



## **DEVELOPMENT CONSENT AUTHORITY**

### **DARWIN DIVISION**

### **MINUTES**

**MEETING No. 368 – FRIDAY 4 DECEMBER 2020**

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

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

**APOLOGIES:** Nil

**LEAVE OF ABSENCE:** Nil

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), Ann-Marie Reynolds and Julie Hillier,  
Amit Magotra (Items 1-3 only),  
Breanna Lusty and Lachlan Linkson (Items 4 & 5 only)  
(Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Brian Sellers

**Meeting opened at 10.30 am and closed at 12.30 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**

**PA2020/0314 INDEPENDENT UNIT WITH A FLOOR AREA EXCEEDING 50M2  
LOT 11164 (38) MAHONEY STREET, MUIRHEAD, TOWN OF NIGHTCLIFF  
APPLICANT DPL Developments Pty Ltd T/A The Red Shed**

Mr Darron Lyons (DLP Developments Pty Ltd), Mr Imran Nadeem and Mr Khalid Nadeem (landowners) attended.

**RESOLVED  
213/20**

That, the Development Consent Authority vary the requirements of Clause 7.10.4 (Independent Units) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 11164 (38) Mahoney Street, Town of Nightcliff for the purpose of an independent unit with a floor area exceeding 50m<sup>2</sup>, subject to the following conditions:

**CONDITIONS PRECEDENT**

1. 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 detail.
2. 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.
3. Prior to the commencement of works (including site preparation), the applicant is to prepare designs and specifications for landscaping of the road reserve adjacent to the property, to the requirements of City of Darwin, to the satisfaction of the consent authority.

**GENERAL CONDITIONS**

4. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
5. The owner of the 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 plan in accordance with the authorities' requirements and relevant legislation at the time.

6. 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.
7. 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.
8. The use as shown on the endorsed plans must not be altered without the further consent of the authority.

**NOTES:**

1. Power and Water Corporation advise that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and the Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of one month prior to construction works commencing to determine servicing requirements and the need for upgrading of infrastructure.
2. 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.
3. The location, design and specifications for proposed and affected crossovers shall be provided at the applicant's expense, to the satisfaction of City of Darwin.
4. This development permit does not grant building approval. You are advised to contact a NT registered private Building Certifier to ensure that you have attained all necessary approvals before commencing construction works.

**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 2007 (NTPS) applies to the land. Although that Scheme has been repealed and replaced by the Northern Territory Planning Scheme 2020 (NTPS 2020) which took effect on 31 July 2020, transitional provisions contained in Section 215 of the *Planning Act 1999* require that a development application relating to a specific use zone is to be determined in accordance with the Act in force and the elements of the planning scheme applicable immediately before the 31st July 2020.

The site is in Zone SD23 (Specific Use Darwin No 23) of the NTPS and is designated for single dwellings residential use on the land use plan endorsed under DP12/0704 for the subdivision.

Clause 5 of Zone SD23 allows independent units provided it complies with all other requirements of the NTPS as if the land were in Zone SD (Single Dwelling Residential). The clause further states that if the development does not comply with the requirements of the Scheme, it shall be permitted only with consent and the consent authority may consent only if it is satisfied that the special circumstances justify the giving of consent.

The proposal has been assessed against the relevant requirements of Zone SD23 (Specific Use Darwin No.23) of the NTPS and complies with all the requirements, except for clause 7.10.4 (Independent Units) of the NTPS.

Clause 7.10.4 (Independent Units)

*The purpose of the clause is to ensure that an independent unit does not detrimentally impact on the amenity of adjoining and nearby property and remains ancillary to the single dwelling on a site.*

*An independent unit may be developed on a site provided:*

- (a) there will be no more than two dwellings on the site;*
- (b) the maximum floor area of the independent unit in Zones SD shall not exceed 50m<sup>2</sup>;*
- (c) there is only one vehicle access point to the road, unless the relevant authority has approved a second access;*
- (d) both dwellings will be serviced by a common effluent disposal system or connected to reticulated sewerage;*
- (e) both dwellings will be serviced by a single bore or a single connection to a reticulated water supply; and*
- (f) both dwellings will be serviced by a single connection to a reticulated power supply.*

The proposal is compliant with subclauses (a), (c), (d), (e), and (f). The assessment notes that the independent unit will be ancillary to the existing single dwelling; will be accessed by the existing driveway crossover, and both dwellings will have a single connection to reticulated services.

The proposed does not comply with sub-clause (b) of clause 7.10.4, which limits the floor area of independent units on land Zoned SD to 50m<sup>2</sup>. The application proposes a floor area of 89.96m<sup>2</sup> and therefore requires a variation of 39.96m<sup>2</sup>.

The Authority notes that the DAS assessment on the variation to Clause 7.10.4 (Independent Units) concludes that:

- The design is considered to be appropriate for the site in the context of the area of the land, compliance with all other performance criteria of Part 4 of the NTPS and footprint and floor layout of the existing single dwelling on the site.
- Limited views will be achieved from Mahoney Street as the independent unit is to be located at the rear of the site and setback further than the proposed dwelling.
- The independent unit remains ancillary to the single dwelling; it maintains one vehicle access and is serviced by common reticulated services including power, water and sewer.

- The lot is designated for single dwellings, but given the large size of the site, 4000m<sup>2</sup>, the increase in floor area proposed for the independent unit is unlikely to impact on the amenity of adjoining or nearby properties.
- The development is less than the maximum permissible height of 8.5m that applies to Zone SD and complies with all minimum building setback requirements for the lot endorsed under DP12/0704.

Mr Darron Lyons (DLP Developments Pty Ltd), Mr Imran Nadeem and Mr Khalid Nadeem (landowners) attended the meeting. Mr Lyons spoke further in relation to the size of the independent unit. Mr Lyons told the Authority that while the zoning of the site permits the use of land in accordance with Zone SD, the size of the lot (>4000m<sup>2</sup>) represents the rural residential zoning character having larger styles homes with large sheds ancillary to the dwelling. Therefore, in this instance, the style of development is consistent with the style and scale of development on rural lots, and the increased floor area of the independent unit is not likely to result in unacceptable amenity impacts. Mr Lyons stressed that the use of a two-storey design enables more efficient use of the land compared to a development of similar size limited to a single storey. Mr Lyons further added that the footprint of the independent unit together with the existing dwelling constitute only 13% site coverage of the lot. With reference to the amenity impacts on the surrounding areas, Mr Lyons stressed that the increased size of the independent unit is unlikely to detrimentally impact on the amenity of adjoining and nearby property as adjoining lots have large sheds developed towards the shared boundary.

The Authority has taken the DAS's assessment into account and carefully considered all comments of the applicant. The Authority considered the very specific design and reason for the additional floor area, the compatibility of development with the predominant development pattern of the area, existing development on adjoining lots, the level of compliance achieved with all other requirements of the NTPS, and lack of objection from relevant service authorities to justify the variation to the size of the independent unit. In accordance with clause 5 of Zone SD23 (Specific Use Darwin No.23), these conditions are considered to demonstrate that the proposed independent unit is appropriate to the site having regard to the potential impact of the independent unit on the amenity of adjoining and nearby properties as required by sub-clause 5 of Clause 7.10.4 and justify the granting of a variation to that Clause of the NTPS.

The Authority notes that the design and layout of the proposed independent is functional or adaptable for expansion (i.e. enclosing the garage and balcony at the upper lever will increase the size of the independent unit). A condition is included on the permit that the use must not be altered without the further consent of the Authority.

2. 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. Also, pursuant to section 51(m) of the *Planning Act 1999*, the consent authority must take into account the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

The land is currently developed with a single dwelling and serviced by reticulated water, sewerage and electricity. The land is not identified as being within a storm surge area and is not subject to flooding in a 1% AEP flood event. Additionally, the Department of Environment, Parks and Water Security did not provide any comments on the application. Service authority requirements have been addressed by the inclusion of relevant conditions and notes on the development permit.

3. 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 land is zoned appropriately for the development proposed with independent units ordinarily permitted in Zone SD23. The application requires consent as the independent unit does not comply with the floor area limits of the Scheme. As is outlined above (reason 1), the specific design of the unit, the character of the area, nature and style of development on adjoining land and overall level of compliance achieved with other requirements of the NTPS are considered to demonstrate that the proposal is acceptable and unlikely to result in unreasonable amenity impacts.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Notice of Consent and Development Permit

**ITEM 2**

**PA2020/0330**

**OFFICE, RESTAURANT AND LEISURE AND RECREATION IN AN EXISTING SINGLE STOREY BUILDING**

**SECTION 1568 (544) STUART HIGHWAY, WINNELLIE, HUNDRED OF BAGOT**  
Goldbox

**APPLICANT**

Ms Maria Pajarillo (Goldbox), Mr Paul Crijns (Director - XInt Consulting), Ms Andrea Cooper (Business Manager), Kath and Jodie (all from New Chapters New Beginnings) attended.

**RESOLVED**  
**214/20**

That, the Development Consent Authority vary the requirements of Clause 5.2.4.4 (Parking Layout) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Section 1568 (544) Stuart Highway, Hundred of Bagot for the purpose of leisure and recreation with ancillary uses (office and industry-light) in an existing single 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), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Policy 054, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the crossover and driveway to the site from the Transport and Civil Services Division (TCS D) of the Department of Infrastructure Planning and Logistics, to the satisfaction of the consent authority.  
*[Note: TCS D clearance is required for proposed access from Stuart Highway]*

## GENERAL CONDITIONS

3. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
4. All works recommended in Section 6 of the Traffic Impact Assessment report (by S J Traffic Consulting dated 09 November 2020) relating to car park layout are to be completed to the satisfaction of the consent authority.
5. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage and electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
6. 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.
7. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the Transport and Civil Services Division of the Department of Infrastructure Planning and Logistics, to the satisfaction of the consent authority.  
*[Note: This condition relates to the proposed access from Stuart Highway]*
8. All proposed works (including the provision or connection of services) within, or impacting upon the Stuart Highway road reserve shall be in accordance with the standards and specifications of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics. Design documents must be submitted to the Director Transport Planning, Transport and Civil Services Division for Road Agency Approval and no works are to commence prior to approval.
9. 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 spaces, access lanes and driveways must be kept available for these purposes at all times.
10. The car parking shown on the endorsed plans must be available at all times for the exclusive use of the occupants of the development and their visitors.
  11. Before the 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.
  12. 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.
  13. The development must be designed and constructed to comply with AS2021-2015 'Acoustics – Aircraft noise intrusion – Building siting and construction' (AS2021), and a statement from a suitably qualified acoustic engineer confirming compliance with AS2021-2015 must be submitted prior to occupation of the development, to the satisfaction of the consent authority.
  14. External lights must be designed, baffled and located to the satisfaction of the consent authority to prevent any adverse effect on adjoining land, roads, and on the operation of the RAAF Base Darwin and Darwin International Airport.
  15. Where unfenced, the Stuart Highway Road frontage is to be appropriately fenced in accordance with the Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics' standards and requirements to the satisfaction to 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. 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.
  18. All roof top plant equipment, equipment relating to the operation of the lift and any other equipment (such as any vents and ducting associated with requirements for stairwell pressurisation or other such ventilation purposes or similar) that will be placed on the rooftop of the development shall be appropriately screened, or designed to soften the visual impact of such equipment from view from neighbouring or nearby developments (or developments reasonably anticipated).



19. 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.
20. The office and industry-light uses approved as part of this development are to remain ancillary to the leisure and recreation use into the future.
21. The use and/or development as shown on the endorsed plans must not be altered without the further consent of the consent authority.

**NOTES:**

1. Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and the Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of one month prior to construction works commencing to determine servicing requirements and the need for upgrading of infrastructure.
2. Darwin International Airport advises that separate requests for assessment and approval must be submitted to Darwin International Airport and the Department of Defence for any cranes used during construction that will infringe on either the Obstacle Limitation Surfaces (OLS) or Procedures for Air Navigation Services – Operations (PANS-OPS) surfaces for Darwin Airport.
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. Darwin International Airport advises that there must be no site activity which would attract birds and create a hazard for aircraft operations.
5. If you choose nbn to service your development, you will need to enter into a development agreement with nbn. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered nbn will be in contact to discuss the specific requirements for the development. Nbn requires you to apply at least 3 months before any civil works commence. All telecommunications infrastructure should be built to nbn guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/buildersdesigners.html>.
6. This development permit does not grant building approval. You are advised to contact a NT registered private Building Certifier to ensure that you have attained all necessary approvals before commencing construction works.

7. 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.
8. A Development Permit issued under the *Planning Act 1999* is not an approval for access onto a Territory Road. Approval for access to be taken from, or constructed within a Northern Territory Government controlled road reserve rests solely with the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics as the approving Road Authority.

## 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 which is within Zone SC (Service Commercial). The proposed use 'leisure and recreation with ancillary uses (office and industry-light) requires consent under Clause 1.8 (When development consent is required). The proposed leisure and recreation use is '*Merit Assessable*' under the zoning table to Zone SC and the proposed uses 'office' and 'industry-light' are listed in the zoning table to Zone SC as '*Impact Assessable*'. However, both are ancillary to the Leisure and Recreation use (Primary Use) proposed on site. Pursuant to Clause 1.9 (Ancillary use and development), the ancillary office is '*Permitted*', and ancillary 'industry-light' is '*Impact Assessable*'. The site is also subject to an Overlay – '3.8 Land Adjacent to a Designated Road' listed under Part 3 of the NTPS 2020.

### Part-2 Strategic Framework (Darwin Regional Land Use Plan)

The site is located along the Stuart Highway and is Zone SC (Service Commercial). While the Land Use Structure of the Darwin Regional Land Use Plan (DRLUP) identifies the subject land as Industry, further discussion in the plan identifies that the existing areas at Yarrowonga and along the Stuart Highway at Winnellie to be developed in accordance with the existing zone.

### Part 3 Overlay – 3.8 Land adjacent to a Designated Road

*The purpose of this clause is Ensure that access to a designated road from adjacent land does not prejudice traffic safety or the integrity and operation of the infrastructure.*

*The relevant Administration and Requirements of this overlay area as below:*

- *Access to a use or development or proposed use or development from a designated road identified on this Overlay requires consent.*
- *Access to a use or development or proposed use or development from an identified designated road and its assessed impacts to the road corridor must be in accordance with the requirements of*

*the Agency responsible for the management of the designated road.*

The subject site is located along the Stuart Highway, which is a designated road controlled by Transport and Civil Services Division (TCSD) of the Department of Infrastructure Planning and Logistics. The existing vehicular access to the site from the Stuart Highway is one way (left turn entry city-bound), and the application does not propose to alter the existing access arrangements. Comments received from the TCSD has not raised any concerns with the access arrangement, and all other requirements of the TCSD are addressed via recommended conditions.

#### Part 4.12 Zone Service Commercial

##### Zone Purpose

*Facilitate destination retailing, commercial and other activities that individually require a large floor area for the handling, display and storage of bulky goods, or activities, in locations that enable convenient access by the broader regional population.*

##### Zone Outcomes

*A diversity of service commercial activities that consist predominately of retail business activities such as showroom sales, vehicle sales and hire, and leisure and recreation.*

##### Leisure and Recreation use

The proposal seeks approval for the leisure and recreation use occupying a floor area of 400m<sup>2</sup> within the existing building. The proposed use comprise of indoor and outdoor activities specifically oriented for people with an intellectual disability registered under the NDIS (National Disability Insurance Service). Specific details of the proposed use comprise:

- The activities will be tailored to meet the requirements of each participant's complex needs in line with the approved care and support plan. This includes:
  - Cooking in a disability-friendly kitchen;
  - Physical wellbeing and fitness - Pilates and yoga classes;
  - Improving motor skills and developing social skills through pet therapy;
  - Artistic and clay modelling; etc.
- The use shall operate from Monday to Friday from 7:30am to 3:00 pm;
- The proposed use will provide pick and drop service for participants, therefore elevates the need of high parking requirement.

The Authority notes that the Development Assessment Services (DAS) assessment concluded that leisure and recreation use complies with the zone purpose and outcomes due to the following:

- The site is located along the Stuart Highway and therefore provides convenient access to the broader regional population.

The site has access to 5 bus stops (4 bus stops are along Stuart Highway and one at Winnellie Road).

- The proposed use requires a large area to comply with the NDIS requirements.
- The site is located on the periphery of service commercial zoned land. Therefore, the proposed use is not expected to compromise the ongoing operation and viability of service commercial activities or the integrity of the zone.

Food Preparation area (ancillary light-Industry use)

The application proposes to establish a food preparation area in the development. This use will provide cooking activities and will also offer food services to patrons visiting the facility. The proposed use occupies an area of 100m<sup>2</sup> of the existing building. The proposed use is considered as 'Industry -light as per Clause 2.1 (Defined Uses) of the NTPS 2020. Industry-light use is listed in the zoning table to Zone SC (Service Commercial) as 'Impact Assessable'.

In accordance with Clause 1.9(1)(b) of the NTPS 2020, *“an ancillary use or development not specified in the definition of the primary use requires consent and the level of assessment that applies to the ancillary use is the assessment category specified in the assessment table for the zone in Part 4.*

Schedule 2.2 of the NTPS 2020 defines ancillary as *“associated with but auxiliary and subordinate to the primary land use.”*

The Authority noted that determination of this use required, firstly, to determine whether the proposed use (food preparation area) is ancillary to the primary use of the land, and secondly, appraisal of the proposed use as *Impact Assessable*.

Turning to the first matter, the Authority noted that the proposed food preparation area is entirely subordinate (i.e. lower in rank or position) to the primary use, and (albeit to a lesser degree) is auxiliary to the primary use through the provision of food services to participants visiting the leisure and recreation use. The Authority also noted that the operating hours of the food preparation are similar to the leisure and recreation use and it is not expected to operate as a commercial kitchen. Furthermore, the proposed food preparation area will also provide activities on a programme basis for participants having an interest in cooking. The Authority considered that the proposed food preparation area is ancillary to the overarching benefit of the leisure and recreation use proposed on site.

In terms of zone purpose and outcome, the Authority considered that the food preparation area is not expected to impact the amenity of the area as it is located at the rear of the site (away from Stuart Highway frontage). Land adjacent to the southern boundary is Zoned OR and constitutes the parking area of the showgrounds. Furthermore, the proposed development will occupy a vacant building which will provide some benefit to passive surveillance during daytime hours.

The Authority determined that the food preparation area, in the context of the operation of the use, site location and scale, can be considered as ancillary to the leisure and recreation use proposed on site.

#### Ancillary office

The proposed development also includes an ancillary office to provide administrative services to the proposed development. The ancillary office use occupies an area of 300m<sup>2</sup> and is situated towards Hook Road part of the building.

As the definition of leisure and recreation include an ancillary office use, the proposed use is permitted under Clause 1.9(1)(a) of the NTPS 2020. While the proposed use fits within the definition of ancillary as it is auxiliary and subordinate concerns, a comment is raised in the assessment regarding the proposed use as ancillary to the main use due to the large size of the office use.

At the hearing Mr Paul Crijns (builder) and Ms Andrea Cooper (Business Manager NCNB) provided an overview of the background of the proposed development, the nature of the facility and why the particular location for the facility was chosen. Mr Crijns explained to the Authority that the proposed facility is a purpose built facility which will provide leisure and recreation facility to National Disability Insurance Support (NDIS) participants based on their respective Participation Plan to meet their individual needs. Ms Cooper confirmed to the Authority that the proposed office use would provide administrative support services only to the use proposed on site.

The Authority determined that the proposed office use is entirely subordinate (i.e. lower in area) to the primary use, and also confirmed by Ms Cooper it will be auxiliary to the primary use through the provision of administrative function to the leisure and recreation use. Conditions are included on the permit to confirm that the office use is required to remain ancillary to the leisure and recreation use into the future.

### Part 5 – Development Requirements

#### Clause 5.4.4.4 (Parking Requirement)

The purpose of the clause is to ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose. The car park is of a suitable gradient, provides separate access to every car parking space, allows for vehicles to enter and exit to the site from Hook Road in a forwards gear. A one-way (entry) only is provided from Stuart Highway frontage. Conditions are included requiring that the car park is sealed and drained.

Sub-clause 5.2.4.4.3(g) requires that the car parking area is to be 3m from the road, and the area between the car park and the road is to be landscaped with species designed to lessen the visual impact of the car parking area.

A variation to the design of the car park occurs where car parking spaces 38 to 43 (located along the truncated site boundary) are located less than 3m from the road (2.8m proposed). The relevant Administration of the clause is:

*“The consent authority may consent to a car parking area that is not in accordance with sub clause 3 if it is satisfied that non-compliance will not:*

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

Considering the minor nature of the variation (0.2m) and the landscaping proposed within the setback boundary, the Authority determined that no unreasonable impacts on the amenity are foreseen. The Authority also notes that the extended green verge of the road reserve in front of the truncated boundary will also provide some amenity to the car parking area.

Another variation to the design of the car parking is also proposed where the layout does not provide 6m wide driveway for two-way traffic flow (Sub-clause 5.2.4.4.3(i)). This occurs at the driveway located at the southern side of the site (adjacent to an easement). Furthermore, there are blind corners on each end of the narrow access which may impact the internal functionality of the car park.

The Authority at the hearing questioned the applicant regarding the functionality of the car parking area. The Authority notes that the majority of car parking for the development is located at the front of the building (toward the Stuart Highway frontage) and considering the existing access/egress arrangement proposed for the site, all vehicles area are required to travel via the rear of the site to exit on Hook Road.

Mr Crijns at the hearing explained to the Authority that the existing drainage easement along the southern boundary restricts achievement of a compliant driveway width. Also, siting of the existing building further restricts the opportunity to increase the width of the driveway. Mr Crijns told the Authority that the measures recommended by the Traffic Impact Assessment (TIA) report would be adopted to control the traffic flow in the narrow driveway. This includes installing convex mirrors on both ends of the driveway along with the signal system to control the traffic flow in the car parking area.

The Authority has taken into account the site constraints and given the proposed facility will utilise the existing building, the Authority considered that it is not possible to meet the compliance with the requirement of the clause. The Authority carefully considered the recommendations of the TIA and determined that in this instance the variation should be assessed on the basis that whether the variation will result in adverse impacts on the local road network or internal functionality of the car parking area.

In relation to the adverse impacts on the local road networks, the Authority noted that the traffic impact assessment concludes that the traffic generated by the proposed development is less than 5% of traffic at the intersection of Stuart Highway/ Hook Road during both AM and

PM peak hours. Therefore, the estimated traffic generation from the proposed development will have minimal impact on the existing road network. The Authority also noted that the proposed development would generate less daily vehicle movements than the previous car dealership, which occupied the subject site. In relation to the internal functionality of the car parking area, the Authority determined that the measure recommended by the Traffic Impact Assessment report to control the traffic flow in the narrow driveway will make the car parking functional for the intended purposes. A condition is included on the permit to carry out the works recommended in the Traffic Impact Assessment report relating to car parking.

Overall the Authority was satisfied that the non - compliances will not result in adverse impacts on the local road network or internal functionality of the car parking area.

In relation to a question raised by the Authority at the hearing in relation to the provision of drop-off bays for the participants and provision of wider/longer bays in the development to accommodate the mini buses used to transport the participants to the site, Mr Crijns explained that the participants would be transported to the site via mini-movers (transit vans) which can be accommodated in the existing parking bays. Furthermore, each participant will be assisted by a carer who will be responsible for the movement of the participant in the car parking area.

2. 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. Also, pursuant to section 51(m) of the *Planning Act 1999*, the consent authority must take into account the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

The subject site is flat and is currently occupied by a single storey building used for the purposes of vehicle sales yard and motor repair station under DP04/0100. The site is fully serviced with essential infrastructure. The proposed development application will not alter or affect any existing approved physical amenities of the whole site area since the development proposed mostly internal changes to the existing building.

The site is not located within a defined flood area, and no land capability issues have been identified. Vehicular access to the site is via an existing double crossover from Hook Road and one way access from the Stuart Highway (left turn entry city-bound). The existing accesses to the site are maintained, and comments received from the Transport and Civil Services Division (Controlling agency for the Stuart Highway) has not raised any concerns with the existing access

arrangements from the Stuart Highway. The site is capable of accommodating the proposed development.

At the hearing, the Authority questioned the applicant in relation to the access to the loading bay and garbage collection area located at the rear of the building. In relation to the loading bay access Mr Crijns explained that the proposed uses are not conducive to the scale of large items transported by vehicles of a size. The deliveries are expected to be infrequent and of a scale more appropriate to van type deliveries which can easily be accessed via existing loading bay. In response to the access to the garbage collection area Mr Crijns explained to the Authority that the swept path analysis provided in the TIA demonstrates that a 6.4m long vehicle can access the bin area and can exit the site in a satisfactory manner via Hook Road.

The Authority noted that the inclusion of a condition on the Development Permit to provide a Solid Waste Management Plan would address access arrangement for the garbage collection area. Furthermore, Mr Brian Sellers from the City of Darwin confirmed to the Authority that as part of Solid Waste Management Plan a detailed assessment will be carried out by the applicant in consultation with the City of Darwin, which will identify access arrangements for the bin area. Mr Sellers acknowledged that the recommended condition precedent would address this requirement.

The applicant at the hearing requested the Authority to amend the proposed condition relating to acoustic treatments to the proposed development. The applicant advised the Authority that full compliance with the AS2021-2015 'Acoustics – Aircraft noise intrusion – Building siting and construction' (AS2021) cannot be met as the building is existing. However, all efforts will be made to achieve compliance with the requirement of the Building Act. The Authority acknowledged the applicant's concern and the condition requiring compliance with AS2021-2015 is instead included as a notation on the permit.

All other service authority requirements have been addressed by the inclusion of relevant conditions and notes on the development permit.

3. 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 impact on amenity should be considered in the context of the site and its surrounds, with the development being consistent with the broader intent of Zone SC (Service Commercial) and applicable clauses. The site is located at the periphery of the Winnellie Industrial area (along the Stuart Highway) and is surrounded by land Zoned CP (Community Purpose) to the north and Zone OR (Organised Recreation) to the south and east. Land to the west (opposite Hook Road) comprise of Zones GI (General Industry) and SC (Service Commercial). The assessment notes that the proposed development, in terms of zone purpose and outcome, is not expected to impact the amenity of the uses surrounding the site. The Authority noted that that



the Hook Road located along the western side boundary provides a buffer to the general industry uses located across the road.

The proposal is predominantly an internal fit-out of an existing commercial building, and no impact on amenity is anticipated. The proposal's external works are limited to the landscaping and car parking reconfiguration only. The Authority determined that despite the variation to the Clause 5.2.4.4 (Parking Layout), the design of the car park will not result in unreasonably impact on the amenity of the surrounding locality. Conditions are recommended on the permit to ensure that variation to car park design does not impact the functionality of the car parking area.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Notice of Consent and Development Permit

**ITEM 3**

**PA2020/0352**

**3 x 3 BEDROOM AND 1 X 4 BEDROOM DWELLINGS-GROUP IN A TWO STOREY BUILDING**

**LOT 4915 (14) GREVILLEA CIRCUIT, NIGHTCLIFF, TOWN OF NIGHTCLIFF**

**APPLICANT**

Northern Planning Consultants

DAS tabled an annotated site plan and aerial image showing dwellings on Grevillea Circuit.

Mr Brad Cunnington (Northern Planning Consultants), Mr George Savvas (Concept Designs – Director), Ms Jess Brittain and Mr Costa Alakiotis (Concept Designs) attended.

Mr Cunnington tabled photographs of the existing development in the area and site plan showing the minimum setbacks to the lot boundary.

Mr Cunnington advised that the landowner sends his apologies.

Submitters in attendance:- Ms Susan Danford, Mr Les Platt and Ms Elizabeth Mathie.

**RESOLVED  
215/20**

That, the Development Consent Authority vary Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures); Clause 5.4.3.1 (Additional Setback Requirements for Residential Buildings longer than 18 metres and for Residential Buildings over 4 Storeys in Height) and Clause 5.4.6 (Private Open Space) of the NT Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999* consent to the application to develop Lot 4915 (14) Grevillea Circuit, Town of Nightcliff for the purpose of 3 x 3 bedroom and 1 x 4 bedroom dwellings-group in a two-storey building subject 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. addition of sun shades and louvers to elevation plan (as per sheet A001 "Sun Study"); and
  - b. fencing around the electricity easement which ensures 24 hour access to the area within the easement, to the requirements of Power and Water Corporation.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the crossover and driveway to the site from the City of Darwin road reserve, to the satisfaction of the consent authority.
  3. Prior to the endorsement of plans and 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 (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.
  5. 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.
  6. Before the development starts, 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 and be generally in accordance with the landscape concept plan dated 9 October 2020 prepared by Concept Designs, except that the plan must show. The plan must show:
    - a. details of surface finishes of pathways and driveways;
    - b. 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,
    - c. inclusion of water efficient plants and addition of trees within the lot boundary along the street frontage of the lot (excludes landscaping outside the lot, which is subject to City of Darwin approval); and
    - d. provision of an in ground irrigation system to all landscaped areas.All species selected must be 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. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage and electricity facilities to each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
9. 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.
10. 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.
11. 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.
12. The kerb crossings 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.
13. The owner shall:
  - (a) remove disused vehicle and/ or pedestrian crossings;
  - (b) provide footpaths/cycleways;
  - (c) collect stormwater and discharge it to the drainage network; and
  - (d) undertake reinstatement works;all to the technical requirements of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
14. 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.
15. 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.
16. Before the 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.
17. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseases or damaged plants are to be replaced.

18. Confirmation shall be provided to Development Assessment Services (in the form of an email addressed to the Power and Water Corporation) from a suitable qualified professional—confirming that all new number labels have been correctly installed at the Customer's Metering Panel(s) and water meters (where applicable). Please provide a copy of an email addressed to both [landdevelopmentnorth@powerwater.com.au](mailto:landdevelopmentnorth@powerwater.com.au) and [powerconnections@powerwater.com.au](mailto:powerconnections@powerwater.com.au)
19. Prior to the use/occupation of the development and connection of services (i.e. power and water), the owner of the land must apply for street addressing from the Surveyor-General of the Northern Territory. This will form the legal address and will be required to be placed on the meters within the development in accordance with the allocation. An Occupancy Permit will not be able to be granted until such time as addressing is obtained.”

#### 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. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5354 ([surveylandrecords@nt.gov.au](mailto:surveylandrecords@nt.gov.au)).
3. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
4. 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.
5. Waste bin storage and pick-up shall be provided in accordance with City of Darwin Policy Number 54 - Waste Management.
6. 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.
7. 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>

## 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 3x3 bedroom and 1x4 bedroom dwellings-group in a two-storey building requires consent under Clause 1.8 (When development consent is required).

It is identified as Impact Assessable under Clause 1.8 (c)(i) and therefore the strategic framework (Part 2 of the Scheme, including the Darwin Mid Suburbs Area Plan, zone purpose and outcomes of Clause 4.4 (Zone MR – Medium Density Residential), and Part 5 development requirements need to be considered.

Darwin Mid Suburbs Area Plan 2016 applies to the land and identifies the land for medium density residential living. The objectives of the Area Plan in relation to medium density development is for a built form and landscape response that sensitively responds to the adjoining suburban residential area. The acceptable responses identified in the Area Plan to achieve the objective is for residential buildings to not exceed a height of three storeys where the site abuts, or is on the opposite side of a street of a width of 18m or less to, land within Zone LR. The development proposal does not conflict with the Area Plan.

Clauses 5.2.4 (Vehicle Parking), 5.2.6 (Landscaping), 5.4.1 (Residential Density Limitations), 5.4.2 (Residential Height Limitations), 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), 5.4.6 (Private Open Space), 5.4.8 (Building Design for Dwelling-Group, Dwelling-Multiple, Rooming Accommodation and Residential Care Facility) have been considered and it is found that the proposal complies with the relevant requirements of the Planning Scheme except for Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and 5.4.6 (Private Open Space).

In the response to Clause 5.4.8 (Building Design for Dwelling-Group, Dwelling-Multiple, Rooming Accommodation and Residential Care Facility) which includes consideration of correct solar orientation, it is noted that whilst the building layout results in the long axis of the building oriented in a north-south direction, the ground level habitable rooms, occupied more frequently during the day are largely protected from solar heat gain. Further the applicant has provided details of the western elevation which show the inclusion of fixed sun shades and placement of louvers, which will provide shade to glazing and promote breeze penetration. The permit includes a condition precedent to ensure the details are incorporated into the elevation plans.

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

The proposal has been found to not accord with Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and Clause 5.4.3.1 (Additional Setback Requirements for Residential Buildings longer than 18 metres and for Residential Buildings over 4 Storeys in Height), because the overall building length the building layout and will result in a front setback of less than 7.6m to Grevillea Circuit, 2m to the northern side boundary and 3.1m to the eastern side boundary.

The application did not specifically consider the reduced setback from 6m to 4.8m to the western frontage to Grevillea Street however at the meeting Mr Brad Cunnington, addressed the Authority highlighting that the design of the façade of the upper level comprises a box awning to floor to ceiling glazing which avoids a bulky appearance to the street. Mr Cunnington detailed that the setbacks are consistent with the setback approach in the immediate locality and sympathetic to adjoining lots. In particular the setback to the western street frontage is 6m to the habitable rooms and 2.5m to the walls of habitable rooms facing the southern street frontage.

The DAS assessment on the variation to Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and sub-clause 5.4.3.1 (Additional Setback Requirements for Residential Buildings longer than 18 metres and for Residential Buildings over 4 Storeys in Height) concluded that:

- In relation to the southern street frontage, the awning setback of 1m and the setback of 1.8m the south east corner of the building (unit 4) represent a minor encroachment in the context of a secondary street;
- In relation to the side setback reductions, the variable setbacks ensure that while technically over 18m in length, the design ensures the visual bulk is mitigated when viewing from adjoining land or the street and the setbacks are consistent with the clause purpose and requirements.

The purpose of Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) is to ensure that *“residential buildings and ancillary structures are located in a manner that: (a) is compatible with the streetscape and surrounding development including residential buildings on the same site; (b) minimises adverse effects of building massing when viewed from adjoining land and the street; (c) avoids undue overlooking of adjoining properties; and (d) facilitates breeze penetration through and between buildings.”* Further, the Clause specifies that the authority may only vary setback requirements under the clause *“if it is satisfied that the reduced setback is consistent with the purpose of this clause and the zone purpose and*

*outcomes, and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.”* In respect of buildings exceeding 18 meters in length, sub-clause 5.4.3.1 specifies that the purpose of the extra setback requirements prescribed are to ensure that residential buildings respond to the potential adverse effects of building massing and visual bulk when viewed from adjoining land and the street. In order to consent to a variation to the requirements of the sub-clause, the authority must be satisfied that the *“design of the development adequately mitigates the adverse effects of building massing and visual bulk that may arise from non-conformity.”*

The Authority considered that the proposal is consistent with the purpose of Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and sub-clause 5.4.3.1 (Additional Setback Requirements for Residential Buildings longer than 18 metres and for Residential Buildings over 4 Storeys in Height), the zone purpose and outcomes, and is appropriate to the site, in this instance because the proposal includes:

- the nature of the site means it has two primary street frontages to Grevillea Circuit and it is appropriate to treat the setback requirements for the southern frontage as comparable with a secondary street, noting that it is consistent with the existing building setbacks of dwellings-multiple on the north-east and north-west corner of the Grevillea Circuit;
- a street frontage to a wide verge which increases the distance from the adjacent street and properties;
- reduced setbacks which do not contribute to undue overlooking of adjoining properties or restrict breeze penetration through and between buildings; and
- building design elements which minimise adverse effects of building massing when viewed from adjoining land and the street such as floor to ceiling glazing to habitable rooms on the upper level and use of varied wall cladding materials and colours.

Further, the permit requires a landscaping plan to be submitted and endorsed to form part of the permit. The detailed landscaping plan, including a planting schedule with feature trees specified within the street frontage and water efficient plants, is to form part of the permit, to demonstrate that the site layout and landscaping provide a sympathetic interface to the street and enhance the streetscape and overall amenity of the locality.

The proposal was assessed as inconsistent with Clause 5.4.6 (Private Open Space), because the proposal will result in Unit 2 and Unit 4 having private open space that does not meet the minimum size and dimension requirements, respectively. The purpose of Clause 5.4.6 is to *“extend the function of a dwelling and enhance the residential environment by ensuring that each dwelling has private open space that is: (a) of an adequate size to provide for domestic purposes; (b) appropriately sited to provide outlook for the dwelling; (c) open to the sky and sufficiently permeable to allow stormwater infiltration and*

*lessen runoff from the site; and (d) inclusive of areas for landscaping and tree planting.”* Variation of the clause requirements can only be approved where the authority is satisfied it is consistent with the clause and zone purposes and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.

The authority considered that the proposal is consistent with the purpose of Clause 5.4.6 (Private Open Space) and a variation is justified as:

- Unit 2 has 37m<sup>2</sup> of private open space rather than 45m<sup>2</sup> that is less than permitted but is of a scale and impact that is appropriate to the site and includes a covered outdoor area consistent with the adjoining dwellings; and
- Unit 4 has in excess of the minimum total private open space but has 20m<sup>2</sup> rather than 24m<sup>2</sup>, all or partly covered with no dimension less than 4m;

The applicant noted that unit 2 could comply by removing part of the roof over the outdoor area however the Authority considers this would be a poor planning outcome, and finds that each dwelling ensures that the size, dimensions and landscaping concept ensure the private open space is appropriate to the site, consistent with the purpose of the zone and ensures attractive outdoor spaces are provided.

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 Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and Clause 5.4.6 (Private Open Space), as identified above and in respect of those non-compliances, variations are compatible with the zone and clause purposes.

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

Eight public submissions were received under section 49 and three submitters attended in person, two speaking to their submissions and providing further information under section 50. A number of the written submissions identified matters that relate to the increase in traffic and parking demand on Grevillea Circuit, in the context of the existing density. Mr Les Platt reiterated those concerns at the meeting, indicating his strong concerns on this issue and recommended that a parking area with three car parks per dwelling and larger parking spaces be provided.

Further amenity concerns with the proposal were raised in the written submissions due to the proposed landscaping, reduced building setbacks and private open space. Mr Platt indicated at the meeting that he considers that the design of a four-storey proposal would be preferable for the site as opposed to the two-storey design as it would



reduce the building footprint, enabling increased landscaping, compliant building setbacks and private open space to meet the minimum requirements.

The Authority carefully considered both the written submissions and the matters raised by submitters during the meeting and noted the strongly held views in relation to the impact on amenity. It however considered the design and density proposed to be appropriate given the historical zoning of the land and the existing built form in the immediate area; the Area Plan and zone anticipates the existing low to medium density development on Grevillea Circuit and meets the NT Planning Scheme 2020 requirements in relation to density and parking. The Authority further considered that the proposal meets the purposes of the zone and the various specific clauses that relate to the proposed development. In respect of amenity of the locality as referred to in Sections 3 and 51(1)(n) of the *Planning Act 1999*, the Authority considered that the proposal is well within the type of development that is expected and provided for by the Planning Scheme for the location and is substantially less dense, with the attendant impacts on amenity, than that which is potentially contemplated by the NTPS. The Authority require a detailed landscaping plan to form part of the permit which will ensure consideration is given to plantings focused on the area along the street frontage and takes into account the existing streetscape.

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

The land is capable of supporting the proposed development with the site and adjacent premises previously developed for residential purposes. Comments from service authorities also support the land as being able to accommodate the development, with access to reticulated power, water and sewerage available.

5. 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 requirements of service authorities in relation to public utilities and infrastructure have been addressed through conditions and notes on the permit.

Power and Water Corporation advised that 24 hour access to the area within the electricity easement in the north-west corner is required and a permit condition is included to ensure that amended plans are submitted which show a revised fencing layout.

City of Darwin do not support the proposed landscaping within the road verge and require an amended plan which provides for a minimum of four new trees. The requirements for landscaping within the road reserve are included as a note on the permit.

Conditions precedent on the development permit require a stormwater management plan and site construction management plan to address requirements of City of Darwin in relation to the impact on public infrastructure.

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

It is reasonable to expect that the proposed development will impact on the existing amenity of the area in terms of increased traffic and residential density. These are matters that were considered during the initial zoning of the land and release of the Darwin Mid Suburbs Area Plan and therefore the subject lot is considered capable of supporting a medium density development.

The proposed development seeks variations to building setbacks and private open space requirements however is otherwise fully compliant with the relevant provisions of the NTPS2020.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Notice of Determination

**ITEM 4**  
**PA2020/0360**  
**APPLICANT**

**PLACE OF WORSHIP WITH ANCILLARY OFFICE AND SHOP  
PORTION 2703 (18) MENMUIR STREET, WINNELLIE, HUNDRED OF BAGOT**  
MasterPlan NT

Mr Joseph Sheridan and Mr Alex Deutrom (MasterPlan NT),  
BAPS members in attendance:- Ketan Patel, Nirav Parekh, Anand Panchal, Alpi Panchal; Sandip Bhavsar and Himanshiv Jani (via teleconference).

Mr Sheridan tabled a response to the report prepared by DAS. A BAPS member tabled a brochure about BAPS Swaminarayan Sanstha, Australia.

**RESOLVED**  
**216/20**

That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse to consent to the application to develop Portion 2703 (28) Menmuir Street, Winnellie, Hundred of Bagot for the purpose of a place of worship with ancillary office and shop for the following reasons:

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 a place of worship with ancillary office and shop requires consent within Zone GI

(General Industry) under Clause 1.8 (When development consent is required) sub-clause 1(c) as an Impact Assessable development.

Where identified as Impact Assessable under Clause 1.8 (c)(i) the strategic framework (Part 2 of the Scheme), zone purpose and outcomes of Clause 4.15 (Zone GI – General Industry), and Part 5 development requirements need to be considered.

The purpose of Zone GI (General Industry) is to provide for industrial developments that require separation from more sensitive uses as the nature of activities may detrimentally impact on the amenity of the locality, in locations with access to services and transport networks capable of supporting heavy industry. The relevant Zone Outcomes indicate that the Zone is intended to provide for –

*Predominantly industrial activities that require separation from sensitive uses due to the nature of operations and the scale of activities, including fuel depot, industry-general, industry-light, industry-primary, motor body works, recycling depot, transport terminal and warehouse.*

Further, outcome 4 which is particularly relevant to the current application provides that -

*Any other non-industrial activities may only be established where they do not compromise or conflict with the ongoing primary use of the locality for industry purposes.*

The present application seeks to establish a place of worship with ancillary shop and office in an existing building originally developed as a warehouse and office. The land and its surrounds are within Zone GI (General Industry) and the locality is generally used and developed in a manner consistent with the zone. Existing uses in the immediate proximity of the site include a concrete batching plant, communication and security technology, commercial sales and motor repair station.

NTPS2020 defines a place of worship as “*premises used as a church, chapel, mosque, temple, synagogue or place of religious instruction or worship or for the purpose of religious training. The use can include where ancillary an office and shop.*”

While a place of worship is identified as permissible, subject to impact assessment, in Zone GI, uses such as a community centre or education establishment are prohibited and could only be carried out where they are ancillary to a permitted use. Elements of the proposed, such as the use of the mandir for supporting community development ‘with volunteering and education programs including English and other language classes, technology classes, youth programs, community impact programs and life education programs’ could be categorised as falling within the definitions of community centre or education establishment. When questioned by the Authority, the applicant advised that such uses would be ancillary to the primary use as a place of worship as they were limited to members of the congregation. The applicant, Mr Joseph Sheridan, and BAPS member addressed the Authority at the meeting and clarified that the activities on the site will primarily be for the members of the congregation and include prayer

sessions, practice of yoga, music, traditional language seminars and workshops.

The Authority noted the applicant's evidence and confirmation that, at times, the place of worship may be open to the broader community for activities such as festivals. The Authority considers that such elements, even if ancillary, increase the sensitive nature of the proposed use.

In *Association of Islamic Da'Wah in Australia Inc v Development Consent Authority* [2019] NTCAT 14 President Bruxner considered the application of 'reverse amenity' or 'reverse sensitivity' considerations in relation to a proposed place of worship in a GI Zone, noting that - *"Such considerations may arise in circumstances where a proposed use of land has potential negative implications for the ability of nearby land to continue be used in a way that is presently permitted.* He further noted that consideration of reverse amenity issues are relevant, as permitting sensitive development may jeopardise continued industrial use of nearby land. Permitting a sensitive use means that *"continued industrial use of the nearby land will involve the risk of exposure to criminal or civil legal action (because of the environmental impacts of the industrial use - such as noise, vibration, smell and dust - upon residents' amenity:"*

While such considerations justified refusal of consent in that case, the applicant relies upon a subsequent NTCAT decision in *Association of Islamic Da'Wah in Australia Inc. v Development Consent Authority* [2020] NTCAT 34 which, on fresh evidence, found that the proposed place of worship could be established and directed the DCA to issue a development permit. The decision of the Authority in that case in respect of noise sensitivity was upheld but then set aside on the basis of manifest failure to consider take into account the actual risk to amenity from non-noise factors. Having set aside the decision of the Authority, the Tribunal then considered additional evidence provided by the applicant which demonstrated that the noise levels within the proposed development could be managed such that reverse amenity from noise pollution was not expected. The Tribunal placed specific conditions on the operational times. The Authority notes that the proposed times of operation for the current proposal are far more extensive and conflict directly with the current hours of operation of the nearby industrial uses.

Both decisions were based upon the NT Planning Scheme 2007 which has now been replaced by the NTPS 2020. The 2020 Scheme gives greater weight to matters such as Zone Purpose and Outcomes in considering an impact assessable application. Further, the purpose of the GI Zone has been expanded and, as noted earlier, Zone Outcome 4 encapsulates the principle of reverse amenity, requiring that a use such as a place of worship is only permissible where it does not compromise or conflict with the ongoing primary use of the locality for industry purposes.

The proposed place of worship immediately abuts a concrete batching plant and a number of other industrial uses operate within the immediate vicinity. The applicant relied upon a Reverse Amenity Report produced by SLR to answer such concerns. The Authority

considered the SLR Report in detail. It draws certain conclusions in relation to the Planning Scheme on page 22 of the report but appears to be referring to the previous planning scheme rather than NTPS 2020. The Report applies the NTEPA Guideline “Northern Territory Noise Management Framework 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 measurements were made at the centre of the habitable room that is most exposed to the noise. The Report concludes that noise levels within the building were non-compliant with the Guideline criteria during proposed hours of worship from Monday to Saturday, and marginally non-compliant (within the upper limit of the upper confidence interval of the measurement uncertainty of the method) during proposed Sunday hours. The Report suggests that the concrete batching plant was the primary contributor to noise within the space. With respect to noise the Report states that “in principle” noise amenity could be achieved by separating the worship space from the rest of the building by installing various wall linings, a floating ceiling and soft floor coverings.

In *Association of Islamic Da'Wah in Australia Inc. v Development Consent Authority* [2020] NTCAT 34, the appellant was able to demonstrate, by fresh evidence that the noise level inside the place of worship was within the required guidelines. There is no such evidence in this case; nor is there any guarantee that the noise attenuation methods suggested by SLR will achieve compliance with the NTEPA guidelines. The SLR Report acknowledges that the effectiveness of the measures can only be confirmed post-construction. Further, the noise attenuation strategy involves isolating the place of worship from the rest of the building but the applicant’s proposal, as detailed in its attached plans, is to utilise other areas of the building for ancillary purposes in the nature of a community centre or educational establishment including language and music study, library and dining hall. Such uses are also sensitive but not included within the proposed noise attenuation area.

The Authority noted that the SLR Report concluded that there was very limited potential for adverse amenity impacts from air quality during congregation times based on current operations in the area. However, the Authority considers that the reverse amenity impacts of noise alone, as detailed in the SLR Report are sufficient to justify refusal of the application.

As proposed, the place of worship with ancillary office and shop is an unsuitable use within this location for the following reasons:

- The strategic framework identifies the land for industrial use and there is no Area Plan or planning scheme amendment relevant identifying this as an area of change.
- Land availability 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.
- The proposal will frustrate the achievement of the zone purpose and outcomes, in particular, due to the:

- minimal separation between industry – general and the place of worship, and the potential conflict with the ongoing primary use of the surrounding land for industry purposes associated with the impact on amenity of the place of worship premises; and
- the operational hours of the place of worship extending within standard business hours (e.g. Monday to Saturday: 7.00 am to 11:30 am) within which an increased likelihood of activities on adjoining land may adversely impact on amenity of the place of worship premises.
- The proposal includes a Reverse Amenity Impact Statement prepared by SLR Consulting Australia (the SLR report) which clearly identifies the levels of noise within the building are unacceptable (exceed 40dB);
- Whilst there are acoustic treatment measures recommended in the SLR report, including additional wall linings, a suspended ceiling and carpet flooring, the effectiveness of the measures are not conclusive.
- Notwithstanding the statutory obligations of surrounding uses under the *Waste Management and Pollution Control Act 1998* the proposal has not demonstrated how its own amenity will be protected by current or future land uses in close proximity to the site, primarily in relation to noise pollution.
- The NTCAT decision on a place of worship in Zone GI in Winnellie previously determined it was correct to issue a development permit only on the basis that the noise levels within the building were shown to not exceed 40dB and conditional on hours of operation limited to predominantly outside standard business hours, with no sufficient evidence of any real risk from non-noise factors.

Mr Sheridan opined that the SLR report thoroughly considered both the existing and future amenity impacts and addresses reverse amenity concerns, confirming suitable measures can be implemented such that compliance with noise levels is achievable. However, the Authority, having carefully considered the SLR report, is not satisfied that reverse amenity considerations will be mitigated and further notes that the Report is based on current operations in the immediate area. Surrounding industrial uses may expand, can produce noise levels up to 70 dB within the guidelines and can operate 24 hours a day 7 days a week. The impact of expansion of or new industrial development which the GI Zone seeks to protect would not necessarily be mitigated by the acoustic treatments proposed. The Authority considers that the SLR Report did not satisfactorily address future impacts on amenity as required by reference to the Zone Outcomes. On the issue of future risks to reverse amenity, Dean DCJ in *Beerwah Land Pty Ltd V. Sunshine Coast Regional Council* [2018] QPEC 10 when discussing the prospect of farm odours affecting a proposed subdivision, said, “...the existence of such risks must ... be real and genuine and not too remote or speculative.” In the present case, the risks posed by the current operation of the concrete batching plant which is operating at less than 24 hours a day, 7 days a week are clearly outlined in the Report which is also clear that effectiveness of proposed noise attenuation measures can only be assessed after construction.

2. The application exhibits a number of other non-compliances and, for completeness, the Authority considered the nature of those non-compliances. Clause 1.10.5 provides that the consent authority may consent to a proposed use or development that is not in accordance with a requirement set out in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:
- (a) the purpose and administration clauses of the requirement; and
  - (b) the considerations listed under Clause 1.10(3) or 1.10(4).

The application is not in accordance with the following development requirements of Part 5 of the NT Planning Scheme 2020 including Clause 5.2.4.1 (Parking Requirements), Clause 5.2.4.4 (Parking Layout), Clause 5.2.6 (Landscaping), Clause 5.6.1 (Setbacks and Building Design in Zones LI, GI and DV) and Clause 5.4.12 (Dwelling-Caretakers).

A variation to the development requirements in relation to landscaping and building setbacks could be allowed due to the existing building footprint limiting compliance with the setback distance requirement of 3m.

A reduction in parking requirements from 54 to 30 could be supported, in accordance with the considerations of Clause 5.2.4.2 (Reduction in Parking Requirements outside of Zone CB in Darwin) including the:

- greatest demand for parking is expected on Sunday, outside standard business hours, being 50 to 60 people and many will travel in family groups, reducing demand;
- approximately one-third of the building is to be used for the purpose of a kitchen and dining area which are unlikely to add to the parking demand generated by the place of worship;
- there is provision of car parking spaces in the vicinity of the land; and
- public transport available in the vicinity of the land; or

The administration of Clause 5.4.12 (Dwelling-Caretakers) requires that the establishment of a dwelling-caretakers must not compromise or constrain the operation or viability of the primary use of the site or adjoining land. As proposed, a variation to Clause 5.4.12 (Dwelling-Caretakers) to permit a floor area of approximately 65m<sup>2</sup> where a maximum of 50m<sup>2</sup> is required would not be supported as the application has not demonstrated that the dwelling is consistent with the purpose of the clause and the zone purpose and outcomes, and that it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.

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 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(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 proposed place of worship is unlikely to have an adverse impact on the existing and future amenity of the area, however reverse amenity concerns are identified with the current proposal from surrounding industrial uses.

**FOR :5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Notice of Refusal

**ITEM 5**

**PA2013/0538**

**EXTENSION OF TIME TO EXTEND DP13/0743 BY 4 YEARS**

**LOT 1622 (4) CAREY STREET, DARWIN CITY, TOWN OF DARWIN**

**APPLICANT**

Gwelo Investments Pty Ltd

Mr Vince Albertoni (Gwelo Investments Pty Ltd) attended.

**RESOLVED  
217/20**

That, pursuant to section 59(3)(a) of the *Planning Act 1999*, the Development Consent Authority consent to the application to extend the base period of Development Permit DP13/0743 for the purpose of 9 x 1 bedroom, 312 x 2 bedroom and 1 x 3 bedroom multiple dwellings in a 28 storey building including car parking on the ground, first, second, third and fourth levels and 1 x level of basement car parking at Lot 1622 (4) Carey Street, Town of Darwin, for an additional period of two years.

**REASONS FOR THE DECISION**

1. Development Permit DP13/0743 was issued on 28 October 2013 for the purpose of 9 x 1 bedroom, 312 x 2 bedroom and 1 x 3 bedroom multiple dwellings in a 28 storey building including car parking on the ground, first, second, third and fourth levels and 1 x level of basement car parking. The permit was subsequently extended twice on 25 September 2015, and on 23 February 2018, for a total of five years until 28 October 2020.

On 27 October 2020, the landowner, Gwelo Investments Pty Ltd, lodged an application to extend the base period of DP15/0490 for an additional four year period making the application to request a further extension valid.

The Authority noted that the conditions precedent of DP13/0743 have yet to be cleared and endorsed plans have not yet been issued.

2. In support of the application for an extension of time the applicant has stated that the application is due to the current economic and market conditions in the Darwin region and the impact of COVID-19 on the property sector. The application also states that at present, pre-sales have been insufficient to



enable finance and construction of the project. The applicant indicated that more time is needed to generate the interest necessary to meet the pre-sale requirements, and has requested an extension of time of four years to provide sufficient time to prepare the development for delivery.

3. The Authority noted the advice contained within the Development Assessment Services (DAS) report that stated despite the introduction of the Northern Territory Planning Scheme 2020, there have not been any substantial changes since the time of issue of the original permit that would impact the compliance of the development. The Authority determined that that permit DP13/0743 should be extended by two years rather than the requested four.
4. Mr Albertoni explained various circumstances that have occurred in the past resulting in the delay of the development. Mr Albertoni expressed that the economic downturn of the Darwin property market since 2015 in combination with COVID-19 has impacted the economic viability of the development. Mr Albertoni also conveyed that the development would therefore require sufficient pre-sales to proceed and advised that Gwelo was committed to delivering this development.
5. The Authority noted that the current application is the third extension of the period of the permit and that seven years has already passed since the permit was issued in 2013, without the development having been substantially commenced. The Authority noted that the applicant has recently re-engaged its design team to review the development and progress to address the precedent conditions so the associated drawings can be endorsed. This suggests that a four year time frame to commence the development from this point is excessive and notwithstanding the current economic impacts resulting from Covid-19, the authority considered that a two year extension should be sufficient time for the economic impact of Covid-19 to pass, and avoid the potential for the permit to become unnecessarily warehoused.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Extension of Time Permit

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

**SUZANNE PHILIP**  
Chair

14 December 2020