Consent Authority, reduce the car parking requirements pursuant to Clause 5.2.4.3 (Reduction in Parking Requirements within Zone CB in Darwin), and vary the requirements of Clause 5.2.3.2 (Volumetric Control in Central Darwin), Clause 5.2.4.4 (Parking Layout), Clause 5.2.5 (Loading Bays), Clause 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T) of the Northern Territory Planning Scheme 2020 and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lots 1519 (66) Smith Street and 1521 & 1522 (4-6) Searcy Street Darwin City for the purpose of mixed use commercial development in a 10 storey building with two levels of basement parking, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to 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 be generally in accordance with the plans submitted with the application but modified to show:
 - (a) signage and design details that prohibits cars from parking at the charging stations provided on ground floor;
 - (b) Compliance with Clause 5.2.4.4(j) can be achieved, without reducing the number of car parks provided;
 - (c) Detailed schedule of materials and finishes of the external façade
 - (d) Annotation for bicycle parking and locker areas to be designed to Australian Standard AS2890.3 – Bicycle Parking.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), approval is required for the provision of awnings to the street frontages to the requirements of the City of Darwin and Power and Water Corporation, to the satisfaction of the consent authority. The awnings shall not reduce the achievement of active frontages below 75% of the total length of the site boundary to the street.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), approval is required by the City of Darwin for any element of the building (separate to awnings) that is designed to be constructed or installed over the City of Darwin road reserve, to the satisfaction of the consent authority.

4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the crossover and driveway to the site from the City of Darwin, to the satisfaction of the consent authority.
5. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a comprehensive Traffic Impact Assessment report is to be prepared by a suitably qualified traffic engineer in accordance with the Austroads Document Guide to Traffic Management Part 12: Traffic Impacts of Developments, in the report structure provided as Appendix C of that document, to the requirement of the City of Darwin, to the satisfaction of the consent authority. The report should include swept paths for waste collection vehicles entering and exiting the site. The report should identify any necessary upgrades to the surrounding street network as a result of the implications of the development. The developer will be required to institute all required upgrade measures resulting from the traffic assessment at no cost to City of Darwin.
6. Prior to the endorsement of plans and prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Darwin 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. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council's system.
7. 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.
8. Prior to the commencement of works (including site preparation), a waste management plan addressing the City of Darwin's Waste Management Guidelines must be prepared, to the requirements of the City of Darwin, to the satisfaction of the consent authority.
9. Prior to the commencement of works (including site preparation), the applicant is to prepare a Site Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP should specifically address the impact to Council owned public spaces and include a waste management plan for disposal of waste to Shoal Bay, traffic control for affected City of Darwin roads, haulage routes, storm water drainage & sediment control, use of City of Darwin land, and how this land will be managed during the construction phase.

GENERAL CONDITIONS

10. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.

11. Lots 1519, 1521 and 1522 Town of Darwin are required to be consolidated and a new title issued for the consolidated lot. Also please refer to Note 13 for advice related to the National Construction Code (NCC).
12. All works recommended by the traffic impact assessment are to be completed to the requirements of the City of Darwin, to the satisfaction of the consent authority.
13. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage, electricity and telecommunication networks to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

Please refer to notations 2 and 3 for further information.

14. 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.
15. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or site is to be created.
16. If Council approval is obtained for in association with Condition 2, other encroachments into the City of Darwin Road Reserve building elements over City of Darwin road reserve, the applicant will be required to enter into appropriate agreements with the City of Darwin and the design specifications are to be to the requirements of City of Darwin to the satisfaction of the consent authority.
17. All works recommended by the traffic impact assessment are to be completed to the requirements of the City of Darwin, to the satisfaction of the consent authority.
18. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin, to the satisfaction of the consent authority.
19. Upon completion of any works within or impacting upon the Searcy Street road reserve, the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin
20. Before the use commences the owner must, in accordance with Part 6 of the *Planning Act 1999*, pay a monetary contribution to the City of Darwin for the upgrade of local infrastructure, in accordance with its Development Contribution Plan for Stormwater Drainage Works – Contributions Area Zone D.

21. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of City of Darwin, to the satisfaction of the consent authority.
22. The owner shall:
 - (a) remove disused vehicle and/ or pedestrian crossovers;
 - (b) provide footpaths/ cycleways;
 - (c) collect stormwater and discharge it to the drainage network; and
 - (d) undertake reinstatement works;all to the technical requirements of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
23. Before the use or occupation of the development starts, the areas set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - (a) constructed;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather-seal coat;
 - (d) drained;
 - (e) line marked to indicate each car space and all access lanes; and
 - (f) clearly marked to show the direction of traffic along access lanes and drivewaysto the satisfaction of the consent authority.
Car parking spaces, access lanes and driveways must be kept available for these purposes at all times.
24. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street, in accordance with the requirements of City of Darwin, to the satisfaction of the consent authority.
25. Storage for waste disposal bins is to be provided to the requirements of City of Darwin to the satisfaction of the consent authority.
26. 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 and from view of neighbouring or nearby developments (or developments reasonably anticipated), 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. The use of angled louvered slats for screening purposes is acceptable, however the slat screening must be designed with a panel to gap ratio, such that the condenser units are not readily visible from any angle.
27. All roof top plant equipment, equipment relating to the operation of the lift and any other equipment (such as any vents and ducting associated with requirements for stairwell pressurisation or other such ventilation purposes or similar) that will be placed on the rooftop of the development shall be appropriately screened, or designed to soften the visual impact of such

equipment from view from neighbouring or nearby developments (or developments reasonably anticipated).

28. All substation, fire booster and water meter arrangements are to be appropriately screened to soften the visual impact of such infrastructure on the streetscape, to ensure that the infrastructure is sympathetic to and blends in with the design of the building. Details will need to be resolved to the satisfaction of the consent authority in consultation with the Power and Water Corporation, and NT Fire and Emergency Services.
29. Prior to the use/occupation of the development and connection of services (i.e. power and water), the owner of the land must apply for street addressing from the Surveyor-General of the Northern Territory. This will form the legal address and will be required to be placed on the meters within the development in accordance with the allocation. An Occupancy Permit will not be able to be granted until such time as addressing is obtained.”
30. Any security boom, barrier or similar device controlling vehicular access to the premises must be located a minimum of six metres inside the property to allow vehicles to stand clear of the Mott Court pavement and footpath.
31. All balconies are to be internally drained and discharge is to be disposed of at ground level and in a manner consistent with stormwater disposal arrangements for the site to the satisfaction of the consent authority.
32. 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.
33. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building.
34. The loading and unloading of goods from vehicles must only be carried out on the land (within the designated loading bays and must not disrupt the circulation and parking of vehicles on the land).
35. Before the use/occupation 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.
36. 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.

NOTES

1. This development as approved by the Development Consent Authority (DCA) achieves a level of active interface deemed by the authority to provide 75% of the length of the site boundary at ground level as active street frontage. Retaining this level of active frontage is considered by the DCA to be essential

to this development achieving the purpose of Clause 5.2.3.3 (Urban Design Requirements in Central Darwin). Any reduction in the percentage of active street frontage, and may require full consideration by the DCA at a meeting of the authority. Refer to “Design guidance to achieve active frontages and provide for services” for advice to active street frontages in relation to service authority requirements.

Notwithstanding the approved plans, the demonstrated awning in City of Darwin road reserve is subject to Council approval at no cost to Council.

2. 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.
3. 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>
4. Power and Water has essential water and sewer infrastructure within the road reserve adjacent to Lot 1519, 1521 and 1522. The developer is advised to take all necessary precautions including seeking direction from geotechnical experts to ensure the surrounds and foundations of PWC’s assets are not undermined during construction. The developer will be fully liable for any damages or undermining of any PWC assets during construction.
5. The developer must contact Power and Water regarding temporary installation of cranes in the road reserve prior to building construction. The developer must propose structural protection of existing PWC assets affected by cranes and crane foundations, then obtain approval from PWC (and other service providers) prior to tower installation of the cranes.
6. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5346 (surveylandrecords@nt.gov.au).
7. Any floodlighting or security lighting provided on site is to be shielded in a manner to prevent the lighting being noticeable or causing nuisance to Searcy Street Road traffic.

8. Notwithstanding the approved plans, any proposed works (including landscaping and awnings) within the City of Darwin's road reserve is subject to approval and shall meet all requirements to the satisfaction of the City of Darwin, at no cost to Council
9. A "Permit to Work Within a Road Reserve" may be required from City of Darwin before commencement of any work within the road reserve.
10. 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.
11. Notwithstanding the approved plans, the demonstrated awning in the City of Darwin road reserve is subject to Council approval at no cost to Council.
12. 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 as required by the Northern Territory *Building Act 1993* before commencing any demolition or construction works. Due to provisions in the National Construction Code (NCC), the subject lots may need to be consolidated before a building permit can be issued.
13. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 8936 4070 to determine if the proposed works are subject to the Act.
14. 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*.
15. There are statutory obligations under the *Waste Management and Pollution Control Act 1998* (the Act), that require all persons to take all measures that are reasonable and practicable to prevent or minimise pollution or environmental harm and reduce the amount of waste. The proponent is required to comply at all times with the Act, including the General Environmental Duty under Section 12 of the Act. There is also a requirement to obtain an authorisation prior to conducting any of the activities listed in Schedule 2 of the Act. Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority (NT EPA) website: <https://ntepa.nt.gov.au/publications-andadvice/environmental-management>. To help satisfy the General Environmental Duty, the proponent is advised to take notice of the SCHEDULE OF ENVIRONMENTAL CONSIDERATIONS provided by DENR. The WMPC Act, administered by the NT EPA, is separate to and not reduced or affected in any way by other legislation administered by other departments or authorities. The NT EPA may take enforcement action or issue statutory instruments should there be non-compliance with the WMPC Act

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.

Lots 1519, 1521 and 1522 are situated centrally within Darwin CBD and is surrounded by a mix of land uses and building heights. Zone CB (Central Business) is the predominant zone within the wider locality accommodating a range of retail, commercial and high-rise residential and tourist accommodation land uses. Pursuant to sub-clause 1(b)(i) of Clause 1.8 of the NTPS 2020, the proposed mixed commercial use and development (offices, shops, food premises – café/takeaway and food premises – restaurant) is *Merit Assessable*; therefore, the strategic framework (Part 2 of the Scheme, including the Central Darwin Area Plan) for any variation to Part 5, zone purpose and outcomes of Clause 4.10 (Zone CB - Central Business), and Clauses 5.2.3 (Building Heights in Central Darwin), 5.2.4 (Vehicle Parking), 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC), 5.5.1 (Interchangeable Developments in Zones CB and C), 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T), and 5.5.11 (Food Premises).

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

Pursuant to Clause 1.10(3) of the NT Planning Scheme 2020 (NTPS 2020), *"In considering an application for consent for a use or development identified as Merit Assessable the consent authority must take into account all of the following:*

- (a) the relevant requirements, including the purpose of the requirements, as set out in Parts 5 or 6; Northern Territory Planning Scheme 2020 Part 1-6*
- (b) any Overlays and associated requirements in Part 3 that apply to the land;*
- (c) the guidance provided by the relevant zone purpose and outcomes in Part 4 relevant to a variation of requirements in Parts 5 or 6; and*
- (d) if an Area Plan in Part 2 applies to the land, any component relevant to a variation of requirements in Parts 5 or 6."*

The considerations listed under Clause 1.10(3) have been considered and it has been found that the proposal complies with all relevant requirements of the NT Planning Scheme 2020 except Clauses 5.2.3.2 (Volumetric Controls in Central Darwin), Clause 5.2.4.1 (Parking Requirements), Clause 5.2.4.3 (Reduction in Parking Requirements within Zone CB in Darwin), Clause 5.2.5 (Loading Bays) and Clause 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T), as identified and addressed below.

Clause 5.2.3.2 Volumetric Controls in Central Darwin

The purpose of this clause is to “ensure the siting and mass of buildings within Central Darwin promotes: (a) a built form that maximises the potential for view corridors to Darwin Harbour; (b) the penetration of daylight and breeze circulation between buildings; (c) privacy for residents of adjoining properties; and (d) a built form that reasonably anticipates the future development of adjoining sites”. Administratively under sub-clause 2, “the consent authority may consent to a development that is not in accordance with sub-clause 3 only if it is satisfied it is consistent with the purpose of this clause, and it is appropriate to the site having regard to such matters as its location, nature, scale and impact on surrounding amenity”. The DAS’ assessment found that variations are required for the building setback (Levels 5 – 7), maximum building length, the setback of two buildings on site (proposed and existing development) and encroachment (awnings, stairway, landscape zone and materials and finishes).

Sub-clause 3 of Clause 5.2.3.2 states that “development in Central Darwin is to be designed in accordance with the diagram to this clause”. An assessment of the proposed development against the requirements of sub-clause 3 is provided below:

Tier 2 (Tower) floor area non-compliances include Levels 5 – 7: 1,388m² (77% coverage), with a median coverage of 59%. Setback non-compliances for Tier 2 (Tower) include the following:

- North-western primary frontage (Searcy Street): Levels 5-7 and roof top : Zero lot line setback.
- North-eastern boundary: Levels 5-7- 3.2m
- South-eastern boundary: Levels 5-7 - 4.5m
- South-western boundary: Levels 5-7 - 0.59m encroaching over the Lot boundary (noting this is to Lot 1519 which forms part of the application)
- Minimum 2.58m between proposed development and existing building on Lot 1519

In relation to dimension requirements for Tier 2 (Tower), Levels 5 to 7 have a maximum length of 80% - 94.8% of the boundary, noting complying with the requirement of 75%.

It is noted that as part of the assessment of this clause, the definitions of site and building setback under Schedule 2 of the NTPS 2020 are “site means an area of land, whether consisting of one lot or more, which is the subject of an application to the consent authority” and “building setback means the distance from any lot boundary to a building or structure and shall be measured from all boundaries to: Northern Territory Planning Scheme 2020 Schedule 2-10

- the wall of a building or structure;
- the outer surface of the railings of a balcony or verandah;
- the outer surface of any support column of a ground level verandah; and

- *the outer surface of any support column for structures without external walls except that the setback of a shade sail is measured to the outer extremity of the fabric”.*

In relation to part (a), the clause ensures that the siting and mass of buildings promotes a built form that maximises the potential for view corridors to Darwin harbour. Regarding part (d), it can be reasonably anticipated that other CBD lots can be developed according to the volumetric controls, notwithstanding the views that may currently exist over undeveloped CBD lots. The main opportunity for views is from upper levels of buildings, along road corridors. The proposed development is bounded by Searcy Street on one side (noting only access is proposed to Lot 1519 (66) Smith Street), and the setback intrusion is minor in nature and will not impact the potential for view corridors to Darwin harbour.

In relation to parts (b), (c) and (d), the degree of impact to daylight and breeze penetration between the buildings, privacy, and built form of future development is unlikely to be affected as the intrusion of the building to all boundaries is considered minor. The proposed development however does have a proposed encroachment over Lot 1521 to Lot 1519 (66 Smith Street) (see Figure 7 below).

The Authority queried how the encroachment into the lot boundary will be mitigated, such as consolidation noting a general condition for the consolidation of the three (3) lots. Mr Cunningham (the applicant) confirmed the lots would be consolidated and was aware of the requirement, noting this is often a requirement of other service authorities.

Under the clause purpose (d) states siting and mass of buildings should promote *“a built form that reasonably anticipates the future development of adjoining sites”*. Although a variation is required for the setback of two buildings, the potential impact has been assessed as minimal. Neither the existing building nor the proposed development include accommodation, in addition, only a small portion of the existing building on Lot 1519 is impacted on by the new development as illustrated in Figure 5 and 8. The window awnings/screens on the existing building will also minimise any impact, noting that both buildings are for the purpose of offices on the upper levels (non-habitable uses).

Clause 5.2.4.1 (Parking Requirements)

The purpose of this 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”*. Administratively, *“The consent authority may consent to a use or development that is not in accordance with the table to this clause only if it is satisfied the use or development is appropriate to the site having regard to the purpose of this clause and the potential impact on the surrounding road network and the amenity of the locality and adjoining property”*.

For the purposes of assessment, *net floor area in relation to a building, includes all the area between internal surfaces of external walls but does not include:*

- (a) stairs, cleaners cupboards, ablution facilities, lift shafts, escalators or tea rooms where tea rooms are provided as a standard facility in the building;*
- (b) lobbies between lifts facing other lifts servicing the same floor;*
- (c) areas set aside as public space or thoroughfares;*
- (d) areas set aside as plant and lift motor rooms;*
- (e) areas set aside for use of service delivery vehicles; and*
- (f) areas set aside for car parking or access;*

The total car parking required for the proposed development is 175.84 (176) parking spaces. The application proposes 103 car parking spaces, therefore having a shortfall of 73 car parking spaces. Vehicle parking has been assessed in the below section.

Clause 5.2.4.3 (Reduction in Parking Requirements within Zone CB in Darwin)

The purpose of the clause is to “Provide for a use or development with fewer car parking spaces than required by clause 5.2.4.1 (Parking Requirements) within Zone CB in Darwin”.

The clause allows for parking reduction based on four different categories.

Sub-clause 1 allows the Authority to determine that fewer car parking spaces are required for development than those otherwise prescribed by the Scheme. The table to the clause provides a variety of considerations and associated percentages which may be taken into account by the Authority in determining whether to reduce the parking requirement. Four different categories in that table may be applicable in this case. Sub-clause 2 provides two further categories of considerations for the Authority in exercising its discretion, namely, allowing for a reduction of one car parking space for every 3 motorcycle parking spaces (to a maximum of one motorcycle parking space for every 25 (or more) and a further reduction of one car parking space for every 10 excess bicycle parking spaces up to 2% of the number of car parking spaces.

Having regard to sub-clause 1, the Authority notes that DAS's assessment concludes that a 40% (70.34 ~71 spaces) reduction under categories 1(a), 2(c) and 4(a) of the table to Clause 5.2.4.3 can be applied due to the following (reduction applied under each category):

- Category 1(a) - The proposed development is within 200m walking distance of the bus stop (No. 70) located on Cavanagh Street. (15% reduction).
- Category 2(c) - The site is within 400m walking distance of Dragonfly Car Park, which has a combined total of 100 car parking spaces or more (5% reduction).
- Category 4(a) - All parking provided in the development is in the basement (20% reduction).

Having regard to sub-clause 2, the Authority noted DAS' assessment concludes that 10 motorbike parking spaces and 17 excess bicycle parking spaces are provided in the development, which equates to three (3) parking space.

After considering the reductions sought under sub-clauses 1 and 2, DAS calculates the total parking car parking requirement for the development is 103 spaces. DAS concludes that the development provides 103 parking spaces (within two basement levels) taking into account the motorbike/bicycle parking spaces, which equates to three (3) car parking space.

The Authority noted that the reduction of car parking requirements under Clause 5.2.4.3 is at its discretion. It acknowledges the various calculations made by DAS and the Applicant in relation to the percentage reductions under the clause and while it supports a reduction in the car parking requirements it wishes to highlight that Clause 5.2.4.3, while providing a table with various possible reductions and suggested percentages, does not provide further guidance regarding its application, apart from providing that only one reduction per category is permitted. The Applicant and DAS have chosen to apply the percentage reduction in each category to the whole parking requirement. It equally could be assessed so that, once a percentage reduction under a category is applied, the parking requirement is thereby reduced and the percentage reduction applied under the next category is calculated on the parking requirement so reduced. Such a method is presumably within the DCA's discretion, particularly in a case such as this where multiple categories for reduction are being relied upon, and would result in a substantially smaller reduction overall.

The Authority also notes that, in exercising its discretion, it is always open to it under Clause 1.10.6 to impose a condition requiring a higher standard of development than is set out in a requirement of Parts 3, 5 or 6. The determined that 103 parking spaces provided in two basement levels are adequate for the proposed development.

Clause 5.2.4.4 (Parking Layout)

The purpose of the clause is to *"Ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose"*. Administratively, *"The consent authority may consent to a car parking area that is not in accordance with sub-clause 4 if it is satisfied that the non-compliance will not:*

- (a) result in adverse impacts on the local road network or internal functionality of the car parking area; and*
- (b) unreasonably impact on the amenity of the surrounding locality"*.

Sub-clause 4(j) states car parking areas are *"be designed so that parking spaces at the end of and perpendicular to a driveway be 3.5m wide or so that the driveway projects 1m beyond the last parking space"*. It is noted that the car parking layout has been assessed as compliant, other than

the development plans not showing the minimum setback for parking spaces at the end and perpendicular to a driveway for basement level 1 does not comply in one section. The Authority notes that a condition precedent which requires amended plans to show compliance with sub-clause 4(j) is included on the permit.

It is noted that the Traffic Impact Assessment (TIA) by Cirqua dated 17 August 2022 (p.2) states *"In regard to the design of the proposed multi-storey building, the parking spaces have been designed in accordance with the requirements of the NT Planning Scheme (NTPS). In particular, the spaces will be 2.5 m wide and 5.5 m long with a 6.0 m wide aisle"*. A condition precedent and general condition is included to ensure all works recommended in the TIA are to be completed to the requirements of City of Darwin.

Clause 5.2.5 (Loading Bays)

Under Clause 5.2.5, the purpose is to *"provide for the loading and unloading of vehicles associated with the use of land"*. Administratively, *"The consent authority may consent to a use or development that is not in accordance with sub-clauses 2 and 3 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and that the non-compliance will not result in adverse impacts on the local road network nor the number or availability of car parking spaces"*. The proposed development requires 4.376 (5) loadings for the proposed uses with a combined floor area of 8,751m². Only one (1) loading bay has been provided on the ground level (8m by 4m, overall clearance of 7m) and a variation has been sort by the applicant.

The following justification is provided in the statement of effect:

"The proposed development provides a single loading bay on the ground level service area, with a clear loading area of 8 by 4 metres, and vertical clearance of 7 metres. The proposed loading bay will provide a shared loading area for all tenancies, and will sufficiently cater for on-site loading and waste collection requirements (given waste will be managed by a single contractor for the entire building, rather than individually for each tenancy) for the proposed development, without any reliance on street or basement car parking areas. Accordingly, the proposed variation is warranted."

The TIA submitted as part of the proposed development also notes *"The loading bay will accommodate movements associated with typical servicing and deliveries (i.e. 6.4 m small rigid vehicles)"*. The Authority considers a variation appropriate in this instance as the proposal provides areas for the loading and unloading of vehicles in excess of the requirements of the clause and the type of vehicles that will service the site (light vehicles) are unlikely to require larger clearance than what is proposed.

Clause 5.3.7 (End of Trip Facilities)

The purpose of this clause is to ensure that new commercial and high density residential buildings provide sufficient safe, quality and convenient end of trip facilities to enable active travel choices by

residents, visitors, workers and customers for the proposed use of the site.

The application has been assessed as compliant with the requirements of Clause 5.3.7, through information provided in the Statement of Effect, Plans and deferral response. Sub-clause 3 requires that 'all bicycle parking facilities and associated bicycle parking devices should be designed in accordance with Australian Standard AS2890.3 – Bicycle Parking.'

A condition precedent has been included on the development permit requesting an annotation on amended plans that bicycle parking and lockers are designed to Australian Standard AS2890.3 – Bicycle Parking to ensure compliance with Clause 5.3.7 (End of Trip Facilities).

Clause 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T).

The purpose of the clause is to *"Promote site-responsive designs of commercial, civic, community, recreational, tourist and mixed use developments which are attractive and pleasant and contribute to a safe environment"*. Administratively, *"A development application must, in addition to the matters described in sub-clauses 2-16, demonstrate consideration of and the consent authority is to have regard to the Community Safety Design Guide (as amended from time to time) produced by the Department of Lands and Planning"*. The application has been assessed as compliant except in relation to Requirement 15 of the clause which states *"Provide facilities, including public toilets, child minding facilities, parenting rooms and the like where the size of the development warrants such facilities"*.

The above has been raised with the applicant and based on the ground floor tenancies being for commercial purposes, the applicant has clarified that the public toilets and end of trip facilities on the mezzanine level will be accessible to staff. However, it will be at the discretion of the tenancies as to whether patrons will also have access to the public toilets.

It is also recognised by the Authority that the Building Code of Australia has public toilet requirements which would be assessed during the building permit process. Because the application has applied for a number of commercial uses on the ground floor (food premises and shops), it the commercial development will need to comply with the relevant AS standard and assessed at a later date once tenancies and their fit outs have been finalised.

While the development includes public toilets at ground floor, no parenting rooms are shown on the plans. Mr Cunnington clarified that *"Parenting facilities for office space would ordinarily be provided as part of the office level fit-out. The proponent is proposing a "cold-shell" office space subject to the ultimate tenants (not yet known) own fit out"*.

The response provided by the applicant is noted and accepted. The compliance can be verified during the Certificate of Compliance stage for any permit issued for the proposed development.

In relation to the design of the building, it is considered the application generally complies with the design requirements of the clause. Upon further review of the development it appears that there are expanses of blank wall along the north-eastern and south-eastern elevation of the building. Based on its locality and adjoining buildings, it is unlikely to be visible however the authority may wish to raise this with the applicant.

Amended plans were tabled at the DCA meeting which provided revised materials and finishes. A condition precedent has been recommended for inclusion for a detailed schedule of materials and finishes.

3. Pursuant to section 51(e) of the *Planning Act 1999*, the consent authority 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.

One public submissions was received during the exhibition period under Section 49 of the *Planning Act 1999* with respect to the proposal.

The main issue raised in the submission relates to preserving the Banyan tree in Council's road reserve (adjacent to Lot 1519 (66) Smith Street). Concern has been raised Concern that the Banyan tree in Council's road reserve will be damaged or destroyed from construction works of the proposed development has been raised.

The application does not state the removal of the Banyan tree, noting it is not located within the subject sites. The Banyan tree is located within Council's road reserve on the corner of Searcy Street and Smith Street. Although the proposed development is not anticipated to impact on the tree, a condition which requires the applicant to submit a dilapidation report covering all infrastructure, including street trees, is included on the permit as per Council's request.

4. 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 overall height and scale of the development are largely consistent with that anticipated in the Darwin CBD with respect to the capability of the land and the effect on surrounding properties. Comments from the City of Darwin, Power and Water Corporation, Department of Defence and Darwin International Airport have been sought in relation

to the capability of the land, including the proposed access arrangements, easements, and building heights as discussed in section 7(m) below.

5. Pursuant to Section 51(1)(m) of the *Planning Act 1999*, the consent authority must consider 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.

The application was circulated to the relevant authorities and comments received from these authorities are addressed by the inclusion of conditions and/or notations on the development permit as required.

6. 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 potential impact on amenity should be considered in the context of the site and the surrounding area. The development is consistent with the broader zone purpose and outcomes of Zone CB (Central Business) and applicable clauses, including the overall height and scale of the building. The building is of high architectural quality and presents the Searcy Street frontage with increased active street frontages and activation. The building presents a high quality interface and limited service provision to the Searcy Street frontage. Any adverse impacts on amenity have been addressed through the recommended conditions and notes for any permit that may be issued for the proposal.

FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

ITEM 3

PA2022/0364

FOOD PREMISES - FAST FOOD OUTLET

LOT 8012 (43) STUART HIGHWAY, STUART PARK, TOWN OF DARWIN

APPLICANT

Cunnington Rosse Town Planning and Consulting

DAS tabled additional submission from a submitter (Planit Consulting).

Applicant: Brad Cunnington (Cunnington Rosse Town Planning and Consulting) attended.

Submitter: Phillip Coleman attended.

**RESOLVED
94/22**

That, the Development Consent Authority vary the requirements of Clause 5.2.4.4 (Parking Layout) 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 8012 (43) Stuart Highway, Town of Darwin for the purpose of food premises - fast food outlet, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to 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 show:
 - (a) Provision of lighting and garbage bins in the car park area.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle, approval is required for the crossover and driveway to the site from the Transport and Civil Services Division (Department of Infrastructure Planning and Logistics), and/or City of Darwin road reserve, to the satisfaction of the consent authority.
3. Prior to the endorsement of plans and commencement of works (including site preparation), an agreement is to be reached with the Transport and Civil Services Division (Department of Infrastructure Planning and Logistics), in relation to the relocation of the existing bus stop, adjacent to the site, within the Stuart Highway road reserve, to the satisfaction of the consent authority.
4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a comprehensive Traffic Impact Assessment (TIA) report is to be submitted to and approved by the City of Darwin to the satisfaction of the consent authority. The TIA report is to be prepared by a suitably qualified traffic engineer in accordance with the Austroads Document Guide to Traffic Management Part 12: Traffic Impacts of Developments in the report structure provided as Appendix C of that document. The report should specifically address the following;
 - (a) Heavy vehicle turning paths entering and exiting the site, using at a minimum a 12.5m rigid truck;

- (b) Affected on-street vehicle parking areas on both sides of Ramirez Road;
 - (c) Sightlines and clearance's provided along Ramirez Road for vehicles entering and exiting the site; and
 - (d) Headlight barriers where vehicle headlights impact upon Stuart Highway and Ramirez Road, are to be provided within the site, to control the headlight effects resulting from internally circulating vehicles.
5. Prior to the endorsement of plans and prior to 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 Transport and Civil Services Division (Department of Infrastructure, Planning and Logistics) and/or City of Darwin as the case may be, 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.
6. Prior to the commencement of works (including site preparation), a Construction Traffic Management Plan (CTMP) is to be submitted to and approved by the Transport and Civil Services Division (Department of Infrastructure, Planning and Logistics) to the satisfaction of the consent authority. The CTMP should specifically address the following:
- i. Details regarding all appropriate site management measures and construction access routes;
 - ii. Haulage routes and vehicles types;
 - iii. Existing assets and public access; and
 - iv. Risk assessment.
7. Prior to the commencement of works (including site preparation), the applicant is to prepare an Environmental and Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP is to address how construction will be managed on the site, and is to include details of waste management, traffic control and haulage routes, stormwater drainage, and the use of City of Darwin land during construction. The SCMP is also to address the protection of existing assets, the protection of public access, and include a risk assessment.
8. Prior to the commencement of works (including site preparation), a waste management plan addressing the City of Darwin's Waste Management Guidelines must be prepared, to the requirements of the City of Darwin, to the satisfaction of the consent authority.
9. 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

10. Works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.

11. All works recommended by the traffic impact assessment are to be completed to the requirements of the City of Darwin, to the satisfaction of the consent authority.
12. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage facilities and electricity services to the land shown 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.

13. 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.
14. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or site is to be created.
15. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the Transport and Civil Services Division (Department of Infrastructure, Planning and Logistics) and/or City of Darwin, to the satisfaction of the consent authority.
16. The owner shall:
 - (a) remove disused vehicle and/ or pedestrian crossovers;
 - (b) provide footpaths/ cycleways;
 - (c) collect stormwater and discharge it to the drainage network; and
 - (d) undertake reinstatement works;all to the technical requirements of and at no cost to the Transport and Civil Services Division (Department of Infrastructure, Planning and Logistics) and City of Darwin, to the satisfaction of the consent authority.
17. All proposed work (including the provision or connection of services) within, or impacting upon the Stuart Highway road reserve shall be in accordance with the standards and specifications of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics. Design documents must be submitted to the Director Corridor Management, Transport and Civil Services Division for Road Agency Approval and no works are to commence prior to approval.
18. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin and/or Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
19. Where unfenced, the Stuart Highway Road frontage is to be appropriately fenced in accordance with Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics standards and requirements to the satisfaction to the consent authority.

20. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
21. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street to the requirements of the City of Darwin, to the satisfaction of the consent authority.
22. Upon completion of any works within or impacting upon existing road reserves, the road reserves shall be rehabilitated to the standards and requirements of the City of Darwin and returned to the condition as documented in the dilapidation report.
23. Before the use or occupation of the development starts, the area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - (a) constructed;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather-seal coat;
 - (d) drained;
 - (e) line marked to indicate each car space and all access lanes; and
 - (f) clearly marked to show the direction of traffic along access lanes and drivewaysto the satisfaction of the consent authority.
Car parking spaces, access lanes and driveways must be kept available for these purposes at all times.
24. The car parking shown on the endorsed plans must be available at all times for the exclusive use of the occupants of the development and their visitors.
25. "No entry/no exit" signs and arrows directing the internal traffic movement on site shall be provided at the completion of building to the requirements and satisfaction of the consent authority.
26. The loading and unloading of goods from vehicles must only be carried out on the land (within the designated loading bays and must not disrupt the circulation and parking of vehicles on the land.
27. 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.
28. 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.
29. Upon completion of any works within or impacting upon the Stuart Highway road reserve, the road reserve shall be rehabilitated to the standards and requirements of the Transport and Civil Services Division, Department of

Infrastructure, Planning and Logistics. Any proposals for the upgrading/ resurfacing of the Stuart Highway footpath fronting the development shall 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.

30. Loads of all trucks entering and leaving the site of works are to be constrained in such a manner as to prevent the dropping or tracking of materials onto streets. This includes ensuring that all wheels, tracks and body surfaces are free of mud and other contaminants before entering onto the sealed road network. Where tracked material on the road pavement becomes a potential safety issue, the developer will be obliged to sweep and clean material off the road, to the requirements of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
31. 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.
32. 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.
33. External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the consent authority.

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/buildersdesigners.html>.
3. 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 as required by the Northern Territory *Building Act 1993* before commencing any demolition or construction works.

4. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 8936 4070 to determine if the proposed works are subject to the Act.
5. 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.
6. Designs and specifications for landscaping of the road verges adjacent to the property shall be submitted for approval by City of Darwin and all approved works shall be constructed at the applicant's expense, to the requirements of City of Darwin.
7. 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.
8. 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.
9. The finish of any Prime Identification sign, if erected, shall be such that, if illuminated, day and night readability is the same and is of constant display (i.e. not flashing or variable message). The sign shall be positioned:
 - (a) so as not to create sun or headlight reflection to motorists; and
 - (b) be located entirely (including foundations and aerially) within the subject lot.
10. A "Permit to Work Within a Road Reserve" may be required from (insert relevant local government council or Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics) before commencement of any work within the road reserve.

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 (NTPS2020) applies to the land and food premises-fast food outlet requires consent under Clause 1.8 (When development consent is required). It is identified as *Impact Assessable* under Clause 1.8(c)(i) and therefore, Part 2 of the Scheme – Darwin Inner Suburbs Area Plan(DISAP), Part 3- Overlays, Part 4 - zone purpose and outcomes of Clause 4.12 (Zone SC), and Clauses, 5.2.4.1

(Parking Requirements), 5.2.4.4 (Parking Layout), 5.2.5 (Loading Bays) 5.2.6 (Landscaping), 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC), 5.5.2 (Plot Ratios in Commercial Zones), 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T) and 5.5.11 (Food Premises) need to be considered.

These clauses have been considered, and it is found that the proposal complies with the relevant requirements of the NTPS2020 except for Clause 5.2.4.4 (Parking Layout).

The Authority notes that the proposed development contributes to the mix of residential, commercial, retail, community and other uses anticipated in the locality. It has been designed to ensure the proposed use is compatible with future, reasonably expected residential development. The development provides fast food facility for passing traffic and the surrounding localities and is consistent with Objective 1 of the Darwin Inner Suburbs Area Plan. The proposal is consistent with providing service commercial uses servicing both the inner suburbs and the CBD. The proposal does not compromise the primary arterial function of the Stuart Highway and ensures vehicle and pedestrian movement routes are maintained.

The Authority notes that the site is identified as an “area for change” to Mixed Use – Residential, Commercial and Showrooms in the Concept Plan for Stuart Highway, Stuart Park, included in the DISAP. The Authority noted the DAS’ assessment which concludes that the DISAP does not prevent the use of land consistent with the current town planning zone that applies to a site. The proposed use is identified as *Impact Assessable* in the NTPS2020, and the consideration of the applicable relevant clauses of the NTPS2020 has found that the proposal is generally compliant. The Authority considers that the application of the concept identified for the site in the DISAP is not relevant to the current as the proposed use is not prohibited in Zone SC or require rezoning of the site.

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).

Clause 5.2.4.4 (Parking Layout)

The purpose of this clause is to ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose. The relevant administration to this clause is – “*the consent authority may consent to a car parking area that is not in accordance with sub-clause 4 if it is satisfied that the non-compliance will not: (a) result in adverse impacts on the local road network or internal functionality of the*

car parking area; and (b) unreasonably impact on the amenity of the surrounding locality.”

The Authority notes the assessment of the Development Assessment Services (DAS), which concludes that the car park is functional and appropriately designed per the clause's requirement. The driveway width is nominated at 6.6m, which exceeds the NTPS 2020 requirement. The Authority further notes that the DAS' assessment found that a variation to the design of the car park exists as car parking bays measure 5.4m x 2.7m when 5.5m x 2.5m is required.

In support of the variation, the applicant outlined, whilst the car parking spaces are shorter (5.4m) than the required 5.5 metres, this is offset by a greater (6.6m) adjacent driveway width than the 6m minimum. The Authority determined that the applicant's response demonstrates that functional access to each parking space is provided. The Authority notes that it has previously granted variations to the dimensional requirements of this clause based on written confirmation from a qualified traffic engineer that all car parking and accesses are compliant with the relevant standards. The Authority further notes the application includes a traffic assessment report which states that the car parking spaces are designed in accordance with the Australian / New Zealand Standard – AS/NZS 2890.1 and AS/NZS 2890.6).

The Authority determined that the variation to the car parking bay dimensional requirement is unlikely to result in adverse impacts on the local road network or internal functionality of the car parking area as the car parking complies with the relevant Australian Standards.

Clause 4(g) requires the car parking area to be not less than 3m from a road, and the area between the car parking area and the road is to be landscaped with species designed to lessen the visual impact of the car parking area.

The DAS' assessment found that a 3m depth of landscaping is provided between the rear boundary and car parking from Ramirez Road; however, car parks in drive-thru lanes are located less than 3m from Ramirez and Stuart Highway frontages. The Authority determined that a variation is appropriate as the landscape plan identifies plant species (with a mature height of 1m) in the area between the drive-thru lanes and road boundary, which will lessen the visual impact and is unlikely to result in adverse impacts on the amenity of the surrounding locality.

The proposed development contributes to the mix of residential, commercial, retail, community and other uses anticipated in the locality. It has been designed to ensure the proposed use is compatible with future, reasonably anticipated residential development. The development itself provides fast food needs of passing traffic and the surrounding localities and is therefore consistent with Objective 1 of the Darwin Inner Suburbs Area Plan 2016. The proposal is consistent with providing service commercial uses servicing both the inner

suburbs and the CBD. The proposal does not compromise the primary arterial function of the Stuart Highway and ensures vehicle and pedestrian movement routes are maintained.

While the subject site is identified as an “area for change” to Mixed Use – Residential, Commercial and Showrooms in the Concept Plan for Stuart Highway, Stuart Park included in the DISAP 2016, the assessment notes that the DISAP does not prevent the use of land consistent with the current town planning zone that applies to a site.

The proposed uses are identified as *Impact Assessable* in the NTPS 2020, and the consideration of the applicable relevant clauses of the NTPS 2020 found that the proposal is generally compliant. The application of the concept identified for the site in the DISAP is not relevant to the current as the proposed uses are not prohibited in Zone SC or require rezoning of the site.

3. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent authority 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.

Two public submissions were received during the exhibition period with respect to the proposal. The submissions were lodged by; Planit consulting on behalf of the landowners of Lots 1726, 1727 and 1728; and Phillip Coleman, Trophi Restaurants Pty Ltd, Licensee of the McDonald's restaurant at 29 Stuart Highway. The submitters raised concerns regarding traffic implications, proposed access from the Stuart Highway, relocation of the existing bus stop and non-compliance with the DISP.

At the hearing, the DAS tabled additional submission from Planit Consulting, confirming that the amended plans and additional information adequately addressed the concerns raised in its submission.

Mr Philip Coleman attended the meeting and spoke further to his submission. Mr Coleman stated that his submission does not object to the proposed use (fast food outlet) but emphasises the impact of the proposed use on the traffic movement in the area. Mr Coleman referred to the location plan provided in the application material and explained how the proposed use would impact the traffic movement along the Stuart Highway. Mr Coleman explained that the customers of the proposed fast food coming from North along the Stuart would require a U-turn at the median break in front of Hassan Place on the Stuart Highway. As Hassan Place provides direct access to the McDonald's restaurant, Mr Coleman is of the view that it will create congestion at the median gap, which will affect his business. Mr Coleman suggested necessary upgrades to the surrounding street network and the median gap in front of Hassan Place should be carried out to accommodate the additional traffic from the proposed use. Mr Coleman acknowledged that his concerns regarding customers taking the wrong turn from the

median gap in front of Queen Street have been addressed in the amended plans.

The Authority carefully considered the submitters' concerns and considered these comments in making its decision. The Authority notes that the traffic impacts and access arrangements to the site are typically to the requirements of the relevant service authority (TCSD – Stuart Highway and City of Darwin – Ramirez Road). The Authority further notes that the relevant service agencies have raised no concerns regarding traffic impacts and proposed access arrangements to the site.

The Authority notes that the inclusion of a condition on the Development Permit to provide a traffic impact assessment would address the concerns of the submitters. A condition to carry out the works identified in the traffic assessment is also included on the Development Permit. The Authority determined that provided the development proceeds in accordance with the requirements of the service agency, and there would be no impacts on the arterial function of the Stuart Highway and Ramirez Road as a local road.

Other matters raised by submitters relating to non-compliance with the DISAP are discussed under reason 3 (above).

4. 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.

There are no concerns about the capability of the land to accommodate the proposed development. The land is not identified as being within a storm surge area and is not subject to flooding in a 1% AEP flood event. The overall height and scale of the development are largely consistent with that anticipated in Zone SC with respect to the capability of the land and the effect on surrounding properties. All other service authority requirements have also been addressed through conditions

5. 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 surrounding. The development is consistent with the broader intent of Zone SC (Service Commercial) and applicable clauses, including car parking and plot ratios. The non-compliance related to the car parking is minor and is unlikely to unduly affect the area's existing and future amenity. The landscaping provided along the street frontages is expected to ensure the visual impact of the drive-through is minimised. A condition is included on the Development Permit to

maintain the landscaping for the life of the development to protect the future amenity of the area.

Conditions are recommended on the permit to provide internal floodlighting at the access to the fast-food outlet to light up the entrance during the night operation hours and install headlight barriers along the Stuart Highway and Ramirez Road to control the headlight effects resulting from internally circulating vehicles. A condition of the Development Permit also requires amended plans to show the provision of bins in the car park area.

6. Pursuant to section 51(p) of the *Planning Act 1999*, the consent authority must take into consideration the public interest, including (if relevant) how the following matters are provided for in the application:
 - (i) community safety through crime prevention principles in design;
 - (ii) water safety;
 - (iii) access for persons with disabilities

In relation to community safety through crime prevention, the establishment of use of a vacant building site will allow for continued passive surveillance of surrounding streets. Furthermore, the presence of persons on the site and lighting will increase the surveillance opportunity on abutting streets. A condition is included on the Development Permit to provide lighting in the car park area to provide enhanced safety. The proposal includes a pedestrian link through the car park to the building. Disabled car parking spaces and accessible bathroom facilities are provided in the development.

FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

ITEM 4

PA2022/0223

**CONCURRENT APPLICATION:-
REZONE FROM FD (FUTURE DEVELOPMENT) & MR (MEDIUM RESIDENTIAL)
TO LMR (LOW-MEDIUM RESIDENTIAL) AND PS (PUBLIC OPEN SPACE); AND
SUBDIVISION TO CREATE 21 LOTS INCLUDING TWO PUBLIC OPEN SPACE
LOTS**

**LOTS 7658, 7659 & 7660 (14, 18 & 22) JULIUS STREET, BERRIMAH AND
LOT 7349 MAKAGON ROAD, BERRIMAH, HUNDRED OF BAGOT**

APPLICANT

Cunnington Rosse Town Planning and Consulting

Applicant: Gerard Rosse and Julian Geuho (Cunnington Rosse Town Planning and Consulting) attended.

**RESOLVED
95/22**

Pursuant to section 30P(1)(a), the Development Consent Authority make a preliminary decision that, if the Minister were to approve the amendment proposal to rezone Sections 7658, 7659 and 7660 (14, 18 and 22) Julius Street, and Section 7349 Makagon Road, Hundred of Bagot that it would be likely to determine to consent to the development under section 30W(1)(a) conditionally for the purpose of a subdivision to create 21 lots including two public open space lot, subject to the following conditions:

Note that for the purpose of this permit:

- (a) any reference to the Land Development Unit means that the Division of the Department of Infrastructure, Planning and Logistics (DIPL), and any reference to the Transport and Civil Services means that the Division of the Department of Infrastructure, Planning and Logistics (DIPL).
- (b) Transport and Civil Services Division (TCS) of DIPL is the relevant service authority for road reserves and associated road pavement, stormwater drainage, street lighting vehicular access, pedestrian/cycle paths, verge landscaping and streetscape.
- (c) Land Development Unit (LDU) of DIPL is the relevant service authority for open space and stormwater drainage external to the road reserve and any infrastructure external to the road reserve on surrounding networks.

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a site stormwater drainage schematic plan demonstrating the on-site collection of stormwater and its discharge into the local stormwater drainage system shall be submitted to and approved by the LDU and/or TCS as the case may be, to the satisfaction of the consent authority. The plan shall indicate how stormwater will be collected on site and discharged to the relevant authorities' drainage system.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the applicant is to provide written confirmation from the Power Networks division of the Power and Water Corporation that anticipated substation loads for the subdivision (Stage 3D) comply with the current approved High Voltage Master Plan for Northcrest subdivision, to the satisfaction of the consent authority.

3. Prior to the endorsement of plans and prior to commencement of works (including site preparation), written confirmation is required from the LDU and/or TCS as the case may be that the following updated reports or approvals have been provided, to the satisfaction of the consent authority:
 - (a) Traffic Impact Assessment report identifying identify the traffic generation and traffic operation impact of the proposed land use zone based on the highest density use which the new zoning could possibly generate. The report must also identify upgrades likely to be required to accommodate the additional road traffic. The TIA report shall also identify impacts of the rezoning on public transport facilities, pedestrian and cycle facilities.
 - (b) Accesses to the development site as a result of Traffic Impact Assessment report;
 - (c) Feasibility stage traffic safety audit;
 - (d) Master plans to show revisions previously approved in development permits or otherwise agreed to:
 - i. Road hierarchy and road cross sections;
 - ii. Pedestrian and cycle routes; and
 - iii. Parks and public open space

4. Prior to the commencement of construction works for the following components:
 - (a) roads;
 - (b) stormwater drainage;
 - (c) street lighting;
 - (d) vehicular accesses;
 - (e) pedestrian/cycle paths;
 - (f) landscaping;
 - (g) establishment irrigation;
 - (h) park areas; and
 - (i) streetscaping;

the Developer shall submit detailed design documentation (engineering design, design report and specifications) for all such proposed works and achieve Permission to Use from the TCS and/or LDU. All designs that relate to future TCS and/ or LDU infrastructure and residential subdivision open space under the NT Planning Scheme are to be in accordance with the 'Berrimah Farm Subdivision Guidelines', to the satisfaction of the TCS and/or LDU and must be prepared and certified by suitably qualified persons.

5. Prior to the commencement of works, a Construction Traffic Management Plan (detailing all appropriate site management measures, including construction access, proposed haulage routes, vehicle types, protection of existing assets, protection of public access and a risk assessment) is to be submitted and approved by the TCS, to the satisfaction of the consent authority.

6. Prior to the commencement of works, the applicant is to prepare a dilapidation report covering existing infrastructure condition within the road reserve to the requirements of the TCS, to the satisfaction of the consent authority.

7. Prior to the commencement of works, a Type 2 Erosion and Sediment Control Plan (ESCP) must be developed in accordance with the Department of Environment, Parks and Water Security Erosion and Sediment Control Plan (ESCP) procedures as updated (see note 4). The ESCP must be certified by a Certified Professional in Erosion and Sediment Control (CPESC) to the satisfaction of the consent authority. The ESCP must be submitted for acceptance prior to the commencement of any earth disturbing activities (including clearing and early works) to Development Assessment Services via email: das.ntg@nt.gov.au.

GENERAL CONDITIONS

8. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
9. All works relating to this permit must be undertaken in accordance with the accepted Type 2 Erosion and Sediment Control Plan (ESCP) to the requirements of the consent authority. Should the endorsed Type 2 Erosion and Sediment Control Plan (ESCP) need to be amended, the revised ESCP must be certified by a Certified Professional in Erosion and Sediment Control (CPESC) to the satisfaction of the consent authority. The revised ESCP should be submitted for acceptance to Development Assessment Services via email: das.ntg@nt.gov.au.
10. All reasonable and practicable measures must be undertaken to prevent: erosion occurring onsite, sediment leaving the site, and runoff from the site causing erosion offsite. Appropriate erosion and sediment control measures must be effectively implemented throughout the construction phase of the development (including clearing and early works) and all disturbed soil surfaces must be satisfactorily stabilised against erosion at completion of works. For further information refer to Note 4 below. At completion of works, written clearance must be provided by a CPESC regarding satisfactory implementation of temporary and permanent erosion and sediment control measures and site stabilisation, and provided to the satisfaction of the consent authority.
11. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, electricity and telecommunication networks to each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

Please refer to Notations on this permit numbered 1 to 3 for further information.

12. 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.
13. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or

site is to be created on the plan of subdivision submitted for approval by the Surveyor General.

14. All proposed roads to be created on the plan of subdivision submitted for approval by the Surveyor General must be dedicated to the relevant Northern Territory or local government authority.
15. Stormwater drainage shall be appropriately discharged into a local or trunk stormwater system to the standards and approval of the TCS and/or LDU as the case may be, to the satisfaction of the consent authority.
16. Pond B is to be upgraded, as detailed in the Northcrest 3D Engineering Assessment-Stormwater report, to the requirements of the LDU to the satisfaction of the consent authority.
17. All works are to be constructed in accordance with the design documentation provided with 'Permission to Use' by the LDU and/or TCSD, excepting as varied with the approval of the LDU and/or TCSD.
18. All works associated with parks and open space areas are to be constructed in accordance with the design documents, provided with 'Permission to use' by the LDU. All works are to be certified by suitably qualified person to the requirements of the LDU to the satisfaction of the consent authority.
19. All proposed work (including the provision of services) within, or impacting upon existing and proposed NT Government controlled road reserves, shall be designed, supervised and certified on completion by a practicing and registered Civil Engineer, and shall be in accordance with the 'Berrimah Farm Subdivision Guidelines'. Design documents must be submitted to the Director Corridor Management, Transport and Civil Services Division for Road Agency Approval, irrespective of approvals granted by other Authorities e.g. Power & Water Corporation. No works within, or impacting upon road reserves controlled or to be controlled by the NT Government are to commence prior to gaining Road Agency Approval.
20. Any new or upgraded intersection and all new collector and local roads are subject to Road Safety Audits in accordance with the Transport and Civil Services Division Policy "Road Safety Audits".
21. Upon completion of any works within or impacting upon existing or proposed road reserves, the road reserves shall be rehabilitated to the standards and requirements of the TCS and returned to the condition as documented in the dilapidation report. Dryland grassing shall be established on the existing or proposed road reserves inside the Northcrest subdivision verge(s) fronting the development and shall be undertaken to the Department's standards and requirements.
22. The installation or relocation of any services or service connections within the site on completed works requires, in addition to service authority approvals, the approval of the LDU and/or TCSD. .

23. Before the issue of Titles, the developer is to provide written confirmation (in the form of plans or drawings) demonstrating that all lots less than 600m² for single dwellings allow for future vehicle access via a single driveway unrestricted by street infrastructure (including any power, water, sewer, or stormwater infrastructure) which demonstrates that a 3.5m driveway can be located on each lot whilst ensuring that each lot's street frontage has a minimum continuous length of 6.5m, to the satisfaction of the consent authority.

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. All developers, including owner-builders, are required to comply with Commonwealth telecommunications requirements. Under Commonwealth law, developers are generally required to provide fibre-ready pit and pipe in their developments at their expense. Developers may be able to access an exemption from these arrangements in some circumstances. For more information visit www.infrastructure.gov.au/tind
3. 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/buildersdesigners.html>
4. Information regarding erosion and sediment control can be obtained from the IECA Best Practice Erosion and Sediment Control 2008 books available at www.austieca.com.au and the Department of Environment, Parks and Water Security ESCP Standard Requirements 2019 and Land Management Factsheets available at <https://nt.gov.au/environment/soil-land-vegetation>. For further advice, contact the Development Coordination Branch: (08) 8999 4446.
5. Department of Environment, Parks and Water Security Erosion and Sediment Control Plan (ESCP) procedures as updated available at <https://depws.nt.gov.au/rangelands/technical-notes-and-factsheets/land-management-technical-notes-and-fact-sheets>
6. As part of any subdivision, the parcel numbers for addressing should comply with the Australian Standard (AS/NZS 4819:2011). For more information

contact Survey and Land Records surveylandrecords@nt.gov.au 08 8995 5354. The numbers shown on the plans endorsed as forming part of this permit are indicative only and are not for addressing purposes.

7. The Aboriginal Areas Protection Authority recommends that the permit holder obtain an Authority Certificate to indemnify against prosecution under the Northern Territory *Aboriginal Sacred Sites Act 1989*. For advice on how to obtain a certificate, please contact the Aboriginal Areas Protection Authority.
8. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
9. The technical design and construction standards of the works are as provided within the Berrimah Farm Subdivision Guidelines dated 31/3/2012 incorporated into the Development Agreement or where this document is silent, the HTG Subdivision Guidelines are to apply.
10. No temporary access for construction purposes shall be permitted from the Julius Street road reserve without approval. Construction and delivery vehicles shall not be parked on the Julius Street road reserve.
11. A "Permit to Work Within a Road Reserve" may be required from the Transport Civil Services Division of the Department of Infrastructure, Planning and Logistics before commencement of any work within the road reserve.
12. Street lighting shall be provided including lighting of traffic management treatments, external works, parks, walkways, footpaths and shared paths and other public areas of the proposed subdivision. The lighting is to be in accordance with the current version of AS/NZS 1158 Lighting for roads and public spaces (all parts) and the department's technical specifications.
13. All land in the Northern Territory is subject to the *Weeds Management Act 2001* (WM Act). The WM Act describes the legal requirements and responsibilities that apply to owners and occupiers of land regarding declared weeds. Section 9 general duties include the requirement to take all reasonable measures to prevent land being infested with a declared weed and to prevent a declared weed from spreading. There are additional duties including a prohibition on buying, selling, cultivating, moving or propagating any declared weed and the requirement to notify the Weed Management Branch of a declared weed not previously present on the land within 14 days of detection.
Should you require further weed management advice contact the weed management branch by phone on (08) 8999 4567 or by email to weedinfo@nt.gov.au

REASONS FOR THE DECISION

1. Pursuant to sections 30P(2)(a) and (b) of the *Planning Act 1999*, the consent authority must take into account any planning scheme that applies to the land to which the application relates and the amendment proposal contained within the application.

The NT Planning Scheme 2020 applies to the land, and subdivision of land requires consent pursuant to 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 - Berrimah Farm Planning Principles and Area Plan), Overlays (Part 3), Zone Purpose and Outcomes of Zone LMR - Low Medium Density Residential and Zone PS - Public Open Space (Part 4) and Subdivision and Consolidation Requirements (Part 6) need to be considered.

Part 2- Strategic Framework (Berrimah Farm Planning Principles and Area Plan)

The application is for "Stage 3D" of the Berrimah Farm 'Northcrest' residential development developed in accordance with the Berrimah Farm Planning Principles and Area Plan. The Area Plan principles seek to promote a safe and diverse urban residential environment that: (i) is structured around a Secondary Activity Centre; (ii) is developed in the order of six storeys in height around the Secondary Activity Centre and reduces in height and density with distance from the centre; (iii) comprises a variety of lot sizes, and housing types; (iv) provides high quality adaptable public spaces and open space areas that are usable for both passive and active recreation; and (v) has an interconnected local road network that distributes the anticipated traffic flow within site and integrates with the surrounding road network through appropriate intersection design.

The Area Plan shows the land is to be developed for residential purposes at a density of 25-60 dwellings per hectare which is intended to be met across the whole of the area shown with the same density band. Dwelling types for this density band are described as dwelling-single (terrace/villas), and dwellings-multiple to a maximum height of three storeys.

The area of the subdivision is 164100m² (1.6ha). With 19 residential lots to be developed accommodating 26 dwellings, the density achieved in the proposed subdivision is 16 dwellings/ha (25-60 dwellings per hectare required in the Area Plan). In support of the proposal, the applicant has provided a density assumption that considers the development of the entirety of the area within the 25-60 dwellings per hectare density band. The density assumption demonstrates that the required dwelling density will be achieved upon completion, and the proposed rezoning and subdivision will not impact the overall dwelling density identified under the Area Plan.

Mr Gerard Rosse and Julian Geuho from Cunnington Rosse Town Planning and Consulting attended the hearing and spoke further to the

application. Mr Rossi gave an overview of the background of the proposed subdivision, the recent amendment to the Area Plan and how density would be achieved in future subdivisions. Mr Gerard explained to the Authority that the reason for rezoning the current MR Zoned lots to LMR is due to the lack of market interest in developing these lots. Mr Gerard while acknowledging that the proposed subdivision results in a density less than the 25-60 dwellings per hectare density required in the Area Plan, it would be achieved in future subdivisions by providing medium-density residential developments in the 'Retirement Village' site identified in the Area Plan within the 25-60 dwellings per hectare band.

The Authority notes the abovementioned comments regarding density compliance as per the Area Plan. The Authority notes the Development Assessment Services (DAS) assessment, which concludes that the current density achieved in the 25-60dw/ha band (based on the subdivisions previously approved and proposed subdivision) is 20 dw/ha, and almost 40% area has been developed. The Authority further notes that future subdivisions would require medium-density lots to achieve the required density of 25-60 dw/ha across the whole area shown with the same density band.

Part 3 (Over Lays) and Part 4 (Zone Purpose and Outcomes)

No overlay applies to the site. An assessment of the subdivision development against the Part 4 requirements of the NTPS2020 as if the land were in Zone LMR (Low Medium Density) and PS (Public Open Space) found that the subdivision will create lots of a size and configuration generally anticipated in Zone LMR. In relation to Zone PS, two public open space lots are proposed in the subdivision with a combined area of 3040m². The two park lots create a connected green spine to the large park lot approved in Stage 1.

Part 6 (Subdivision and Consolidation) requirements

The DAS' assessment has found that the subdivision generally complies with Clause 6.2 (Subdivision in Zones LR, LMR, MR and HR), including subclauses 6.2.2 (Lots Less Than 600m² for Dwellings-Single) and 6.2.3 (Site Characteristics for Subdivision in Zones LR, LMR, MR and HR), 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR) and 5.2.4.5 (Vehicle Access and On-site Parking for Dwellings-Single on Lots Less than 600m² but not less than 300m²). A non-compliance has been identified against Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zone LR, LMR, MR and HR).

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 that 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).

Clause 6.2.1 (Lot Size and Configuration for Subdivision in ZoneLMR...)

The requirements of this clause area:

- (1) *Minimum lot size of 300m²;*
- (2) *Minimum building envelope requirements of 17m x 17m for a lot size of between 600m² and greater and 7m x 15m for a lot 300m² to less than 450m²;*
- (3) *Lots have sufficient area and appropriate dimensions to provide for the proposed density of developments including dwellings, vehicle access, parking and ancillary buildings;*
- (4) *There are no battle-axe lots;*
- (5) *Lots are oriented to allow dwellings to take advantage of environmental conditions such as prevailing breezes and sunlight;*
- (6) *Lots are connected to reticulated services;*
- (7) *Potential land use conflicts are minimised by taking account of the visual and acoustic privacy of residents.*
- (8) *Where there are lots for medium and higher density residential development, those lots are:*
 - (a) *distributed in small groups serviced by public transport;*
 - (b) *in close proximity to public open space and with adequate access to community facilities and services; and*
 - (c) *not located in a cul-de-sac.*

The DAS' assessment has found that the subdivision complies with many requirements of Clause 6.2.1, including the minimum lot size of 300m² in Zone LMR. No battle-axe lots have been provided, and all lots are proposed to be connected to reticulated services. Further, the orientation of the proposed lots will enable access to north-west wet season prevailing breezes. Roof overhangs and awnings ensure appropriate shading from the western sun. The proposed subdivision is part of the Berrimah Farm 'Northcrest' residential development; therefore, no potential land use conflicts are expected. Sub-clause 8 is not relevant as the proposed zoning is low medium density.

Subclause (6) requires a minimum building envelope of 7m x 15m for lot sizes 300m² to less than 450² and 17m x 17m for 600m² and greater. The building envelopes are exclusive of any boundary setbacks or service authority easements.

The DAS' assessment further indicates that that the application does not meet sub-clause 6 as proposed Lots 135, 296, 301 and 302 are not configured to enable compliance with the minimum building envelope requirement of 17m x 17m (exclusive of any boundary setbacks or service authority easements) that applies to lots with an area of 600m² or greater. *Note: The building envelope plan proposes front setback of 4.5m (6m required as per Clause 5.4.3 of the NTPS2020). The proposed setback is consistent with the setbacks approved for other lots in the Northcrest subdibdivision.*

The relevant Administration for 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 Authority notes that the DAS' assessment concludes that the subdivision is generally compliant with the clause. The Authority also considers that while Lots 135, 296, 301 and 302 do not satisfy the minimum building envelope requirement of 17m x 17m, the illustrative building envelope exceeds the envelope area of 289m² exclusive of any boundary setbacks or easements. The Authority notes that the requirement of 17m x 17m is a standard requirement for all lots exceeding 600m². This means that lots that are marginally greater than 600m² (as in the subject site) and lots exceeding 800m² (predominant lot size in Zone LR) require a similar building envelope.

The Authority taking into account the application material and DAS' assessment, is satisfied that the variation to the minimum building envelope requirement of 17m x 17m for Lots 135, 296, 301 and 302 will not frustrate the achievement of the purpose of Clause 6.2.1 and the zone purpose and outcomes of Zone LMR, which is to provide a range of low rise housing options that contribute to the streetscape and residential amenity. The Authority is also satisfied that the area of the lot is sufficient to accommodate a dwelling-single that has regard for vehicle access, on-site parking and street infrastructure. Furthermore, the building envelopes respond to the angled boundary of the lot due to road truncation.

The Authority considers that the building envelope plan does not depict the final location of the future dwellings and only represents that the lots can accommodate dwellings in a manner that has regard for vehicle access, onsite parking and street infrastructure. The Authority also notes that the design of the future dwellings can differ from the building envelope and any non-compliance related to Part 5 of the NTPS 2020 will require separate planning approval, which further requires exhibition (public/ neighbour) as per the provisions of the Planning Act 1999, and it will be to the discretion of the Development Consent Authority to vary the requirements of Part 5 of the NTPS 2020.

3. Pursuant to section 30P(2)(j) of the *Planning Act 1999*, the consent authority must take into consideration the capability of the land to support the development proposal and the effect of the proposal on other land, and on any other land, the physical characteristics of which may be affected by the proposal and pursuant to section 30P(2)(l) of the *Planning Act 1999*, the consent authority must take into consideration the public utilities or infrastructure provided in the area in which the land is situated and any requirement for public facilities and services to be connected to the land; and facilities, infrastructure or land to be provided by the applicant.

There are no concerns with the capability of the land to support the proposed development. The land is not identified as being affected by

drainage, slope, seasonal inundation, land units, soil characteristics, heritage constraints and easements.

The ANEF mapping to the year 2042 shows that only a narrow strip of the Berrimah Farm Area, adjoining Stuart Highway, will be in ANEF-20 in that year. The area of the proposed subdivision is outside the ANEF-20 contour.

No concerns with the provision of public utilities or infrastructure have been identified for the proposed subdivision, and all requests by service authorities have been appropriately addressed through recommended conditions and notes to be included on any permit issued.

4. Pursuant to section 50P(2)(m) of the *Planning Act 1999*, the consent authority must take into consideration the potential impact of the existing and future amenity of the area in which the land is situated.

The overall Berrimah Farm 'Northcrest' residential development is currently being developed, and the amenity of the area is being established. The Berrimah Farm Planning Principles and Area Plan, zoning provisions and the application all seek to promote the best amenity outcomes for the future residents of the suburb.

The proposal, with the exception of density, generally accords with the layout depicted within the Area Plan and is considered unlikely to adversely impact the area or alter community expectations for the site. Provided matters raised related to the density are addressed in future subdivisions, and pedestrian and cycle corridors, including landscaping, are established in appropriate locations and in a timely manner, the proposed subdivision can achieve appropriate levels of residential amenity.

Conditions and advisory notes on any permit issued can address matters identified by service authorities (erosion and sediment control, stormwater, construction noise, vehicle access, reticulated services etc.).

RESOLVED
96/22

That under section 30Q of the *Planning Act 1999*, the consent authority report to the Minister for Infrastructure, Planning and Logistics advising of the likely decision in relation to the development proposal, issues raised in the submissions, issues raised at the hearing and any other matters it considers the Minister should take into account when considering the amendment proposal.

RESOLVED
97/22

That, pursuant to section 86(1) of the *Planning Act 1999*, the Development Consent Authority delegates its powers to the Chair or in the absence of the Chair any member of the Darwin Division of the Authority to:

- vary the requirements of Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR) of the Northern Territory Planning Scheme 2020, and determine pursuant to Section 30W(1)(a) to consent to the development proposal contained in the concurrent

application and consent to the concurrent application after receipt of a notice under Section 30U(1) that the Minister has approved the amendment proposal contained in the application;

- issue a development permit under section 54(1) in relation to the development proposal to develop Sections 7658, 7659 and 7660 (14, 18 and 22) Julius Street, and Section 7349 Makagon Road, Hundred of Bagot for the purpose of a subdivision to create 21 lots including two public open space lots; and
- issue the relevant notices under Section 30Y.

FOR: 3

AGAINST: 0

ABSTAIN: 0

ACTION:

Report to the Minister

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

SUZANNE PHILIP
Chair

12 December 2022