



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 349 – FRIDAY 7 FEBRUARY 2020

**BROLGA ROOM
NOVOTEL DARWIN ATRIUM
100 THE ESPLANADE
DARWIN**

MEMBERS PRESENT: Suzanne Philip (Chair), Mark Blackburn, Marion Guppy, Simon Niblock and Robin Knox

APOLOGIES: Peter Pangquee

OFFICERS PRESENT: Margaret Macintyre (Secretary), Dawn Parkes, Richard Lloyd, Julie Hillier, Emmett Blackwell and Lachlan Linkson (only part of meeting) (Development Assessment Services)

COUNCIL REPRESENTATIVE: Brian Sellars and Conneil Brown

Meeting opened at 10.45 am and closed at 1.45 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

**PA2019/0474 ADDITION OF 6 X 42M HIGH LIGHT POLES TO AN EXISTING LEISURE AND RECREATION FACILITY (MARRARA CRICKET GROUND)
SECTION 3094 (155) ABALA ROAD, MARRARA, HUNDRED OF BAGOT**
APPLICANT/S Northern Territory Project Management Pty Ltd

Mr Dean Osborne (Northern Territory Project Management Pty Ltd) and Mr Joel Morrison (Chief Executive Officer, NT Cricket) attended.

Submitter Mr Brendan Lawson attended and tabled a further submission and a photo taken from his house showing the light from the TIO stadium in Marrara.

Interested party in attendance: Mr Will Zwar (NT News).

**RESOLVED
13/20**

That, the Development Consent Authority vary the requirements of Clause 6.1 (General Height Control), of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Section 3094 (155) Abala Road, Hundred of Bagot for the addition of 6 x 42m high light poles to an existing organised recreation facility (Marrara Cricket Ground), subject to the following conditions:

GENERAL CONDITIONS

1. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
2. The owner of the land must enter into agreements with the relevant authorities for the provision of electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time, to the satisfaction of the consent authority.
3. 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.
4. 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.
5. The applicant is to provide advice from the Department of Defence and Darwin International Airport that approval is granted for the height of the structures, to the satisfaction of the consent authority.
6. The lighting must be designed and constructed to comply with AS4282:2019 - Control of the obtrusive effects of outdoor lighting, to the satisfaction of the consent authority.
7. The use and development as shown on the endorsed plan must not be altered without the further consent of the consent authority.

8. 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.
9. 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 (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@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. The site is subject to the 'Defence Areas Control Regulations (DACR)'. All structures, including temporary structures, higher than 15m above ground level, including, but not limited to, additional buildings, light poles, cranes used during construction, vegetation etc., require approval from the Department of Defence.
3. The applicant is advised that the provision of lighting at the site is required to be consistent with the CASA Manual of Standards (MOS-139) Aerodromes to minimise the potential for conflict with aircraft operations. The design of lighting is a developer responsibility and if it is later found that lights or glare endangers the safety of aircraft operations, the Department of Defence or the Civil Aviation Safety Authority may require the lighting to be extinguished or suitably modified.
4. 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 at <https://ntepa.nt.gov.au/wastepollution/guidelines/guidelines>.

The proponent is advised to take notice of the attached Schedule of Environmental Considerations provided by DENR.

The 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 Environmental Operations Branch of the Environment Division may take enforcement action or issue statutory instruments should there be non-compliance with the Act.

REASONS FOR THE DECISION

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

The Northern Territory Planning Scheme (NTPS) applies to the land, and the site is within Zone OR (Organised Recreation) of the NTPS. The primary purpose of Zone OR is to provide areas for organised recreational activities. Further, the development is to be limited to that which is consistent with the recreational opportunities of the land.

Section 3094 is developed as the home of NT Cricket, containing two cricket ovals, practice cricket pitches (outdoor and undercover), change rooms, bar, storage shed and administrative offices. The site is generally known as Marrara Cricket Ground. The application relates to the turfed primary cricket oval, located on the eastern side of the subject site. The use is defined as leisure and recreation within Clause 3 (Definitions) of the NTPS.

“leisure and recreation” means the provision indoors or outdoors of recreation, leisure or sporting activities and includes cinemas, theatres, sporting facilities and the like as a commercial enterprise but does not include a licensed club or community centre.

The leisure and recreation use is listed within the zoning table of Zone OR as a discretionary use. The proposed development comprises the installation and use of six light poles to allow for evening sports training and matches. This is seen to be furthering the recreational opportunities of the land as expressed in the zone purpose.

The maximum height for development in Zone OR is defined by Clause 6.1 (General Height Control) of the NTPS. The purpose of Clause 6.1 is to ensure that the height of buildings in a zone is consistent with the development provided by that zone. The clause requires the height of a building is not to exceed 8.5m above the ground level unless it is a flag pole, aerial, antenna; or for the housing of equipment relating to the operation of a lift. The development proposes six lighting poles which do not comply with this clause as the highest point of the proposed light structures is 42m, which exceeds the height limit by 33.50m.

In accordance with Clause 2.5 of the NTPS, the consent authority may grant a variation to this clause provided it is satisfied that special circumstances can be identified to justify the variation sought. The consent authority will need to be satisfied that despite the variation proposed, the height of the light poles is consistent with development provided in Zone OR. *The meaning of special circumstances for the purposes of Clause 2.5 are circumstances that are ‘unusual, exceptional, out of the ordinary and not to be expected’ (as per Phelps v Development Consent Authority [2009] NTSC 54 Kelly J). In considering whether there are special circumstances the Authority must take a holistic approach, with each case to be considered on its merits. Circumstances which by themselves might not be ‘special’ can, in combination with other circumstances, create a situation which*

overall gives rise to 'special circumstances'. Equally a holistic approach to the application of clause 2.5 also applies to the respects in which a proposed development does not comply with the NTPS.

A variation to Clause 6.1 is supported as:

- Zone OR is the only standard zone within the NTPS designed explicitly for land use and development to accommodate organised recreation activities, including facilities for sporting competition.
- It is evident that stadium and sports lighting is a reasonable expectation for sporting facilities in Zone OR.
- The site is within the Marrara Sporting Complex which has several other lit sporting grounds. The height of the proposed lights is consistent with the lights associated with these venues. The height of the proposed lights is lower than that of Marrara's TIO stadium.
- The height of the structures is necessary to efficiently provide the desired level of lighting cover to the facility to provide for the needs of the users.
- The lights are slimline structures, typically designed for the purpose. The lights are wholly contained within the subject site. Given the urban environment and slimline design of the lights, they are not assessed to be visually bulky or out of keeping with the locality.

The assessment also notes that the height restriction in Clause 6.1(4) is a broad restriction that applies to a number of zones, but some uses are exempted from the height restriction if it is consistent with the development provided for by that zone. For example the height of buildings in Zone CP (Community Purpose) should not exceed 8.5m under the Clause; however, education establishments and hospitals are exempted from the height restriction. This is because these uses contain structures which require height exceeding 8.5m; like certain sporting facilities in the education establishment.

2. 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.

Two (2) individual submissions were received under section 49(1) of the Act. The submissions raise concern regarding community consultation, lighting impacts on surrounding residential properties and increased noise activity on the subject site.

With reference to the public consultation, the application (including applicant's response to submissions) states the applicant conducted community consultation activities for the proposed facility in late 2019, prior to the lodgement of this development application. A detailed summary of documents and correspondence from the consultation are included as attachments to the full planning report for this application. Subsequent public exhibition of the development application was also carried out under the requirements of the *Planning Act 1999*.

In relation to the glare impacts of the proposed lighting poles on surrounding properties, the discussion provided below (under reason 4) addresses the concerns raised in the submissions.

In terms of the submitters concerns pertaining to excessive noise generation on the subject site as a result of the lighting poles, night time use of the cricket ground under lights may increase the frequency of use, however activities will cease at 10pm, with lights out by 10:30pm, as stated in the applicant's public consultation material. The use of the site for sporting activities is consistent with the purpose of Zone OR (Organised Recreation) and the levels of noise anticipated from cricket games is minimal.

Mr Lawson of 13 Sunningdale Court, Marrara attended the meeting representing his own written submission and also that of his neighbours who could not attend the meeting; Peter and Narelle Campbell of 8 Sunningdale Court, Marrara. Mr Lawson tabled a further written submission and a photo of the TIO stadium lights at night time from his residence. Mr Lawson spoke during the meeting in relation to the issues raised in his tabled submission, specifically questioning the validity of the applicant's supporting lighting study and the proposals compliance under the applicable Australian Standards. Mr Lawson also raised concern about the potential increased noise generation as a result of the development, in particular increased non-cricket related use of the facility at night time for Australian Football League (AFL) games and social functions.

In response to Mr Lawson's concerns, the applicant asserted that the lighting compliance report submitted with the application was rigorous and that the lighting would be installed so as to be compliant with the applicable Australian Standard AS4282:2019 (Control of the obtrusive effects of outdoor lighting). The applicant also stated that he would be happy for a condition to be included on the development permit ensuring compliance in this regard but did not support Mr Lawson's request that a condition be applied to the development permit limiting the light spill to 1 Lux at the nearest residential boundary, given that the Australian Standard allows for up to 10 Lux as an acceptable level.

In relation to noise concerns, the applicant confirmed that the oval currently is and will continue to be used for other sporting codes including AFL and that night time games will occur. Furthermore Mr Morrison expressed his intention to ensure that NT Cricket acted as a good neighbour toward surrounding residents on the eastern side of the facility, wanting to maintain a respectful dialogue with residents into the future. Specifically, NT Cricket would review its management practices to notify nearby residents of additional activities and/or special events etc. taking place on the oval.

The Authority noted the matters raised in both the written submissions and those made by Mr Lawson during the meeting, as well as the responses provided by the applicant and Mr Morrison. The Authority determined to apply a condition to the development permit to ensure that the final design and construction of the lighting poles accords with

AS4282, as while the current lighting report suggests that the light spill at the nearest residential boundary is 1 Lux, the Authority accepts that AS4282 allows for up to 10 Lux and did not consider it was necessary, based on the submitted information, to impose a higher standard.

3. Pursuant to Section 51 (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 on the development permit.

The applicant requested that the recommended condition precedent, concerning approval from Department of Defence for the height of structures, instead be made a general condition so as not to slow down the progression of the development, given that approval in this regard would be sought in any case. The Authority agreed that this change to conditions was acceptable, therefore the condition precedent has been edited to become a general condition of the development permit.

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

The subject site is in Zone OR (Organised Recreation), and the immediate locality comprises various zones developed with a range of uses. The locality comprises the broader Marrara Sporting Complex of which the subject is a part, being located in the south east corner of the complex, adjoining the Pints Club and TIO stadium to the north and a shooting range to the west. Immediately south of the site is a large area of bushland. Darwin Golf club and the residential area of Marrara sit to the west of the subject site, the closest residents being in Carnoustie Circuit and Sunningdale Court, with a minimum separation distance of 81 metres from any residential property boundary to the base of the nearest lighting pole. Residential lots being buffered from Marrara cricket oval by the 13th fairway of Darwin Golf Club.

Amenity under Section 3 of the Act and Clause 3 of the NTPS is defined as:

“amenity” in relation to a locality or building, means any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable.

The potential amenity impact by the proposed development is considered in two components. Firstly, the visual impact from the proposed structures (the light poles and luminaires), and secondly any impact (such as glare or light spill) from the operation of the luminaires.

With regard to visual impact, the assessment notes that the residential properties are located 81 metres from the base of the nearest lighting pole. The proposed enhancement of an existing vegetation buffer with extra trees to be planted on the eastern side of the oval between the proposed light poles and the residential area will help screen the light poles from view. During the meeting Alderman Knox queried whether it would be possible to provide extra tree planting on the northern side of the oval to provide improved amenity for the nearby residents. NT Cricket CEO Joel Morrison advised that options for further tree planting in this area may be limited due to vehicle access and grounds keeping requirements of the facility, but that they would certainly look at any options to increase planting where possible.

Given the subject site's location on Abala Road is in the south eastern corner of the Marrara Sports Complex, the nearest proposed lighting pole is located 580 metres from McMillans Road, the nearest main road. TIO stadium within Marrara Sporting complex is far closer to McMillans Road, and contains a greater number of sports ground lights and it is therefore considered that the proposed lights and their operation will not have a negative impact on the safety of road users

Notwithstanding the light poles will be a visible inclusion in the landscape, they are interspaced on site, and given the bulk and mass of the light poles is minimal as compared to a building, this will be a small addition to the existing landscape of the broader locality. Considering that the location and direction of the lighting poles are well away from the residential uses and main roads, it is considered that the visual effect of the light poles would be negligible.

With regard to light spill on the surrounding residential areas, the application includes a design report which concludes that the proposed lighting poles are designed to comply with 'AS4282 – Control of Obstructive Effects of Outdoor Lighting' which specifically requires that the vertical illuminance at the nearest residential property shall not exceed 10 Lux. The design report assesses the light spill extending along the boundaries. The light spill plans shows that lux levels are a maximum of 1 Lux at the boundaries of the nearest residential properties which is compliant under Australian Standard - AS4282. A condition is included on the development permit to ensure that the final design and construction of the light poles achieves compliance with AS4282.

It is considered that the proposed development promotes the general purpose of Zone OR by way of a facilitating use. The lighting poles are located and orientated away from adjacent uses, and the proposed and existing vegetation between the development area and the adjacent residential area acts to soften the impact of the lighting poles and the effect of the development on the existing and future amenity of the locality.

Further, the addition of lighting poles will enable evening use of the existing leisure and recreation facility. This in addition to the activation of the area will have a positive contribution to the amenity of the users of the facility.

5. Pursuant to section 51(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.

This site is near the Darwin International Airport (DIA) and is affected by the 20 ANEF 2030 and 2042 contours from DIA. While the existing use of the site is not identified in the 'Building Site Acceptability Based on ANEF Zones taken from AS 2021 – 2000', the use has been in this location for many years, and no known conflict with the airport operations concerning noise has been identified. The proposed addition of lighting poles does not intensify the existing use of the site, and as such, the proposal is considered consistent with the clause. It is therefore considered that the land is capable of supporting the proposed development and will not unduly affect the development of other land.

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; and
 - (iii) access for persons with disabilities.

The proposed development does not impact on the water safety and access for persons with disabilities. It is noted that the addition of lighting poles to the existing sporting facility would enable evening training sessions and matches to take place which will provide additional activation to the area; opportunities for passive surveillance; and improve community safety. It was also considered to be in the public interest to provide additional sporting facilities that have the capacity to operate in the evening when it is cooler and therefore safer to participate in sport.

ACTION: Notice of Consent and Development Permit

ITEM 2

PA2019/0464

SUBDIVISION TO CREATE 11 LOTS

SECTION 7471 (582) STUART HIGHWAY, WINNELLIE, HUNDRED OF BAGOT

APPLICANT/S

Northern Planning Consultants Pty Ltd

Mr Brad Cunnington (Northern Planning Consultants Pty Ltd) and Mr Tony Parsons (Precision Civil and Hydraulic Engineering) attended.

Submitters:- Mr Chris Mellios and Mr Michael Lynagh attended.

Mr Philimon Siskamanis (attended with Mr Mellios) and Mr Neville Jones (attended with Mr Lynagh).

Mr Lynagh tabled a further submission.

Interested party in attendance: Mr Will Zwar (NT News).

**RESOLVED
14/20**

That, pursuant to section 53(a) of the *Planning Act 1999*, the Development Consent Authority, consent to the application to develop Lot 7471 (582) Stuart Highway, Hundred of Bagot for subdivision to create 11 lots, subject to the following conditions:

CONDITIONS PRECEDENT

1. 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 City of Darwin, Crown Land Management Division - Department of Infrastructure, Planning and Logistics (DIPL), and Transport and Civil Services Division - DIPL, to the satisfaction of the consent authority. The plan shall include details of site levels, Council's/Crown Lands' stormwater drain connection point/s and connection details, and any required stormwater study.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a traffic impact statement in accordance with the *Austrroads Guide to Traffic Management Part 12: Traffic Impacts of Development* is to be prepared by a suitably qualified traffic engineer with particular attention to: the development's traffic generation, trip distribution, traffic operation impact, the nature and timing of impacts, and recommended measures required to accommodate and/or mitigate the traffic impacts of the development, including construction traffic, to the requirements of the City of Darwin and DIPL - Transport and Civil Services Division, to the satisfaction of the consent authority.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the proposed accesses to the site from the City of Darwin and Northern Territory Government road reserves, to the satisfaction of the consent authority.
4. 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.
5. Prior to the commencement of works (including site preparation), 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) and an Operational Traffic Management Plan (detailing access routes, vehicle types and other relevant matters, including a risk assessment) shall be submitted to the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, 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.

GENERAL CONDITIONS

7. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
8. All works recommended by the traffic impact assessment are to be completed to the requirements of the City of Darwin and Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
9. The owner of land must enter into agreements with the relevant authorities for the provision of water supply, sewerage, and electricity services to the development shown on the endorsed plans in accordance with the authorities' requirements and relevant legislation at the time.
10. 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.
11. 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.
12. Engineering design and specifications for the proposed and affected roads, street lighting, stormwater drainage, site earthworks, vehicular access, pedestrian / cycle corridors and streetscaping are to be to the technical requirements of City of Darwin and Transport Civil Services Division – DIPL, to the satisfaction of the consent authority and all approved works constructed at the owner's expense.
13. Crossovers and driveways shall be provided to each lot, to the requirements of the City of Darwin, to the satisfaction of the consent authority.
14. No temporary access for construction purposes shall be permitted from the Amy Johnson road reserve and construction and delivery vehicles shall not be parked on the Amy Johnson Avenue or Stuart Highway road reserves, to the requirements of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
15. Where unfenced, the Stuart Highway and Amy Johnson Avenue road frontages are to be appropriately fenced in accordance with the requirements of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, to the satisfaction to the consent authority.
16. Upon completion of any works within or impacting upon the Stuart Highway or Amy Johnson Avenue road reserves, the road reserve shall be rehabilitated to the standards and requirements of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.

NOTES:

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@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. 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 website at <http://ntepa.ntg.gov.au/waste-pollution/guidelines/guidelines>.

The proponent is advised to take notice of the SCHEDULE OF ENVIRONMENTAL CONSIDERATIONS provided by DENR.

The Act, administered by the Northern Territory Environment Protection Authority, is separate to and not reduced or affected in any way by other legislation administered by other Departments or Authorities. The Environment Operations Branch of the Environment Division may take enforcement action or issue statutory instruments should there be non-compliance with the Act.

3. A "Permit to Work Within a Road Reserve" may be required from the Transport Civil Services Division, DIPL before commencement of any work within the road reserve.
4. Dryland grassing shall be established on the Stuart Highway verge fronting the development and shall be undertaken to the requirements of Transport and Civil Services Division, DIPL.
5. 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.
6. As street trees will become an asset of City of Darwin, Council advises it requires the developer to provide Council specification for the purchasing of quality tree stock prior to construction, and the street trees shall be of advanced size to provide greater impact to the road reserve and the development. It also advises that prior to the establishment of street trees within the road reserve contact shall be made with City of Darwin's Parks and Reserves to ensure appropriate species and planting locations are defined.

REASONS FOR THE DECISION

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

The Northern Territory Planning Scheme (NTPS) applies to the land, and the site is within Zone SC (Service Commercial) of the NTPS. The primary purpose of Zone SC is to provide for commercial activities which, because of the nature of their business or size of the population catchment, require large sites.

The proposed development is for the subdivision of land into 11 lots which are between 2,496m² and 19,330m² in size, with four of the 10 commercial allotments above 5,000m². The minimum allotment size of 2,496m² allows the development of a commercial building with at least 1,000m² internal floor space, in addition to car parking, service and back of house areas. Accordingly, the proposed subdivision provides large commercial allotments, capable of accommodating future development requiring large sites. The proposed subdivision is therefore considered consistent with Zone SC.

It is noted that land zoned SC is not included under Clause 11 (Subdivision) of the NTPS, however the proposal can still be assessed under Clause 11.1.1 – Minimum Lot Sizes and Requirements. The purpose of this clause is to ensure that unzoned land and lots in Zones SD, MD, MR, HR, RR, RL, R, LI, GI, DV, FD, RD, H, WM and T will be of a size capable of accommodating potential future uses.

The size of the lots to be created by this proposal will satisfy the purpose of this clause in that all lots will be capable of accommodating future development/uses and the Authority determined that the proposal is fully compliant with the NTPS.

2. 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 received under section 50, in relation to the development application.

Three submissions were made under section 49 in relation to the application during the exhibition period. Submitters Mr Lynagh and Mr Mellios were present during the meeting.

At the meeting Mr Lynagh was represented by Mr Jones. The key issues raised in the submissions and by Mr Jones at the meeting relate to stormwater and traffic issues.

In relation to stormwater, the main concerns in the submissions relate to the impacts on the three lots of land owned by the submitters and positioned adjacent to the site. In some cases, stormwater from those adjacent blocks currently drains onto the site and concerns were expressed as to future drainage should the development proceed. Mr Jones outlined historical issues with the site with regards to stormwater and raised particular concern about off-site impacts, stating that this

was an issue going back sometime and is highlighted by the Authority's letter of July 2010, which considered that a coordinated approach to stormwater management by the relevant authorities for Farrell Crescent and surrounding area should be applied.

The Authority noted the July 2010 letter but also noted that the submissions made by City of Darwin and Crown Lands Division – DIPL, as the responsible authorities for stormwater, considered stormwater management can be addressed through recommended consent conditions, particularly the requirement for a stormwater plan. The Authority also noted that City of Darwin considers the stormwater system along Farrell Road has the capacity to accommodate stormwater from the three lots adjoining the site, to which the public submissions relate. When questioned by the Authority, City of Darwin representatives indicated that there were no formal complaints on file in respect of stormwater issues or flooding of Farrell Road. Mr Lynagh confirmed that no complaints to Council had been made.

A condition precedent is included on the development permit requiring that 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 City of Darwin, Crown Land Management Division - Department of Infrastructure, Planning and Logistics (DIPL), and Transport and Civil Services Division - DIPL, to the satisfaction of the consent authority. The plan shall include details of site levels, Council's/Crown Lands' stormwater drain connection point/s and connection details, and any required stormwater study.

With this, it is considered that stormwater relating to the site can be adequately managed.

The Authority suggests that should any of the submitters remain to have concerns about off-site stormwater management in particular, they contact City of Darwin and the Crown Land Management Division - Department of Infrastructure, Planning and Logistics to further discuss the issue.

In relation to traffic, the principal concern of the submissions is the volume of traffic the proposal will generate and associated safety issues. Mr Jones reiterated the concerns raised in Mr Lynagh's submission, particularly regarding the increased volume of traffic on Farrell Road.

The Authority noted from the submissions made by City of Darwin and Transport Division of DIPL - the responsible authorities for Farrell Road and the Stuart Highway respectively - that these authorities consider traffic issues relating to the site can be adequately managed through recommended consent conditions, particularly including the requirement for an updated traffic impact statement with particular attention to the development's traffic generation, trip distribution, traffic operation impact, the nature and timing of impacts, and recommended

measures required to accommodate and/or mitigate the traffic impacts of the development, including construction traffic. The authorities' recommended conditions regarding traffic are included in the conditions of consent.

With this, it is considered that traffic issues relating to the site can be adequately addressed.

3. Pursuant to Section 51(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, particularly relating to stormwater and traffic matters.

4. Pursuant to section 51(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 subdivision will allow for the continued commercial use of the land in accordance with the existing zoning (Zone SC), and no adverse amenity impacts are expected to surrounding uses as a result of the proposal. A number of consent conditions are however included to ensure stormwater and traffic impacts are appropriately addressed in particular.

ACTION: Notice of Consent and Development Permit

ITEM 3

PA2019/0471

PART CHANGE OF USE FROM WAREHOUSE TO PLACE OF WORSHIP LOT 8641 (4) STEELE STREET, WINNELLIE, TOWN OF DARWIN

APPLICANT/S One Planning Consult

DAS tabled a late letter of objection from Northern Planning Consultants on behalf of the adjoining landowner Penguin Ice.

Mr Israel Kgosiemang (One Planning Consult), Mr Savvas Savvas (Savvas Architects), Mr Basuki Suratno (AIDA - Landowner), Mr Liam Munro and Mr Paul Heron (SLR Consulting) attended.

Mr Brad Cunnington (Northern Planning Consultants) attended on behalf of the adjoining landowner Penguin Ice.

Interested party in attendance: Mr Will Zwar (NT News).

**RESOLVED
15/20**

That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse consent to the application to develop Lot 8641(4) Steele Street, Town of Darwin for the purpose of part change of use from warehouse to place of worship for the following reasons:

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REASONS FOR THE DECISION

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

The Northern Territory Planning Scheme (NTPS) applies to the land and the site is within Zone GI (General Industry). Under Clause 5.12 of the NTPS, the primary purpose of Zone GI is to provide for general industry. Offices are expected to primarily provide a service to the general industry in the zone and be of a size commensurate with the service provided and shops are expected to be limited to those that either service the needs of the general industry in the zone or would be inappropriate in a commercial zone.

Consent for the change of use of the subject land from warehouse to place of worship is necessary because place of worship is a discretionary use in Zone GI according to the NTPS (see clause 5.12 Zoning Table). In 2018, the applicant made a very similar application for approval of a place of worship on the subject site. The application was refused by the consent authority on 6th October 2018 and that determination was the subject of an appeal by the applicant to the Northern Territory Civil and Administrative Tribunal (NTCAT) in 2019. See *Association of Islamic Da'Wah in Australia Inc v Development Consent Authority* [2019] NTCAT 14. That decision upheld the refusal by the consent authority.

In relation to the previous, unsuccessful application, the refusal by the consent authority, emphasised 'reverse amenity' or 'reverse sensitivity' considerations. It concluded that such change of use for the subject site did not meet the purpose of the zone because of its potential impact on surrounding GI uses through reverse sensitivity, particularly in relation to noise. The concept of reverse amenity or sensitivity was recognised by the NTCAT decision, the Tribunal finding that –

*“The relevance of reverse amenity considerations to planning in the Northern Territory is underscored by clause 4.1(f) of the NTPS which requires that the administration of the NTPS is to:
'(f) ensure development does not unreasonably intrude on or compromise the privacy of adjoining residential uses and ensures its own amenity is not compromised in the future'.”*

During the hearing of the previous application, the applicant produced evidence of noise readings from both inside and outside the existing warehouse on the subject land, those readings regularly exceeding the standards set by the Northern Territory Environment Protection Authority in the Northern Territory Noise Management Framework Guideline ('the NMF Guideline'). The principal source of noise contributing to the readings was refrigeration machinery operated (day and night) by the neighbouring business, Penguin Ice. The applicant's own evidence established that the subject land could not be used for a place of worship in a manner consistent with the standards established by the NMF Guidelines and would therefore render the otherwise

permissible noise generated from Penguin Ice's operations as exceeding acceptable limits and possible action under the Waste Management and Pollution Control Act 1998 (NT).

On appeal, the Tribunal considered –

“The fact that an existing adjoining use is incompatible with the proposed use of the subject land as a place of worship means it is unnecessary to speculate about future incompatible uses in the vicinity; however, there is clearly the potential for such uses given the General Industry zoning of the area (and noting, as did the respondent, that there is no present prospect of rezoning).”

The Tribunal however stated it did *‘not discourage the applicant from making a fresh application to the respondent (DCA) in the event it is able to put forward measures (enforceable by means of conditions attaching to any development approval) for satisfactorily addressing those considerations.’*

The applicant has subsequently lodged a further application for change of use from warehouse to place of worship, the application being advertised on 29th November 2019. The applicant does not offer any significantly different arguments as to how the proposal meets the purpose of the zone for this application, but does provide further information regarding reverse amenity effects particularly as it relates to noise. The application contains new noise monitoring data in a detailed report by SLR Consulting Australia Pty Ltd and dated September 2019 (the SLR Report). Representatives of SLR Consulting Australia also attended the meeting on 7th February 2020 to speak to the Report.

The applicant asserts that the differences between the data provided with the previous application and new sets of monitoring data supporting the current application arise because the previous readings were incorrect due to the methodology and equipment used.

The Authority considered the SLR Report in detail. The Report applies the NMF Guideline recommended maximum assigned amenity noise level for a place of worship (PoW) of 40 dB LAeq when the place of worship is in use and concludes that the measurements taken over a 14 day period in late 2019 show that noise levels within the building were compliant with the guideline criteria during all proposed hours of worship. The measured levels also suggest that noise within the space was unlikely to exceed the criteria under normal circumstances, as the LAeq over the monitoring period of 14 days, was 32 dB.

It is clear from the SLR Report that assessments made were based on the current businesses operating in the area. The Report states - *A desktop investigation of surrounding businesses to the Site was carried out to gather information on the nature of their operations and potential emissions from these processes.*

The SLR Report further provides –

The amenity risk assessment presented in the report is based upon the continued operation of the existing processes. This has been undertaken to provide a thorough and appropriate amenity impact assessment based upon the current situation. Where those processes are removed from site the risk assessment will not apply and the conclusions of the report would need to be adjusted accordingly.

With respect to future amenity issues the SLR Report states -

If a surrounding land parcel was developed for a commercial land use that is in operation in the evenings, then the amenity of the proposed land use of the Site as a PoW would likely be adversely impacted by excessive and frequent noise emissions.

While the Authority acknowledges the new noise data suggests that the current operation of businesses in the immediate vicinity of the site operated during the period of testing is within the acceptable NMF Guideline for a place of worship, it does not address potential future GI uses which may operate under the NMF Guidelines for those uses at levels well in excess of that acceptable for a place of worship. The Authority further notes that the immediate neighbour to the site, Penguin Ice, advises that since the period of monitoring both Penguin Ice and NT Ice have been acquired by Artic Ice Pty Ltd and all business operations will be located at that neighbouring site. This will involve increases in operating hours and activities and involve an additional industrial ice maker, compressor and cooling towers. While it is not possible to determine the effect of such an expansion on the NMF Guideline, it does illustrate the potential of both existing industrial operations to expand and the possibility of new general industrial businesses to locate in the area. The applicant's consultant acknowledged that the NMF Guideline permitted noise levels of 70 dB to be generated by businesses undertaking a GI use. While the consultant was of a view that a noise level of 65dB at the boundary of the proposed place of worship site would still keep the noise levels inside the building at or around the amenity noise level for a place of worship of 40 dB LAeq, the Authority noted there is still scope for a neighbouring business to operate at permitted noise levels (70dB) but still impact adversely on the place of worship.

In the previous appeal (*Association of Islamic Da'Wah in Australia Inc v Development Consent Authority* [2019] NTCAT 14) the Tribunal found that

“It is plain that clause 4.1(f) directs attention to ways in which the amenity of a proposed development may, in the future, be affected.

Such future impacts must be taken into account in the context of a decision whether or not to grant development consent. It follows that, unless the consent authority can be satisfied that the future amenity of a proposed development can adequately be safeguarded, this may be a strong consideration against the granting of approval.”

The Authority also notes that the reverse amenity consideration in the application has essentially focussed on noise, with little, if any, consideration given to potential reverse amenity impacts from

vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil or otherwise, which may through the Zone GI definition legitimately occur in GI zones.

The Authority further notes that the applicant proposes the place of worship will only be used Tuesday 6pm – 9pm, Wednesday 6pm - 9pm, Friday 1pm - 2pm and 6pm - 9pm and Sunday 10am - 12pm, the same hours as proposed in the previous application. The Authority however considers that with potentially intense industrial activity operating 24 hours a day, the time limitations proposed cannot eliminate reverse amenity issues from potentially arising and complaints from the place of worship being made as a result. The owners' comments at the meeting that complaints will not be made are noted, however there would be nothing in law preventing the owners from making complaints regarding reverse amenity impacts in the future.

The Authority has considered whether imposing a time limited consent of five years or less could address the issue of reverse amenity in general, in that if there were reverse amenity impacts during the period of the consent, the time limit would end the place of worship's use within whatever timeframe was applied. A time limited consent however is not considered desirable as it will not address any reverse amenity issues that arise during the period of the consent. The Authority notes that the subject lot is in close proximity to other GI zoned premises with no potential for the proposed place of worship to be sited so as to make it less susceptible to reverse amenity issues. Further, not only is granting consent for a few years for a use, which is likely wanted for longer, undesirable - particularly in terms of certainty - but also it sets a precedent of allowing a potentially incompatible use within Zone GI, particularly when it is centrally located in the zone.

It is also noted that the land available in Zone GI in this particular area is limited and to place a potentially incompatible use within it would not be the highest and best use of the land. It is further noted that in terms of the proposal providing a service to the GI zone, the applicant provides the names of three people who work within the zone and would use the place of worship, which suggests that the place of worship would only provide a very limited service for the zone.

The Authority also continues to note that there is no area plan or planning scheme amendment to rezone the land currently proposed for this area, suggesting that it is not an area identified for land use change anytime in the near future and is expected to continue to provide suitable land for general industrial purposes.

For these reasons, the Authority remains of the opinion that the place of worship does not meet the purpose of the zone in that it is an unsuitable use within this location, particularly as the amenity could be compromised due to the changing operations of the adjacent buildings to a number of more intensive uses permitted within Zone GI which would be at odds with the administration of the NTPS (Clause 4.1) which amongst other things, seeks to ensure development does not unreasonably intrude on or compromise the privacy of adjoining residential uses and ensures its own amenity is not compromised in the future.

2. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the Northern Territory Planning Scheme, the Authority may consent to a development that does not meet the standards set out in Part 4 and 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

A variation to Clause 6.5.3 (Parking Layout) is supported due to the non-compliances being minor in nature and an acceptable level of vehicle access is expected to be achieved, as confirmed by the traffic engineer engaged by the applicant.

3. Pursuant to Section 51(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 would be able to be addressed by the inclusion of conditions and/or notations on the development permit, if approval had been granted.

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

The potential impact on the existing and future amenity of the area in which the land is situated has been discussed in detail above (reason 1). In summary the Authority considered that the proposed use of a place of worship in this location would adversely impact on, and be adversely impacted by, the existing and future amenity of the area.

5. Pursuant to section 51(t) of the *Planning Act 1999*, the consent authority must take into account other matters it thinks fit.

A late letter of objection to the application was received from Mr Brad Cunnington of Northern Planning Consultants Pty Ltd (NPC), objecting to the proposal on similar grounds to the objections NPC made in a late submission to the previous application for the site.

The Authority accepted the objection letter for information rather than as a submission under the *Planning Act 1999*, which was taken into consideration when determining the application. At the meeting the Chair made clear to all parties that NPC's letter would not be considered as a submission under the Act. The Authority also allowed Mr Cunnington to present the issues raised in his letter of objection for consideration.

Additionally, the Authority notes that the caretaker's residence proposed in this application complies with Clause 7.10.3 (Caretaker's Residence) of the NTPS and therefore does not require consent.

ACTION: Notice of Refusal

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

SUZANNE PHILIP
Chair

14 February 2020