



# DEVELOPMENT CONSENT AUTHORITY

## DARWIN DIVISION

### MINUTES

#### PART 2 – ITEMS 1 AND 2

**MEETING NO. 410 –FRIDAY 22 SEPTEMBER 2023 AT 10:15 AM**

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

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

**APOLOGIES:** Nil

**LEAVE OF ABSENCE:** Nil

**OFFICERS PRESENT:** Elya Sugg (Acting Secretary) and Amit Magotra (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Apology

Meeting opened at 10:15 am and closed at 11:45 am

**ITEM 1 CHANGES TO DP18/0297 TO AMEND THE WORDING OF CONDITION 23 TO CAPTURE THE CAR PARKING REQUIREMENTS OF THE NT PLANNING SCHEME 2020**

**PA2023/0247 LOT 2365 (38) CAVENAGH STREET, DARWIN CITY, TOWN OF DARWIN**

**APPLICANT MasterPlan SA Pty Ltd**

Mr Stewart Hocking (MasterPlan SA Pty Ltd) attended.

In attendance via videoconference: Nick Sissons, Mark Holloway and Keith McGeough (Sissons Architects); Nathan Trajcevski and Sebastian McEwan (Podia)

Interested parties in attendance: Mr Brad Cunnington, Ms Andreea Caddy and Mr Alex Deutrom.

Mr Hocking tabled Litchfield Street multi-level carpark occupancy numbers from January 2023 to September 2023.

**RESOLVED  
34/23**

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 2365 (38) Cavenagh Street, Town of Darwin, for the purpose of changes to DP18/0297 to amend the wording of Condition 23 to capture the car parking requirements of the NT Planning Scheme 2020, to require the Applicant to provide the following information that the Authority considers necessary to enable the proper consideration of the application for the following reasons:

- Further information that demonstrates how the application amounts to a “development” as defined in Section 3 *Planning Act 1999*;
- How the Authority has power to determine the matter pursuant to Section 53 *Planning Act 1999*.

## **REASONS FOR THE DECISION**

### 1. Background

On 25 July 2023, the Applicant purported to lodge a “Variation Development Application” to DP18/0297 for the redevelopment of the Manunda Place building located at 38 Cavenagh Street, Darwin (Lot 02365 Town of Darwin)” (the “Variation Application”). The sole purpose of the Variation Application was to amend the wording of condition 23 “to capture the car parking requirements of the NT Planning Scheme 2020”. As noted in the Report, no physical changes were proposed to the building. The consent authority further notes that Development Permit DP18/0297 was issued on 24 August 2018 with the approved purpose to “use and develop the land for the purpose of of[sic] office and ground level commercial tenancies in a 10 storey building plus two levels of basement car parking, in accordance with the attached schedule of conditions and the endorsed plans.” No changes to the stated use of “office and ground level commercial tenancies” were proposed by the Variation Application.

Condition 21 of the Permit provides

*21. Before the use commences the owner must, in accordance with Part 6 of the Planning Act, provide 368 car parking bays. In accordance with section 70(5) of the Planning Act, 68 of the required parking bays may be provided through a monetary contribution to the City of Darwin. The contribution is to be calculated in accordance with the requirements of section 70(6) of the Planning Act.*

Condition 23, which the application seeks to vary, provides -

*If the car park at Lots 2396 & 2397 Town of Darwin ceases to be available, then the owner must supply 302 car parking bays off-site for the duration and benefit of Lot 2365 Town of Darwin at a place or places proximate to the site to the satisfaction of the consent authority. The owner of Lot 2365 may instead, in accordance with Part 6 of the Planning Act, provide 302 parking bays through a monetary contribution to the City of Darwin. The contribution is to be calculated in accordance with the requirements of section 70(6) of the Planning Act.*

The development is generally known as 'Manunda Place', is fully constructed and has been occupied within the terms of the stated use for a number of years.

## 2. Associated Permits

Permit DP18/0297 was granted in association with DP18/0298 'for the purpose of a 7-storey car park (324 spaces)' at Lots 2396 and 2397, (14 & 12) Litchfield Street, Town of Darwin (now Lot 11154 (14) Litchfield Street, Town of Darwin), known as 'Litchfield multi-level car park.' Both development permits were issued under the NT Planning Scheme 2007 (NTPS 2007).

The Authority notes that the Litchfield Street multi-level car park Permit DP18/0298 provides a car parking alternative for the Manunda Place development in lieu of providing a monetary contribution to the City of Darwin.

The assessment of the Development Assessment Services (DAS) concluded that the car parking requirement for Manunda Place, determined pursuant to the 2007 Planning Scheme in force at the time DP18/0297 was issued, is 367 car spaces. Only 66 car spaces are provided in two basement levels of Manunda Place, including 61 physical car parking bays in the basement and 4 additional car spaces motorcycle parking spaces provided. The remaining shortfall of 302 spaces (367 required and 65 provided) is provided in the Litchfield Street multi-level carpark and is controlled through Condition 23 of DP18/0297, noted previously.

## 3. Scheme Changes

On 31 July 2020, the NTPS 2020 replaced the NTPS 2007 and introduced a new structure to the planning scheme, a new assessment framework, and a number of new clauses and changes to some land use terms, among other things. Relevant to the Variation Application, the NTPS 2020 introduced new car parking rates and criteria for a parking reduction in Zone CB in Darwin in accordance with PSA No. 547. In essence, if the current Scheme requirements were applied to the Manunda Place development, the parking allocation required within the Litchfield Street multi-level carpark would be substantially reduced, on DAS calculations, from 302 spaces to 181 spaces. The applicant acknowledged that the Variation Application

intends to reduce the theoretical car parking spaces allocated within the Litchfield multi-level car park to enable the allocation of additional spaces in that car park resulting from the changes to a further development approved under DP22/0123 at Lot 2377 (8) Cavenagh Street, Town of Darwin (Palm Court variation application).

#### 4. Planning Act 1999

##### Variation Applications

The Planning Act deals with variation to conditions on a permit in Section 57, allowing an owner of land, at any time before the permit lapses, to apply to the consent authority for a variation of a condition of the permit. The ability of the consent authority to consent to such a variation is prescribed in subsection (3) which provides:

*(3) The consent authority may, in writing, vary a condition of a development permit if:*

*(a) the proposed variation will not alter a measurable aspect of the development by a margin greater than 5% and, in the opinion of the consent authority, will not materially affect the amenity of adjoining or nearby land or premises; or*

*(b) in the opinion of the consent authority, the alteration resulting from the proposed variation is not conveniently measurable and the proposed variation will not materially affect the amenity of adjoining or nearby land or premises*

The Authority notes that the proposed changes to the car parking requirements exceed 5% of that approved and cannot be characterised as "not conveniently measurable" as required by s57(3). Therefore, the proposed changes exceed the parameters within which a variation can be issued under Section 57 of the *Planning Act 1999*.

##### Development Applications

If an application to vary a permit condition is not available under Section 57, the only recourse for an Applicant is to lodge a Development Application under Section 46. The Act does not recognise the term "Variation Development Application" as used by the applicant and the application under Section 46 must comply with all the usual requirements for a Development Application. Relevantly, Section 46(1) provides –

*(1) The owner of land, or a person authorised in writing by the owner, may apply to the consent authority for consent to carry out a development on the land.*

'Development' is defined in section 3 of the Planning Act 1999 and states:

*development, in relation to land, means an activity that involves:*

*a) the establishment of, or a change in, the use of the land;*

*b) the subdivision or consolidation of the land; or*

*c) the carrying out of works on or in relation to the land, including:*

*i. excavation or land-filling;*

*ii. the clearing of native vegetation;*

- iii. the construction of a building;
- iv. the construction or upgrading of roads and drains, other than:
  - A. By a statutory corporation, by a statutory authority or corporation incorporated under an Act of the Commonwealth or by a local authority; or
  - B. If the works are carried out in pursuance of a statutory responsibility;
- v. the construction or upgrading of hardstand car parking or landscaping; and
- vi. any other operation that affects the physical character of the land.

As the Manunda Place building is fully constructed and there is no change in the use of the land, the consent authority queries how the purported application to vary condition of 23 DP18/0297 constitutes a “development”, as defined by section 3.

#### Meaning of the Term “Use”

The consent authority notes that the term “use” is not defined in the Act although it is employed in a number of contexts including Part 7 Enforcement – see for example - Section 75 Use or Development Contravenes Planning Scheme. The operation and application of the relevant provisions of the Act rely heavily on the Scheme, as in force from time to time, including reference to assessment or zoning tables published as part of the Schemes. The 2020 Scheme refers to defined uses both in Schedule 2 definitions and in the Zone Assessment Tables. Application for change of use made to the consent authority ordinarily relate to change of from one use to another as provided in the zoning tables such as change from “office” to “shop” or “medical clinic”. Further, the consent authority notes that the Scheme now provides for “Interchangeable Uses” in clause 5.5.1, relying on the generic use descriptions in the zoning tables.

The approved purpose of Permit DP18/0297 is expressed as “*To use and develop the land for the purpose of [sic] office and ground level commercial tenancies in a 10 storey building plus two levels of basement car parking, in accordance with the attached schedule of conditions and the endorsed plans.*” The consent authority does not consider a change to the schedule of conditions, altering the car parking calculation, amounts to a change in the use as referred to in Section 3 definitions.

Conditions placed on a planning permit may be viewed as the community price a developer pays for a planning approval for development and use of land. Under Section 55 of the *Planning Act 1999*, the consent authority may impose on a development such conditions that it thinks fit and specifies in the development permit. As noted previously, Once construction of a building is complete, if the permit is necessary to sanction the ongoing use, it being a use which requires consent, the permit remains in force and does not lapse, because of s 58(4). Section 57 provides the mechanism for variation of conditions upon previously issued development permits, while Section 57(3) limits the power of the consent authority to vary such a condition to two situations, both of which require the consent authority to be satisfied that the proposed variation will not materially affect the amenity of adjoining or nearby land or premises. The Act draws a clear distinction between a permit and the use in Part 7 Enforcement. Any owner or occupier of the land (including the building) needs the permit to avoid prosecution under s 75 and s 75B for an unauthorised use of land. Any such owner or occupier must use the land in accordance with the permit in order to avoid prosecution

under s 75 and s 75B. Section 75 specifically deals with uses or developments in contravention of a Planning Scheme. Section 75B, on the other hand, deals with uses or developments in contravention of a permit.

The consent authority considers that the present standalone application for a change to a condition of a permit for a fully constructed building does not amount to a change of use.

5. *Tribunal Decision - Bellamack Pty Ltd v Development Consent Authority [No. 2] 10TH AND 21ST May 2021 (the Bellamack Decision)*

In the Bellamack Decision, the Tribunal considered a refusal by the consent authority to a “standalone” application for approval of a setback plan under which the required setbacks for two of the proposed units would be less than the minimum setbacks required by clause 5.4.3 of the Northern Territory Planning Scheme 2020 (‘NTPS2020’). The Tribunal found that the consent authority “was clearly correct in reaching the conclusion that the application did not propose ‘development’ of the land. The applicant’s ‘standalone’ proposal for reduction of the minimum setback requirements was not a proposal to do any of the things or take any of the actions severally listed in the definition of ‘development’ in section 3 of the Planning Act 1999”.

The Tribunal further found that “Once the respondent had formed the (clearly correct) view that there was no development application within the meaning of the Planning Act 1999, it should, in my respectful view, have declined to deal any further with the Application”. The Tribunal found that the consent authority’s jurisdiction (and obligation) to make a determination under section 53 depended upon there being a ‘development application’ to consider. In the absence of a development application, the Tribunal set aside the consent authority refusal and substituted for it a decision not to entertain the applicant’s purported development application.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:** Notice of Deferral

**ITEM 2** **CHANGES TO DP22/0123 TO ALTER THE GROUND FLOOR LAYOUT AND BUILDING FAÇADE AND CONVERT FOOD PREMISES-RESTAURANT AND OUTDOOR AREA AT LEVEL 3 TO AN OFFICE**

**PA2023/0146** **LOT 2377 (8) CAVENAGH STREET, DARWIN CITY, TOWN OF DARWIN**

**APPLICANT** MasterPlan SA Pty Ltd

Mr Stewart Hocking (MasterPlan SA Pty Ltd) attended.

In attendance via videoconference: Nick Sissons, Mark Holloway and Keith McGeough (Sissons Architects); Nathan Trajcevski and Sebastian McEwan (Podia)

Interested parties in attendance: Mr Brad Cunnington, Ms Andreea Caddy and Mr Alex Deutrom.

Mr Hocking tabled Litchfield Street multi-level carpark occupancy numbers from January 2023 to September 2023.

**RESOLVED  
35/23**

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 2377 (8) Cavenagh St, Darwin City, Town of Darwin, for the purpose of changes to DP22/0123 to alter the ground floor layout and building façade and convert food premises-restaurant and outdoor area at level one to an office to allow the applicant to provide the following additional information that the Authority considers necessary in order to enable the proper consideration of the application:

- Further information in relation to the determination of the related planning application, PA2023/0247, for a re-assessment of the car parking requirements for 38 Cavenagh St; or
- Revised plans or an alternative arrangement to accommodate additional car parks (21 car spaces) resulting from proposed changes to the development.

**REASONS FOR THE DECISION**

1. Pursuant to section 46(4)(b) of the *Planning Act 1999*, if the consent authority considers additional information necessary to enable it to consider the application properly – require the applicant to provide the information.

The application proposes changes to the development approved through DP22/0123 as below:

- Level 1 (ground) – addition of lobby café and alfresco dining area to commercial entry lobby, change from commercial office tenancy to café kitchen and store.
- Level 3 – Change from food premises-restaurant to office tenancy.
- Level 4 to 12 – Removal of vertical landscaping from north-western boundary

The NT Planning Scheme 2020 applies to the land and "office/shop/food premises-restaurant" and "dwelling-group" require consent under Clause 1.8 (When development consent is required). An "office/shop/food premises-restaurant" is Merit assessable under clause (1)(b)(i) and "dwelling-group" is Impact assessable under Clause 1.8(1)(c)(i), therefore, zone purpose and outcomes of Clause 4.10 (Zone CB – Central Business) and Clauses 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC), 5.5.3 (General Building and Site Design), 5.5.11 (Food Premises) and 5.9.2 (Darwin City Centre), need to be considered.

Clause 1.10(1)(a) states that in considering an application for consent for a use or development, the consent authority must consider the use or development in its entirety except in relation to an application to alter, change or vary a development permit under sections 43A, 46 or 57 of the *Planning Act 1999*. The application seeks changes to Development Permit DP22/0123 under section 46 of the Act; therefore, the Authority considered only the proposed changes to the approved development (i.e. changes to the floor layout (level 1 and 3) and vertical landscaping).

The Authority notes the assessment of the Development Assessment Services (DAS), which concludes that the changes proposed are generally compliant with Part 5 (Development Requirements). The Authority further notes that changes

proposed to the floor layout and reduction in vertical landscaping impact the car parking requirement. According to the technical assessment, the proposed changes generate an additional parking requirement of 21 parking spaces, which are proposed to be accommodated within the Litchfield Street multi-level car park.

The DAS assessment also concluded that the Litchfield Street multi-level car park currently provides 324 car parking spaces approved through DP18/0298. This carpark is a car parking alternative for the Manunda Place development (approved through DP18/0297) in lieu of providing a monetary contribution to the City of Darwin. The Litchfield Street multi-level car park currently provides 302 car parking spaces linked to the Manunda Place development. The provision of 302 spaces in the Litchfield Street multi-level car park is controlled through Condition 23 of DP18/0297. Furthermore, 88 car spaces are reserved for the Energy House and is controlled through condition 22 of DP18/0298.

In addition to the above, 4 car parking spaces are allocated to the proposed child care centre (ground floor of Energy House building) approved through DP21/0159 and for commercial tenancies within the multi-level car park.

The car parking allocation in Litchfield multi-level car park, as assessed by DAS, is as follows:

Parking spaces provided (A)	324 car spaces plus 2 additional bays accounting for the motorcycle parking spaces provided
Parking allocation - (B)	423 car spaces (as below)
Spaces required for commercial tenancies (111m <sup>2</sup> )	4 car spaces
Parking allocation - DP18/0297 (Manunda Place)	302 car spaces
Parking allocation - DP18/0298 (Energy House)	88 car spaces
Parking allocation - DP21/0159 (Child care centre)	4 car spaces
Parking allocation - DP22/0123 (original proposal)	25 car spaces
Net Position (A-B)	97 car spaces (over allocation)

The Authority notes that a parking contribution of 68 car spaces is provided to Council through DP18/0297 (Manunda Place) and DP18/0298 (Litchfield multi-level car park).

The Authority is satisfied that after considering the DAS's assessment of the car parking allocations within the Litchfield multi-level car park and contributions paid to the Council, the car parking within the Litchfield multi-level car park is over-allocated by 29 car spaces.

The proposal submitted to the Authority is accompanied by a related planning application, PA2023/0247. This application is for a re-assessment of the Litchfield Street Car Park in accordance with the amended car parking requirements under



the NTPS 2020. The Authority considered this application at the same time as the proposal.

During the hearing, the applicant, Mr Stewart Hocking from MasterPlan SA Pty Ltd, presented an overview of the application and tabled the current Litchfield Street multi-level carpark occupation rates (between January 2023 and September 2023).

Mr Hocking acknowledged that providing adequate car parking represents the Authority's most relevant consideration. Accordingly, the discretionary car parking assessment conducted by the Authority while reviewing the original proposal concluded that an additional 25 car parking spaces were required beyond the Scheme reduction guidelines. The Authority deemed it necessary to provide these additional spots in the Litchfield Street multi-level carpark.

Mr Hocking emphasised that the decision of the Authority for the original development proposal had recognised the Litchfield multi-level car park's convenient location near the Palm Court development, making it an efficient option to fulfil the parking needs. The current proposal follows the same parameters as the previous one, including allocating 21 additional car spaces within the Litchfield Street multi-level car park.

The Authority noted the applicant's responses to questions raised and other comments made at the hearing. The Authority noted that the arguments put forward by the applicant were based on the related planning application PA2023/0247, which is for a re-assessment of the Manunda Place car parking requirements which will impact upon the Litchfield Street Carpark allocation. The Authority further notes that both applications are intrinsically connected.

The Authority has noted that the proposed changes in this application would create a shortfall, which is dependent on the allocation of space within the Litchfield Street multi-level carpark. However, since the Authority has deferred the purported application to re-assess the Manunda Place carpark allocation, questioning whether it amounts to a development application and whether it can be determined, it has decided to defer this particular application until an arrangement can be found to address the shortfall.

2. 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.

In its submission, the City of Darwin also noted that Litchfield Street's multi-level carpark is already used to offset parking shortfalls for a number of other properties. The City of Darwin requests that the Authority require a detailed breakdown of the parking shortfall currently assigned to the Litchfield Street carpark from these developments.

The City of Darwin also comments that if the Authority determines that the proposed number of parking bays are insufficient, a monetary contribution is paid

to the City of Darwin in lieu of the car parking shortfall that may arise from this development. This contribution would be in accordance with the Car Parking Contribution Plan of the City of Darwin.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:** Notice of Deferral

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

**SUZANNE PHILIP**

Chair

06 October 2023