



## **DEVELOPMENT CONSENT AUTHORITY**

### **DARWIN DIVISION**

### **MINUTES**

**MEETING NO. 408 – FRIDAY 18 AUGUST 2023 AT 10:30 AM**

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

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

**APOLOGIES:** Mark Blackburn  
**LEAVE OF ABSENCE:** Nil

**OFFICERS PRESENT:** Elya Sugg (Acting Secretary), Amit Magotra, Monica Pham and Ben Wollinski

**COUNCIL REPRESENTATIVE:** Apology

**Meeting opened at 11:15 am and closed at 12:15 pm**

**ITEM 1 DATA CENTRE**  
**PA2023/0228 LOT 9702 (8) RYKO COURT, DARWIN CITY, TOWN DARWIN**

**APPLICANT** Cunnington Rosse Town Planning and Consulting

Applicant Brad Cunnington attended.

Crystal Jordan, Jasen Floyd and Tomsic (NEXT DC), Gavin Bartley (NDY, Next DC's technical design and engineering consultants), Jason Lenard (Hames Sharley) attended via Microsoft Teams.

Interested party Maria Duchateau and Chris Mouat attended.

**RESOLVED**  
**28/23**

That, the Development Consent Authority vary the requirements of Clauses 5.2.4.4 (Layout of Car Parking Areas), 5.2.5 (Loading Bays), 5.5.15 (Design in Commercial and Mixed Use Areas) and 5.5.16 (Active Street Frontage) 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 9702 (8) Ryko Ct, Darwin City, Town of Darwin for the purpose of a Data Centre, subject to the following conditions:

**CONDITIONS PRECEDENT**

1. Prior to the endorsement of plans and prior to commencement of works, 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:
  - Additional landscaping that achieves compliance with Clause 5.2.6.2 (Landscaping in Zone CB) of the NT Planning Scheme 2020.
2. Prior to the endorsement of plans and prior to commencement of works, a landscape plan to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions. The landscaping plan must be generally in accordance with the landscape concept plan dated (May 2023) prepared by TCL and incorporate additional landscaping required under condition 1 of this permit. The plan must include a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant. All species selected must be to the satisfaction of the consent authority.
3. Prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.
4. Prior to the commencement of works, a 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, with particular attention to vehicular, pedestrian, cyclist and public transport issues and opportunities. The Traffic Impact Assessment report is to also include swept paths for waste collection vehicles entering and exiting the site, and identifying any necessary upgrades to the surrounding street network to the requirements of the City of Darwin, to the satisfaction of the consent authority.

5. 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 road reserve, to the satisfaction of the consent authority.
6. 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.
7. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Guidelines, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.
8. 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**

9. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
10. 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, 3 and 4 for further information.

11. 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.
12. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
13. 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.
14. 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.

15. 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.
16. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
17. Upon completion of any works within or impacting upon existing road reserves, the infrastructure within the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin and returned to the condition as documented in the dilapidation report.
18. 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 driveways to the satisfaction of the consent authority.Car parking spaces, access lanes and driveways must be kept available for these purposes at all times.
19. The loading and unloading of goods from vehicles must only be carried out on the land and within the designated loading bays, to the satisfaction of the consent authority.
20. All substation, fire booster and water meter arrangements are to be appropriately screened to the requirements of Power and Water Corporation and NT Fire and Emergency Services, to the satisfaction of the consent authority. Any screening should soften the visual impact of such infrastructure and details will need to be resolved in consultation with the Power and Water Corporation, and NT Fire and Emergency Services.
21. 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.
22. 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.
23. The development must be designed and constructed to comply with the acoustic treatment recommendations of the Acoustics Spatial Co-Ordination Report, dated 28 June 2023, prepared by Norman Disney and Young, and a statement from a suitably qualified acoustic engineer confirming compliance with Acoustics Report must be submitted prior to occupation of the development, to the satisfaction of the consent authority.
24. 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.

25. 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. The Authority advises the applicant that the building and façade must be constructed in accordance with the materials shown on Drawings numbered DA400(N) and DA401(L), dated 29/06/2023, prepared by Hames Sharley and the drawings endorsed through this permit.
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. 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](http://www.infrastructure.gov.au/tind)
4. 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>
5. Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics advises that surface stormwater run-off from the development site onto the Garramilla Boulevard road reserve is not permitted.
6. 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.
7. 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.
8. 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.
9. 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.

10. 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](mailto:info@ntbuild.com.au)) or by phone on 08 89364070 to determine if the proposed works are subject to the 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.

The NT Planning Scheme 2020 (NTPS 2020) applies to the land, a 'data centre' is undefined under the NTPS 2020, and an undefined use requires consent under Clause 1.8 (When development consent is required). It is identified as *Impact Assessable* under Clause 1.8(1)(c)(i), therefore the strategic framework (Part 2 of the Scheme, including Darwin Regional Land Use Plan 2015 and Central Darwin Area Plan 2019), zone purpose and outcomes of Clause 4.10 (Zone CB - Central Business), and Clauses 3.13 (GL Gateway Locations), 5.2.4.4 (Layout of Car Parking Area), 5.2.5 (Loading Bays), 5.2.6.2 (Landscaping in Zones CB), 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC), 5.5.15 (Design in Commercial and Mixed Use Areas), 5.5.16 (Active Street Frontage), 5.9.2 (Darwin City Centre), need to be considered.

These clauses have been considered, and it is found that the proposal complies with the relevant requirements of the NTPS 2020 except for Clauses 5.2.5 (Loading Bays), 5.2.6.2 (Landscaping in Zone CB), 5.5.15 (Design in Commercial and Mixed Use Areas) and 5.5.16 (Active Street Frontage).

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NTPS 2020, the consent authority may consent to a proposed development which is not in accordance with a requirement set out in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:
  - (a) The purpose and administration clauses of the requirement; and
  - (b) The considerations listed under Clause 1.10(3) or 1.10(4).
  - (a) Under Clause 1.10(4) (Exercise of Discretion by the Consent Authority), "In considering an application for a use or development identified as *Impact Assessable* the consent authority must take into account all of the following:
    - a) any relevant requirements, including the purpose of the requirements, as set out in Parts 5 or 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, or Schedule 4.1 Specific Use Zones; and
    - d) any component of the Strategic Framework relevant to the land as set out in Part 2."

### Part 2 – Strategic Framework

The land is identified within the Darwin Central Business District (CBD) activity centre of the Darwin Regional Land Use Plan 2015, which is identified as providing a capital city role and higher order function as the NT's dominant commercial, cultural, administrative, tourism and civic centre. The continued growth of the CBD's retail role is important to maximise tourism expenditure and support further residential and commercial floor space growth.

The proposal is for a data centre, and the application states that, *the facility will function as a regional data centre and is a result of NEXTDC's confirmation as the successful proponent in response to the Northern Territory's Expression of Interest process to identify proponents to build and operate a data centre in Darwin, and to work closely with the Territory's commitment to grow the Northern Territory's digital ecosystem around the Data Centre.*

The site is identified on the Land Use Vision Map of the Central Darwin Area Plan 2019 for Mixed Use (commercial, civic, residential, education, tourism, recreation & retail).

The Mixed Use theme identifies that intensive residential and commercial activity drives the activities within the city centre. The Area Plan encourages diverse development and uses to ensure that mixed use environments are robust, flexible and responsive to economic and social change. The requirements of the strategic framework are captured in the Part 5 development requirements. The proposal complies with the Part 5 requirements, except for the variations discussed below.

### Part 3 - 3.13 (Gateway Locations)

Overlay clause 3.13 (Gateway Locations) applies to the site. The purpose of the clause is to *ensure that the use or development of land identified as a Gateway Location is designed to respect and enhance the unique characteristics of the locality.* Sub-clause 4 requires that *building design must be in accordance with the relevant requirements for gateway locations identified in Clause 5.9 (Location Specific Development Requirements), the gateway location requirement in the Darwin City Centre is clause 5.9.2.8 (Development in Gateway Locations).*

Sub-clause 4, of clause 5.9.2.8, requires that *development is to establish a strong sense of arrival through one or more of the following design elements: (a) an increased building height of at least one storey compared to adjacent buildings; (b) varied roof sections, raised parapets and spires; (c) signage incorporated into the building design; or (d) public art.*

The proposal includes raised roof parapets, feature screening and illuminated signage to establish a sense of arrival and meets the requirements of clause 5.9.2.8.

Sub-clause 2 of clause 5.9.2.8 states *every application is to include a design statement prepared by a suitably qualified professional demonstrating how the proposed development meets the purpose and requirements of this clause.*

The Authority notes that the application includes an architectural statement prepared by Hames Sharley that states *the colour on the sawtooth façade creates different impressions from various viewpoints around the building - creating a collection of interpretations of its form. This combined with natural and artificial lighting cast over the angular forms, presents an ever-changing façade throughout the day and night. Integrated into the façade design is the NEXTDC branding and signage, which adds another layer of interest and reveals the development's purpose. The development addresses the key entry artery into the Darwin City Centre of Garramilla Boulevard by arranging its most active spaces to this frontage. This exposure to this key frontage serves to not only provide the observer with an insight into the proposed development but also provide the data centre user with the passive surveillance of the city in which it is taking its significant position.*

At the hearing, Mr Brad Cunnington from Cunnington Rosse Town Planning and Consulting (applicant) spoke to the application and provided further context regarding site selection. The proposal results from an expression of interest process from the Northern Territory Government to build and operate a regional



data centre in Darwin, where NextDC were selected. The site subject to the application provides benefits in built form outcomes and demands to the Zone CB requirements where industrial uses are located at the periphery of the CBD. The proposal provides a dedicated response to the gateway overlay and ideal land use and design outcomes for a constrained site at the end of a cul-de-sac at a gateway site.

The Authority queried the applicant regarding the visual aesthetic intent of the sentence in the Architectural Statement , - *"This combined with natural and artificial lighting cast over the angular forms, presents an ever-changing façade throughout the day and night"*, in relation to the gateway location.

The applicant advised that the reference to natural light is the way the sunlight reflects on the building throughout the day, and the reference to artificial light is the lighting and highlighting of NextDC's branding on the building. Of the four design element options a gateway location can incorporate, the proposal includes raised roof parapets, feature screening and illuminated signage. The two design elements are focused along the Garamilla frontage to highlight the building for vehicles and pedestrians.

A note has been recommended on the development permit that the building and façade must be constructed in accordance with the materials shown on drawings prepared by Hames Sharley and the drawings endorsed through this permit.

#### Part 4 – 4.10 Zone CB – Central Business

The purpose of Zone CB is to *promote an active and attractive mixed use environment that maximises its function as the commercial, cultural, administrative, tourist and civic centre for the surrounding region that is integrated with high density residential development.*

The relevant zone outcomes for the proposal are:

*7. Developments such as vehicle sales and hire, motor body works, motor repair station, service station, industry-light and emergency services facility:*

*(a) are sited on the periphery of the CB area;*

*(b) are located with good access to the local road network; and*

*(c) are managed to minimise unreasonable impacts to the amenity of surrounding residents.*

*10. Developments are designed and operated in a manner that avoids unreasonable loss of amenity for surrounding premises, having regard to the close proximity between residential and entertainment uses, and the overall mixed use nature of the zone.*

Amenity impacts are minimised by the screening proposed and the inclusion of treatments as outlined in the Acoustic Report. The proposal is located at the periphery of the CBD, at the end of a cul-de-sac and is situated outside of the core and city centre focus areas identified within the Central Darwin Area Plan, where there is less pedestrian activity. The proposal is for a single storey building and is of a limited scale compared to other developments in the area.

The subject site is in a Gateway location, and the proposal includes raised roof parapets and, feature screening and illuminated signage to establish a sense of arrival. An assessment of the Part 5 development requirements has identified that the proposal complies with the relevant requirements of the NTPS 2020, except for the clauses discussed below.



#### 5.2.4.4 (Layout of Car Parking Areas)

The Development Assessment Services (DAS) technical assessment notes that the proposal can comply with the requirements of sub-clause 8(d) of Clause 5.2.4.4 (Layout of Car Parking Areas), which requires car parking spaces at the end to project 1m beyond the last parking space. This requirement is to allow for cars to have adequate space to exit and manoeuvre. The Authority notes that the car parking layout provides sufficient space for vehicles to enter and exit the car parking area due to the length and width of the driveway area and the location of the staff car parking spaces.

#### 5.2.5 (Loading Bays)

The purpose of Clause 5.2.5 (Loading Bays) is to *provide for the loading and unloading of vehicles associated with the use of land.*

Sub-clauses 3 and 4 of Clause 5.2.5 require (3) *Use and development is to include provision of a minimum number of loading bays in accordance with the table to this clause (rounded up to the next whole number) and (4) A loading bay is to: (a) provide areas wholly within the site for loading and unloading of vehicles; (b) be at least 7.5m by 3.5m; (c) have a clearance of at least 4m; and (d) have access that is adequate for its purpose.*

The Authority notes the DAS assessment, which concludes that a data centre is an undefined use therefore no loading bay requirement is listed in the Table to Clause 5.2.5. The Authority further notes that one loading bay is provided on-site, and this is considered sufficient when comparing similar requirements for industrial uses such as *Industry-light* and *Industry-general*, both requiring 1 loading bay for a single occupation of a net floor area of 10000m<sup>2</sup> or less; and 1 loading bay for every 5000m<sup>2</sup> of net floor area or part thereof in excess of 10000m<sup>2</sup>.

The DAS' assessment also concludes that the proposal is not in accordance with sub-clause 4 of Clause 5.2.5, as the size of the proposed loading bay does not meet the 7.5m by 3.5m dimension requirements (a loading bay of 6.7m by 3.35m is provided).

Administratively, under sub-clause 2 of Clause 5.2.5, *the consent authority may consent to use or development that is not in accordance with sub-clauses 3 and 4 only if it is satisfied sufficient, safe and functional loading areas are available to meet the needs of the use with regard to: (a) the scale of the use and development on the site; (b) any potential adverse impacts on the local road network; and (c) any agreements for off-site loading and unloading of vehicles, such shared loading areas or approval to carry out loading activities in a laneway or secondary street.*

A variation to the dimension requirements for loading bays under Clause 5.2.5 is considered appropriate, noting the following circumstances which have been identified:

- The loading requirements of Clause 5.2.5 may not consider the development of this size and scale.
- The expected delivery needs for the proposed use can be accommodated within a smaller size loading bay area.
- Conditions are included on any permit issued to ensure that all loading and unloading occur on site.

#### 5.2.6.2 (Landscaping in Zone CB)

The purpose of Clause 5.2.6.2 (Landscaping in Zone CB) is to *ensure developments within central business districts minimise heat capture and enhance the visual amenity of the area when viewed from the street or from surrounding buildings.*

Sub-clause 3 of Clause 5.2.6.2 requires that *development in Zone CB is to provide areas of landscape planting equivalent to 10% of the site area.*

The proposal has been found not to be in accordance with sub-clause 3 of Clause 5.2.6.2 because less than 10% landscaping is provided.

Administratively, under sub-clause 1 of Clause 5.2.6.2, *the consent authority may consent to a development that is not in accordance with sub-clause 3 if: (a) it is a small development and the consent authority is satisfied that it would be unreasonable to provide the required landscaping, having regard to the intended use of the development or whether the development would become unfeasible; or (b) the development provides an alternative response to achieve the purpose of this clause.*

The Authority raised concerns regarding the non-compliance with the landscaping provided and the extent of the variation sought. The Authority queried the applicant as to whether it would be possible to provide more landscaping.

The applicant explained that the site is constrained due to the size of the site in providing the required built form and servicing requirements. From a design perspective, the amount of hardstand included in the development has been limited, and the requirements of the gateway overlay having to highlight the built form presence makes it difficult for the building design to include vertical landscaping.

The Authority notes the above-mentioned comments of the applicant and DAS' assessment in support of the variation. The Authority noted that the clause requires development in Zone CB to provide areas of landscape planting equivalent to 10% of the site area. The Authority queried whether it is possible to replace the hardstand with landscaping or provide additional landscape planting along the staff car parking area with the removal of one car parking space. The Authority determined not to grant a variation to this clause as the proposed development is a Greenfield. There was no evidence that a further reconfiguration of the development, which complies with the requirements of this clause, is either impossible or impractical.

The Authority notes that a limited number of car parking and bicycle parking spaces are required due to the scale and type of development and would be supportive of a reduction in one less car parking space (total of 3 car parking spaces) and fewer bicycle parking to allow for more landscape planting to be provided to achieve compliance with Clause 5.2.6.2 (Landscaping in Zone CB).

A condition precedent has been included on the development permit requiring amended plans demonstrating additional landscaping that complies with Clause 5.2.6.2 (Landscaping in Zone CB).

Condition Precedent 2 is recommended on the development permit issued for a landscape plan, including a planting schedule of species proposed. The Authority notes there is a typo in the DAS report to the Authority, and the condition should reference "prior to the endorsement of plans" rather than "before the development starts". The applicant agreed that a detailed landscape plan could be provided and was amenable to amend Condition Precedent 2 to "prior to the endorsement of plans". The wording of Condition Precedent 2 has been slightly modified to provide details of additional landscaping that is required as a result of Condition Precedent 1.

#### 5.5.15 (Design in Commercial and Mixed Use Areas)

The purpose of Clause 5.5.15 (Design in Commercial and Mixed Use Areas) is to *encourage a diverse mix of commercial and mixed use developments that are safe, contribute to the activity and amenity of commercial centres, are appropriately designed for the local climate, and minimise conflicts between different land uses within and surrounding the commercial centre.*

Sub-clause 16 and 18 of Clause 5.5.15 require, *(16) Car parking areas, including rooftop parking, and open expanses of pavement are to be shaded by landscaping and/or shade structures. 18) Development is to provide legible pedestrian access from the street and public pathways to building entrances that: (a) is direct and provides refuge from the sun and rain; and (b) avoids potential entrapment areas, blind corners or sudden changes in level that restrict sightlines.*

The proposal has been found not to be in accordance with sub-clause 16 of Clause 5.5.15 as the staff parking area is not shaded or landscaped and sub-clause 18 as parts of the pedestrian path are uncovered.

Administratively, under sub-clause 4 of Clause 5.5.15, *the consent authority may consent to a development that is not in accordance with sub-clause 16 if it is satisfied that the development provides an appropriate level of shading that reduces heat capture of paved surfaces, having regard to the location of the site and scale of the development* and under sub-clause 6 of Clause 5.5.15, *the consent authority may consent to a development that is not in accordance with sub-clauses 18 if it is satisfied that the development facilitates safe and shaded pedestrian movement through the site.*

The Authority notes that landscaping is provided along the visitor car parking area to provide shading. While no landscaping or shading is provided along the staff car parking spaces, it is considered appropriate in this instance, as landscaping or shade structures may compromise the vehicle maneuverability of the area. Additionally, a pedestrian entrance is provided near the front of the site, which is legible and functional. The pedestrian path is partially landscaped, and an awning covers the entrance to the building. The parts of the pedestrian path that are not shaded are minor, and given the low visitation and nature of the use, a variation to this requirement is considered appropriate in this instance.

#### 5.5.16 (Active Street Frontage)

The purpose of Clause 5.5.16 (Active Street Frontage) is to *provide a site-responsive interface between commercial buildings and the public domain that: (a) is attractive, safe and functional for pedestrians; (b) encourages activity within the streetscape; and (c) encourages passive surveillance of the public domain.*

Sub-clause 6 of Clause 5.5.16 requires *buildings to provide a minimum of 60% of the length of each site boundary that fronts a primary or secondary street or public open space, as active street frontage, made up of any combination of the following components, where the distance between individual components is no more than 1.5m: (a) windows that maintain clear views to and from the street, with openings that have dimensions not less than 0.9m wide and 1.2m high; (b) operational and legible entrances (excluding fire egress) that are directly accessible from the public domain; (c) areas within the site that are used for alfresco dining that provide visual interaction with the street/public open space; or (d) well-designed spaces that allow for pedestrian movement and/or seating.*

The proposal is not in accordance with sub-clause 6 of Clause 5.5.16 as less than 60% of the length of Ryko Court is provided as active frontage.

Administratively, under sub-clause 2 of Clause 5.5.16, *the consent authority may consent to a development that is not in accordance with sub-clauses 5, 6 and 7 if: (a) an alternative solution effectively meets the purpose of this clause; (b) the site design reflects the established character of the area; or (c) it is satisfied that compliance would be impractical considering servicing requirements and any advice provided under sub-clause 4.*

The Authority notes that the proposal meets the purpose of the clause as the entrance and landscaping along the frontage are legible and are likely to enhance the amenity of the streetscape. The establishment of the use of a vacant site will allow for continued passive surveillance of the street.

The Authority notes that all lots within the Ryko Court cul-de-sac are currently vacant, and the streetscape will be established as the lots are developed. The frontage length of adjacent lots is shown on the survey plan and ranges from 10.75m to 18.54m. The type of development and position on the lot will influence the streetscape design of adjacent lots; however, due to the irregular shape of the lots being located at the end of a cul-de-sac and having a smaller frontage length, a similar streetscape design may occur for other developments within the cul-de-sac.

The Authority further notes that the proposal is located at the periphery of the CBD, at the end of a cul-de-sac and is situated outside of the core and city centre focus areas identified within the Central Darwin Area Plan, where there is less pedestrian activity.

#### 5.9.2.11 (Car Parking Spaces in Darwin City Centre)

The purpose of Clause 5.9.2.11 (Car Parking Spaces in Darwin City Centre) is to *ensure that sufficient off-street car parking spaces, constructed to a standard and conveniently located, are provided to service the proposed use of a site.*

Sub-clause 5 of Clause 5.9.2.11 requires *the use, and development to include the minimum number of car parking spaces specified in the table to this clause (rounded up to the next whole number).*

As a data centre is an undefined use, a minimum car parking requirement is not specified in the Table to Clause 5.9.2.11, and a data centre would fall under *any other uses where the minimum number of car parking spaces to be determined by the consent authority*

The application provides 4 car parking spaces and 1 motorcycle parking space and notes this is sufficient to cater to the intended demand as the development is only anticipated to have a maximum of two permanent on-site staff; sporadic client visitation for the purpose of inspecting the facility and infrequent technician or trade visitation.

Under Table to Clause 5.2.4.1 the car parking requirements for similar uses are as follows:

- Office 2 for every 100m<sup>2</sup> of net floor area, only 1 car parking space where a building has a net floor area of up to 500m<sup>2</sup>; and
- Warehouse 2 for every 100m<sup>2</sup> of net floor area.

The NTPS 2020 Schedule 2: Definitions provides the following definition, *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 net floor area calculation for the proposal includes the meeting room (17m<sup>2</sup>), security room (14m<sup>2</sup>) and data hall (173m<sup>2</sup>), resulting in a total net floor area of 204m<sup>2</sup>.

If calculated at the same car parking requirement as an office, the proposal would be required to provide 1 car parking space, and if calculated at the same car parking requirement as a warehouse, the proposal would be required to provide 4.08 car parking spaces (5 spaces rounded up). The data centre use differs from both a warehouse and an office as it does not require the same number of staff on-site (a maximum of 2 on-site staff) and experiences a more sporadic visitation from clients, technicians or trades professionals. The number of car parking spaces provided is considered sufficient in this instance as the proposal provides enough car parking for the 2 on-site staff, an additional 2 visitor car parking spaces, 1 motorcycle parking space and 3 bicycle parking spaces. The Authority notes that a limited number of car parking and bicycle spaces are required due to the scale of the development and was supportive of providing one less car parking space (total of 3 car parking spaces) and bicycle parking space to allow for more landscape planting to achieve compliance with Clause 5.2.6.2 (Landscaping in Zone CB).

- (b) The considerations listed under Clause 1.10(4) have been given regard to and it has been found that the proposal complies with all relevant requirements of the NT Planning Scheme 2020, except for Clauses 5.2.4.4 (Layout of Car Parking Areas), 5.2.5 (Loading Bays), 5.2.6.2 (Landscaping in Zone CB), 5.5.15 (Design in Commercial and Mixed Use Areas) and 5.5.16 (Active Street Frontage) as identified above.
3. Pursuant to section 51(1)(j) of the *Planning Act 1999*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development.

The land is capable of supporting the proposed development. The overall scale of the development is consistent with that anticipated in the Darwin CBD with respect to the land's capability and the effect on surrounding properties. Comments from the City of Darwin and Power and Water Corporation have been sought in relation to the capability of the land, the requirements of service authorities are addressed through conditions and notes on the permit.

The applicant at the hearing requested the Authority to amend the recommended general condition 19 to clarify no additional physical screening is required as there is limited space to allow for additional screening. The Authority noted the applicant's comment and amended the wording that all substation, fire booster and water meter arrangements are to be appropriately screened to the requirements of Power and Water Corporation, and NT Fire and Emergency Services has been included.

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

The impact on amenity should be considered in the context of the site and its surroundings. The development is consistent with the broader intent of Zone CB (Central Business) and applicable clauses. The proposal is for a single storey building and is of a limited scale compared to other developments in the area. The proposal is located at the periphery of the CBD, at the end of a cul-de-sac and is situated outside of the core and city centre focus areas identified within the Central Darwin Area Plan, where there is less pedestrian activity. The building presents the Ryko Court frontage with increased activation. Any adverse impacts on amenity have been addressed through the recommended conditions and notes for any permit that may be issued for the proposal.

An acoustic report was provided as part of the application, which includes a noise emission assessment and noise emission treatment recommendations, a condition has been recommended for inclusion on any development permit issued that the development must be designed and constructed to comply with the acoustic treatment recommendations of the Acoustics Spatial Co-Ordination Report.

**FOR:** 4

**AGAINST:** 0

**ABSTAIN:** 0

**ACTION:** Notice of Consent and Development Permit

**ITEM 2**  
**PA2023/0126**

**CHILDCARE CENTRE IN A TWO STOREY BUILDING**  
**LOT 9780 (366) BAGOT ROAD, MILLNER, TOWN OF NIGHTCLIFF**

**APPLICANT**

Cunnington Rosse Town Planning and Consulting

Applicant Brad Cunnington.

Hermanus Louw and Leandre Piggott (Louw Group), Desmond Robertson and Max Manohar (Rossi Architects), Bryden Smith (Arcos Traffic Engineering) attended.

**RESOLVED**  
**29/23**

That, the Development Consent Authority vary the requirements of Clauses 5.2.4.4 (Layout of Car Parking Areas), 5.5.15 (Design in Commercial and Mixed Use Areas) of the Northern Territory Planning Scheme 2020 (NTPS 2020), and pursuant to section 53(a) of the Planning Act 1999, consent to the application to develop Lot 9780 (366) Bagot Road, Town of Nightcliff for the purpose of childcare centre in a two storey building, 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) an annotation 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); and
  - (b) Parking space/s dedicated for mini-bus/s along with swept path diagram illustrating the ability for the mini-bus/s to enter and end exist the site safely.



2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a Traffic Impact Assessment (TIA) report is to be prepared by a suitably qualified traffic engineer in accordance with the Austroads Document Guide to Traffic Management Part 12: Integrated Transport Assessment for Developments shall be submitted to and approved by the Transport and Civil Services (TCS) of the Department of Infrastructure Planning and Logistics, to the satisfaction of the consent authority. The TIA should include:
  - a) A network analysis comprising the Bagot Road and Skelton Road intersection;
  - b) Proposed access arrangements to/from Skelton Street and internal vehicle circulation, including recommendations to mitigate traffic and safety impacts;
  - c) A sightline assessment for the Bagot Road and Skelton Street intersection including the proposed access to/from Skelton Street;
  - d) A signage plan for warning the presence of the proposed driveway on the side road; and Stage 3 Road Safety Audit in accordance with the Department's polict "Road Safety Audit".
  
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a Stage 3 Road Safety Audit 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 shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority. The Road Safety Audit should consider vehicular, pedestrian, and cyclist safety and shall include:
  - a) Internal vehicle circulation and parking arrangements to understand the possibility of queuing back on to the Skelton Street and any resulting impacts on the Skelton / Bagot Road intersection;
  - b) Driveway dimensions and demonstration to confirm simultaneous vehicle entry and exit;
  - c) Swept paths for waste collection vehicles entering and exiting the site; and
  - d) Necessary upgrades to the surrounding street network resulting from implications of the development.
  
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 and/or Transport and Civil Services, Department of Infrastructure, Planning and Logistics (TCS) road reserve, to the satisfaction of the consent authority.

[Note: Swept path diagrams for the design vehicle/ maximum sized vehicle based on the speed of the left lane turn exit curve with the detailed design drawings of proposed access shall submitted for TCS approval to demonstrate the suitability of the access design geometry]

5. 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 Transport and Civil Services, Department of Infrastructure, Planning and Logistics and/or the City of Darwin stormwater drainage system shall be submitted to and approved by Transport and Civil Services, Department of Infrastructure, Planning and Logistics and/or 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 to an underground system.
  
6. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principal approval is required for any element of the building design that is designed to be constructed or installed over the Power and



Water Corporation (Water Services) easements, to the satisfaction of the consent authority.

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 Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics and City of Darwin, to the satisfaction of the consent authority.
8. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Guidelines, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.
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. All works required as part of the Traffic Impact Assessment and Road Safety Audit, to be completed to the requirements of Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics, and the City of Darwin, to the satisfaction of the consent authority.
12. All proposed works impacting on Bagot Road are to be designed, supervised and certified on completion by a practicing and registered civil engineer, and shall be in accordance with the standards and specifications of the Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics. Drawings must be submitted to the Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics for approval and no works are to commence prior to approval and receipt of a "Permit to Work Within a Road Reserve".
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 1, 2, 3 and 4 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. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to Transport and Civil Services, Department of Infrastructure, Planning and Logistics and/or the City of Darwin, to the satisfaction of the consent authority.

16. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the City of Darwin and/or Transport and Civil Services, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
17. 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 or at the intersection of Bagot Road and Skelton Street, in accordance with the requirements of Transport and Civil Services, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
18. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
19. Upon completion of any works within or impacting upon existing road reserves, the infrastructure within the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin and Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics and returned to the condition as documented in the dilapidation report.
20. 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 driveways to the satisfaction of the consent authority.

Car parking spaces, access lanes and driveways must be kept available for these purposes at all times
21. The 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.
22. Where unfenced, the Bagot 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.
23. 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.
24. 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.

25. 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.
26. 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. The Power and Water Corporation advises that the Water and Sewer Services Development Section ([waterdevelopment@powerwater.com.au](mailto:waterdevelopment@powerwater.com.au)) and Power Network Engineering Section ([powerdevelopment@powerwater.com.au](mailto: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](http://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/newdevelopments/buildersdesigners.html>
4. 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.
5. 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.
6. 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.
7. A "Permit to Work Within a Road Reserve" may be required from Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics before commencement of any work within the Bagot Road road reserve.
8. Any proposals for the upgrading/ resurfacing of the Bagot Road footpath/ verge fronting the development shall require the approval of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics.
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. 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 Bagot Road traffic.
  11. The construction of awnings over the Bagot Road road reserve is subject to Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics' approval and will require the execution of a "Deed of Indemnity and Release" in favour of the Northern Territory of Australia prior to construction. An application with detail drawings of the proposed structures and locations in the road reserve, shall be submitted to the Transport and Civil Services Division for consideration. Awnings proposed on Territory roads shall be in accordance with the Department's policy "Awnings and Columns in the Road Reserve".
  12. The developer shall consider the Department's Policy "Road Traffic Noise on Northern Territory Government controlled roads" and have carried out, in accordance with AS3671 Road Traffic Noise Intrusion - Building Siting and Construction, an assessment by a suitably qualified person of the development's present and predicted future exposure to road traffic noise levels. Where required, the developer shall provide appropriate noise attenuation measures to the satisfaction of the Chairman, Development Consent Authority. All noise attenuation works deemed necessary, e.g. building materials and design, lot layout or noise barriers, shall be wholly contained within the subject Lot (including foundations) and carried out and maintained at full cost to the developer.
  13. Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics has advised that no temporary access for construction purposes shall be permitted from the Bagot Road road reserve. Construction and delivery vehicles shall not be parked on the Bagot Road road reserve.
  14. 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.
  15. There are statutory obligations under the WMPC 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 WMPC Act, including the General Environmental Duty under section 12 of the WMPC Act. There is also requirement to obtain an authorisation prior to conducting any of the activities listed in Schedule 2 of the WMPC Act. Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority (NT EPA) website . To help satisfy the General Environmental Duty, the proponent is advised to take notice of the list of environmental considerations below. The list is not exhaustive, and the proponent is responsible for ensuring their activities do not result in non-compliance with the WMPC Act. 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.
  16. 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*, the *Food Act 2004* and the Education and Care Services National Regulations that apply to the requirements for the establishment and operation of child care centres.

## 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 child care centre requires consent under Clause 1.8 (When development consent is required). It is identified as Merit Assessable under Clause 1.8(1)(b)(i), therefore zone purpose and outcomes of Clause 4.11 (Zone C - Commercial), and Clauses 5.2.1 General Height Control, 5.2.4.1 Car Parking Spaces, 5.2.4.4 Layout of car parking area, 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 Commercial Plot Ratio, 5.5.7 Child Care Centre, 5.5.15 Design in Commercial and Mixed Use Areas, 5.5.17 Building Frontage in Commercial and Mixed Use, need to be considered.

These clauses have been considered, and it is found that the proposal complies with the relevant requirements of the NTPS 2020 except for Clauses 5.2.4.4 (Layout of car parking areas) and 5.5.15 (Design in Commercial and Mixed Use Areas).

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).

Under Clause 1.10(4) (Exercise of Discretion by the Consent Authority), "In considering an application 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;
- (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 Part 5 and 6.

### Part 3- Overlays and Part 4 - 4.11 Zone C (Commercial)

No Overlay listed under Part 3 applies to the land. The purpose of Zone C is to provide a mix of activities and services well connected to a surrounding community at varying scales, including: (a) mixed use centres providing a wide range of retail, entertainment, community and business activities that serve the broader community; (b) smaller centres that cater for convenience needs of immediately surrounding communities; (c) small local centres predominantly focused on convenience retailing; and (d) residential development commensurate to the scale of the commercial precinct.

The relevant zone outcomes is:

*A diversity of commercial activities that provide for a range of needs of the surrounding area at an appropriate scale for their location, including: child care centre, club, residential care facility, and other community activities and support services.*

The proposal is consistent with the purpose of Zone C and relevant zone outcome as it provides a child care facility at a location connected to the surrounding

community and provides a service for the broader community. The site is connected to an established pedestrian network, and the building design, site layout and landscaping respond to the climate and include breeze circulation. There is no impact of overlooking from adjacent land, and the design contributes to reducing the appearance of building massing relative to surrounding buildings. The development has attractive outdoor spaces, enhances the streetscape and will not have any impact of loss of amenity for surrounding premises, as it only abuts a government archive facility.

#### Part 5 – Development Requirements

The proposal complies with the relevant Part 5 development requirements of the NTPS 2020 except for Clauses 5.2.4.4 (Layout of car parking areas) and 5.5.15 (Design in Commercial and Mixed Use Areas).

#### Clause 5.2.4.4 (Layout of Car Parking Areas)

*The purpose of the clause is to ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose.*

The Development Assessment Services (DAS) assessment has found the proposal not to be in accordance with subclause 6 because the proposal provides two car parking spaces (car parking space 1 and 32) closer than 3 metres from the lot boundary which also affects the ability to provide landscaping to a depth of 3 meters to lessen the visual impact of the car parking area when viewed from the street.

Administratively, under sub-clause 3 of Clause 5.2.4.4, the consent authority is to consider if the non-compliance of the parking spaces close to the boundary and landscaping is satisfactory and will not unreasonably impact on the amenity of the surrounding locality.

The Authority notes the assessment of DAS, which concludes that the car parking area is consistent with the purpose of the clause in that it is appropriately designed, constructed and maintained for the intended purpose. A variation to the requirements listed under subclause 6 is considered appropriate, noting the following circumstances which have been identified:

- Improving visibility for vehicles and pedestrians at the access point will improve safety due to the close proximity of the Bagot Road and Skelton Street intersection.
- The parking layout and reduction of landscaping do not unreasonably impact on the amenity of the surrounding locality, including walkability and safety of pedestrians.

#### Clause 5.5.15 (Design in Commercial and Mixed Use Areas)

The purpose of Clause 5.5.15 (Design in Commercial and Mixed Use Areas) is to encourage a diverse mix of commercial and mixed use developments that are safe, contribute to the activity and amenity of commercial centres, are appropriately designed for the local climate, and minimise conflicts between different land uses within and surrounding the commercial centre.

Subclause, 17 of the clause requires “Unless advised otherwise by the relevant local government council or controlling agency for roads (whichever is applicable), development is to provide an awning or verandah to all street frontages that adjoin a footpath, which: (a) extends along the full length of the site boundary to provide continuous coverage for pedestrians; (b) covers the full width of the footpath or has a minimum width of 3m; and (c) allows for the growth of existing trees and the planting and growth of reasonably anticipated trees within the road reserve.”



The proposal has been found not to be in accordance with subclause 17, as no awning or verandah is provided to street frontages and adjoining footpaths (Bagot Road and Skelton Street).

A variation to the requirements listed under subclause 17 is considered appropriate, noting the following circumstances which have been identified:

- The character of the site is associated with the Jape Homemaker Village. The Jape Homemaker Village is defined within the Darwin Regional Land Use Plan 2015 as a Bulky Goods / Specialist activity centre. This style of activity centre is not typically designed for neighbourhood walkability, but for vehicles and trucks to easily access the site by being connected to major road networks.
- There are no awnings or verandas covering or aligning the street footpaths in the surrounding area. As such, providing any awning or verandah is not consistent with the established character of the streetscape.
- Bagot and Trower Road create a pedestrian barrier, meaning that pedestrians cannot cross Bagot and Trower Road in close proximity to the site. As such, providing an awning or verandah along the Bagot Road or Skelton Street frontages will have negligible impact on pedestrian movements or pedestrian amenity.
- Not requiring alternate shading, such as trees, will maximise sightlines and enhance visibility for pedestrians and drivers at the Bagot Road and Skelton Street intersection, improving safety.

The considerations listed under Clause 1.10(4) have been given regard to and it has been found that the proposal complies with all relevant requirements of the NTPS 2020, except for Clauses 5.2.4.4 (Layout of car parking areas) and 5.5.15 (Design in Commercial and Mixed Use Areas), as identified above.

Furthermore, the Authority carefully evaluated Clause 5.5.7 concerning Child Care Centre to confirm that the intended use is suitable and meets all the necessary criteria specified in the clause. This is discussed in detail below.

#### Clause 5.5.7 – Child Care Centre

*The purpose of the clause is to ensure that a child care centre: (a) is developed in a location that provides convenient vehicle access and does not interfere with the safe or efficient operation of the local road, cycle and footpath network; (b) incorporates appropriate site layout, building and landscape design to ensure that there is no unreasonable loss of amenity for adjoining and nearby properties.*

The requirements listed under subclause 2 to 6 of the clause are:

- (1) *Provide associated vehicle access, parking and manoeuvring.*
- (2) *Provide landscaping and any necessary screening.*
- (3) *Be located:*
  - (a) *adjacent to or within other community facilities such as shopping centres, schools and health services;*
  - (b) *at or near the entrance to a residential suburb; or*
  - (c) *in or near employment areas.*
- (4) *Have vehicular access from a road other than from an arterial road.*
- (5) *If a child care centre is located adjacent to land in Zones LR, LMR, MR or HR:*
  - (a) *the development is to be set back 5m from all site boundaries and landscaped to a minimum depth of 3m to provide a visual screen;*
  - (b) *a minimum 1.8m high solid acoustic screen fence is erected along the full length of all site boundaries adjoining land in Zones LR, LMR, MR or HR;*
  - (c) *the design of the centre is to take account of the noise impact on any adjacent dwelling by either locating outdoor play space away from the common boundary or by including appropriate screening.*



Regarding requirements (3), (4), and (6), the Authority notes the assessment of the DAS, which concludes that the proposed development is generally consistent with the performance criteria due to the following:

- The development proposes timber look aluminium screening battens to provide screening along Bagot Road. The screening encloses a courtyard and play area.
- Landscaping at the intersection of Bagot Road and Skelton Street is required to be minimal to maintain sightlines for pedestrian and vehicle safety.
- Landscaping at the access on Skelton Street also requires minimum landscaping to maintain sightlines for pedestrian and vehicle safety.
- The site is directly adjacent to the Jape Homemaker Centre (shopping centre), which is identified as a bulky goods activity centre, approximately 600m from Millner Primary School, approximately 350m away from Pandanus Medical NT and 800m from the Rapid Creek Markets. The Jape Home Maker Centre and the Rapid Creek shops provide many employment opportunities in the area. The site is within the suburb of Millner, which contains a significant proportion of LR and LMR zoning.
- Requirement (6) is not applicable as the site is not adjacent to Zones LR, LMR, MR or HR the requirement.

In regard to requirement (2), the Authority notes that the DAS assessment on 5.2.4.4 (Layout of Car Parking Areas) also concludes that the car parking layout is functional and is generally compliant with the requirements of the clause, except for a minor variation to the setback and landscaping requirement along the street frontage, which is supported as it will improve the visibility for vehicles and pedestrians at the access point. Recommended conditions on the permit require sightlines to be maintained and no obstruction to exceed a height of 0.6m, including plants, at the access and intersection.

While the NTPS 2020 does not specify the provision for a dedicated pick-up/drop-off area for a child care centre, the Authority notes that the proposed child care centre will accommodate up to 156 children with 66 pre-school age-group children.

The Authority at the hearing questioned the applicant (Brad Cunnington from Cunnington Rosse Town Planning and Consulting) on whether there would be any bus service for preschool children. Mr. Cunnington clarified that although the child care centre will have 66 children in the preschool age group, they will not be dropped off/picked-up collectively. Mr Cunnington also explained that the centre will use small minibuses that can accommodate up to 12 children and can be parked in the existing car parking.

The Authority, was mindful that the proposed use will have a large population of preschool age-group children, which would require drop-off/pick-up during different times during the day. The Authority considers that adequate mini bus/s parking arrangements is required as part of the development. Condition Precedent 1 (b) is included on the permit to provide mini bus parking along with a swept path diagram to ensure adequate manoeuvring of minibus/s within the site.

The Authority also questioned the applicant regarding the functionality and manoeuvrability of vehicles within the car parking area. The Authority noted that the garbage bin area is located at the end of the car park, which means that garbage trucks will have to drive through to the end of the parking area. The Authority expressed concern that this could pose a safety risks for pedestrians and vehicles within the parking area. Mr. Cunnington clarified that waste collection will be handled by a private contractor using smaller vehicles and will take place outside of

peak hours. Furthermore, a turnaround bay has been provided near the bin enclosure for service vehicles, enabling the trucks to depart in a forward gear.

In response to the question raised by the Authority regarding the availability of a loading bay for delivery trucks, Mr Cunningham explained that the proposed child care is unlikely to require loading facilities as contemplated under the NTPS 2020 designed for loading / offloading large bulky goods. Deliveries are expected to be on a smaller scale and can be easily accommodated within the current car parking area, suitable for small trucks.

In relation to requirement (5), the Authority notes that the site is located on the corner of Bagot Road and Skelton Street, and the proposal provides vehicle access from Skelton Street, a lower-order road with less traffic than Bagot Road. The Authority further notes that the City of Darwin (controlling agency for Skelton Street) and Transport and Civil Services Division (controlling agency for Bagot Road) have requested a condition precedent requiring the preparation of a Traffic Impact Assessment and Road Safety Audit to ensure the proposed child care centre will not interfere with the safe or efficient operation of the local road network. Recommended conditions on the permit require the City of Darwin and Transport oversight to ensure the suitability of the traffic network.

3. Pursuant to section 51(1)(m) 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, 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 notes on the development permit. The City of Darwin and the Transport and Civil Services, Department of Infrastructure, Planning and Logistics did not oppose the development but expressed concerns about its potential impact on traffic, the Bagot Road and Skelton Street intersection, and access to the site.

To ensure the development does not unreasonably impact public safety, traffic network, the intersection of Bagot Road and Skelton Street and access to the site, both the City of Darwin and Transport and Civil Services, Department of Infrastructure, Planning and Logistics, require a Traffic Impact Assessment and Road Safety Audit. These requirements are met through the inclusion of specific condition on the permit.

The Water Services division of the Power and Water Corporation has identified that the eaves of the building affects an existing sewer easement located at the western part of the site. A condition is recommended for the development permit requiring approval from the Water Services division of the Power and Water Corporation for any portion of the that encroaches on the easement.

The Quality Education Care NT (QECNT), which is responsible for administering the National Quality Framework, including the approval, monitoring and quality assessment of early childhood education and care services, provided comments on the internal layout and provision of facilities in the proposed child care. The Authority notes that the approval of a planning application for the proposed child care does not mean that approval from the QECNT will also be granted, as they are two very distinct processes with separate decision-making authorities. A note is included on the permit advising the proponent to obtain separate approval from the QECNT.

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

The impact on amenity should be considered in context of the site and its surrounds. The child care centre is considered appropriate within the zone and does not negatively impact the amenity of the area. The nature of the proposal is consistent with the commercial opportunities of the land and is expected within the zone. Where the development does not comply with the relevant clauses of the NTPS 2020, the impact on existing and future amenity has been considered, and a variation has been supported as amenity will not unduly be impacted upon.

Provided the development proceeds in accordance with the conditions included on the permit, the proposed development is unlikely to impact the existing and future amenity of the area.

**FOR: 4**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:** Notice of Consent and Development Permit

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

**SUZANNE PHILIP**

**Chair**

28 August 2023