



**DEVELOPMENT CONSENT AUTHORITY**

**DARWIN DIVISION – SESSIONS 1 and 2**

**MINUTES**

**MEETING No. 378 – FRIDAY 6 AUGUST 2021**

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

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

**APOLOGIES:** Nil

**LEAVE OF ABSENCE:** Nil

**OFFICERS PRESENT:** Breanna Lusty (A/Secretary), Ann-Marie Reynolds, Richard Lloyd and Julie Hillier (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Brian Sellers, Conneil Brown, Cindy Robinson, Peter Heffernan

**Meeting opened at 10.30 am and closed at 1.30 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**

**PA2021/0190 PLACE OF WORSHIP WITH ANCILLARY OFFICE AND SHOP  
PORTION 2703 (18) MENMUIR STREET, WINNELLIE, HUNDRED OF BAGOT  
APPLICANT One Planning Consult**

Mr Israel Kgosiemang (One Planning Consult), Nirav Parekh, Ketan Patel, Anand Panchal (BAPS) attended in person.

Himanshu Jani, Sandeep Bhausar (BAPS) and Luke Zootjens (SLR Sound Consultant) attended via phone.

**RESOLVED 66/21** That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse the application to develop Portion 2703 (28) Menmuir Street, Winnellie, Hundred of Bagot for the purpose of place of worship with ancillary office and shop.

**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 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.

The strategic framework (Part 2 of the Scheme, including the Darwin Regional Land Use Plan 2015), zone purpose and outcomes of Zone GI must be considered for an *Impact Assessable* use.

The NTPS 2020 provides that the purpose of Zone GI 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 Zone outcomes reiterate that it is intended for predominantly industrial activities, requiring “separation from sensitive uses due to the nature of operations and the scale of activities”. The types of uses specified include fuel depot, various types of industry including industry-general, motor body works, recycling depot, transport terminal and warehouse. The present application for a place of worship falls within Zone Outcome 4 which requires that such activity only be established where it does not “compromise or conflict with the ongoing primary use of the locality for industry purposes.” Further the NTPS 2020 mandates that an Impact Assessable use requires the consent authority to determine if it is appropriate given the location of the site and the potential impacts on surrounding uses.

The applicant lodged a similar proposal in 2020 which was refused by the DCA in December 2020 (NR20/0018). On that occasion, the DCA found the place of worship with ancillary office and shop was an unsuitable use at this location for various reasons, including the strategic framework which identifies the land for industrial use, limited land availability in Zone G1, minimal separation between industry-general and the place of worship, and potential conflict with the ongoing primary use of the surrounding land for industry. In that case, the operational hours of the place of worship extended within standard business hours (e.g. Monday to Saturday: 7.00 am to 11:30 am) creating an increased likelihood of activities on adjoining land adversely impacting on amenity of the place of worship premises. Further, the proposal included a Reverse Amenity Impact Statement prepared by SLR Consulting Australia, clearly identifying that the levels of noise within the building were unacceptable (exceeding 40dB).

The present application acknowledges that the proposed use requires “reverse amenity impact assessment” as it is located close to other uses that are predominantly industrial activities. It seeks to address the previous Reasons for Refusal by limiting the hours of operation while increasing the level of noise attenuation measures and extending the area of the building to be treated. To that end, a new Report by SLR Consulting Australia Pty Ltd, as an expert in the area of Environmental Nuisance, was commissioned and relied upon by the applicant. The Report identifies noise as the environmental factor with potential to affect the proposed sensitive use and makes clear the extent to which the building is currently affected by noise from the neighbouring concrete batching plant. It outlines extensive measures required to reduce those noise levels and concludes that the proposed use could exist in the area, subject to the noise attenuation proposal, which will potentially reduce the noise within the building to a level acceptable (40dB) for a Place of Worship in an industrial area.

The DCA carefully considered the SLR Report and the responses of the applicant and the SLR representative, Mr Zootjens, during the meeting on 6<sup>th</sup> August but determined that 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 G1 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.

It is particularly noted that a range of land uses are permitted and therefore may establish and operate without consent within Zone G1. Use of land for industry-general is an example of a permitted use in Zone G1 which has the potential for impact on surrounding sensitive uses. Industry-general in the NTPS 2020 means:

*“an industry in which the process carried on, the machinery used and goods and commodities carried to and from the premises on which the industry is sited has potential for significant impacts on the surrounding amenity due to off-site emissions including aerosol, fume, dust, smoke, waste products, odours, noise, generation of heavy vehicle traffic flows in the locality and the potential for night-time and/or outdoor activities. The use can include when ancillary office and shop”.*

Therefore, air quality, odour, heavy vehicle traffic and 24 hour operations, including in the outdoors, are factors that can be reasonably expected to occur. The land use in the area currently include activities which have known off-site emissions.

The SLR Report found that the noise levels within the building were, at worst, around 12 - 13 dB above the recommended internal target of LAeq 40 dB and proposes extensive works to the building to reduce those levels by 15 dB in LAeq terms to enable the development to comply with the requirements of the Northern Territory Environmental Protection Agency (NTEPA) “Noise Management Framework Guideline” (Guideline). Those calculations are based on the operation of the concrete batching plant at the rear of the site and the Report notes that it assumes future external noise from the nearby concrete batching plant will continue to be similar.

Reverse Amenity issues, specifically relating to placement of a Place of Worship within Zone GI, have been considered by NTCAT on two occasions, in *Association of Islamic Da'wah in Australia Inc. v Development Consent Authority* [2019] NTCAT 14 and again at [2020] NTCAT 34. The DCA notes those decisions and, in particular, the stricture in relation to future reverse amenity impacts, that “the existence of such risks must ...be real and genuine and not too remote or speculative...”. See *Dean DCJ in Beerwah Land Pty Ltd V Sunshine Coast Regional Council* [2018] QPEC 10'. However, the DCA considers that the SLR Report is expressly based on the existing surrounding uses, their present level of intensity and hours of operation. The Guideline allows LAeq 70 dB for industrial uses, some 30 dB above the requirement for a Places of Worship. It also relies on the distance between the existing Batching plant and the proposed Place of Worship to reduce the level of noise, stating that - “*Airborne noise reduction of 18 dB (in LAeq terms) between outdoor boundary position (Location D, **Table 2**) and proposed Assembly Hall (Location B).*” DCA considers that the risk of further, more intense or noxious industry or use arising in the immediate vicinity of the proposed Place of Worship are real and genuine. It further notes that the NTCAT decisions, referenced above, were based on the previous Planning Scheme. The NTPS introduced in 2020 contains far more extensive provisions relating to the purpose, outcomes and requirements for the GI Zone, emphasising the need for separation from sensitive uses.

The protection of land within Zone GI in Winnellie from encroachment of sensitive uses is important to ensure the primacy of the land for activities of an industrial nature that have potential for off-site impacts on sensitive uses. The site is fully serviced and is proximate to the Stuart Highway, a major transport corridor, and land supply in the area is limited. These factors reinforce the importance of protecting the zone.

It is noted the applicant considers that, if the use was considered inappropriate within Zone GI, it would be identified as prohibited. However, a place of worship is *Impact Assessable* within a range of zones and the very process of assessment enables a case by case analysis of the specific proposal on a given site in the context of the zone purpose and outcomes and potential impact on amenity. NTPS 2020 requires the consent authority to consider specifically, the guidance provided by the relevant zone purpose and outcomes and any component of the Strategic Framework relevant to the land, and in consideration of these, the place of worship is considered an unsuitable use in the proposed location.

The Authority notes the rebuttal made by the applicant to the above points at the hearing, however the Authority remains of the view that this particular site within the GI zone is unsuitable for a place of worship with the risk of reverse amenity issues occurring in the future being considered high, particularly as a concrete batching plant already exists immediately next door to the site. The DCA considers that there is a real possibility that the present land uses of the surrounding GI land, the possible expansion of those uses and the introduction of new permitted General Industry uses, may be adversely affected or hindered by the introduction of such a sensitive use in close proximity, in contradiction to the purpose and intent of the zone.

The Authority also notes the statements made by the Bochasanwasi Shri Akshar Purushottam Swaminarayan Sanstha (BAPS) representatives at the hearing and wishes to stress that its decision is based purely on the proposed location of the place of worship within Zone GI and the high risk of land use conflict in the future due to reverse amenity impacts from neighbouring industry-general use. It is in no way a reflection on the value or contribution made by the BAPS community or the type of religious activities that would be undertaken at the place of worship.

2. 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), and Clause 5.6.1 (Setbacks and Building Design in Zones LI, GI and DV).

A variation to the development requirements in relation to landscaping and building setbacks could be supported 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 is available in the vicinity of the land.
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)(m) 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.

While the operation of the proposed place of worship, in itself, is unlikely to have an adverse impact on the existing and future amenity of the area, 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, means that reverse amenity concerns remain an issue. The DCA considers that it cannot be satisfied that the future amenity of the proposed Place of Worship can be adequately safeguarded so as to avoid potential negative implications for the ability of nearby land to continue be used in a way that is presently permitted.

**FOR: 5**                      **AGAINST: 0**                      **ABSTAIN: 0**

**ACTION:**                      Notice of Refusal

**ITEM 2**  
**PA2021/0209**

**EXHIBITION CENTRE WITH ANCILLARY FOOD PREMISES-RESTAURANT AND SHOP IN A THREE STOREY BUILDING WITH BASEMENT LEVEL (STATE SQUARE ART GALLERY)**  
**LOTS 7582 & 6649 (7 & 3) SMITH STREET, LOTS 5949, 7583, 6571 (18, 16 & 14) THE ESPLANADE AND LOT 3940 (25) MITCHELL STREET, TOWN OF DARWIN**

**APPLICANT** Masterplan NT

Alex Deutrom and Chandilini Kubar (Masterplan NT), Lyle Hebb, John Harrison (DIPL), Irma Lamaya and Randal Ashford (Architect) attended in person.

John Brears (submitter) and Matthew Kelly and Sue Hiley (interested parties) Jesse Thompson (ABC Journalist) attended in person.

DAS tabled three late submissions from Justice Graham Hiley, Justice Judith Kelly and Mr Ross Dunkley.

Masterplan tabled photographs illustrating the landscaping that exists between the Administrator's Offices and the proposed site.

**RESOLVED  
67/21**

That, the Development Consent Authority pursuant to section 46(4)(b) of the *Planning Act 1999*, defer the application to develop Lots 7582 (7) Smith Street, 7583 (16) The Esplanade, 3940 (25) Mitchell Street, 5949 (18) The Esplanade, 6571 (14) The Esplanade, and 6649 (3) Smith Street, Town of Darwin for the purpose of an exhibition centre with ancillary food premises-restaurant and shop in a three storey building with basement level (State Square Art Gallery), to require the applicant to provide the following additional information that the Authority considers necessary in order to enable proper consideration of the application (please note also the reasons for decision further below):

- A more extensive consideration of Clause 5.5.3 (Commercial and Other Development in Zones... CB...) of the NT Planning Scheme 2020, particularly sub-clauses 3, 4, 7, 10, 11 and 12;
- A car parking audit to clearly establish the number of car parking spaces being lost and gained in the context of the art gallery proposal and State Square Precinct as a whole, to enable proper consideration of the proposal under Clause 5.2.4 (Vehicle Parking) of the NT Planning Scheme 2020;
- Provision of indicative drawings or submission of a development application for the proposed lot consolidation to enable proper consideration of its impacts on the affected lots;
- That the issues raised in the public submissions as they relate to Clause 5.5.3 (Commercial and Other Development in Zones... CB...), of the NT Planning Scheme 2020 have been satisfactorily addressed;
- Provision of any updated plans for the art gallery as the result of any changes to address the above points of deferral;
- A third party peer review to be undertaken by an independent specialist to provide the consent authority with an opinion on the proposal focussing on sub-clauses 3 and 4 of Clause 5.5.3 (Commercial and Other Development in Zones... CB...) of the NT Planning Scheme 2020.

**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 land is located in Zone CB (Central Business), the purpose of which zone is to *promote an active and attractive mixed use environment that maximises its function as the commercial, cultural, administrative, tourist and civic centre for the surrounding region that is integrated with high density residential development*. The Zone Outcomes specifically require that an Exhibition Centre supports the needs of the local or regional population and contribute to the diversity and activity of uses within the zone.

The uses proposed in the Development Application are identified as Merit Assessable under Clause 4.10 – Zone CB (Central Business), and therefore the following elements of the Planning Scheme need to be considered in

determining the application -

- the strategic framework (Part 2 of the Scheme – Central Darwin Area Plan 2019),
- zone purpose and outcomes of Clause 4.10 (Zone CB),
- Clause 5.2.3 (Buildings in Central Darwin),
- Clause 5.2.4 (Vehicle Parking),
- Clause 5.2.5 (Loading Bays),
- Clause 5.2.6 (Landscaping),
- Clause 5.3.7 (End of Trip Facilities in Zones... CB...),
- Clause 5.5.3 (Commercial and Other Development in Zones... CB...),
- Clause 5.5.11 (Food Premises), and
- Clause 5.8.4 (Exhibition Centre...).

In particular, the purpose of Clause 5.5.3 requires that relevant developments promote site-responsive designs which are attractive and pleasant and contribute to a safe environment. A number of specific requirements are imposed by the clause, including, preservation of vistas, minimisation of expanses of blank walls, provision of safe and convenient movement of vehicles and pedestrians to and from the site, provision of convenient pedestrian links and protection for pedestrians from sun and rain. Importantly, it also requires that the development be sympathetic to the character of buildings in the immediate vicinity.

The Authority was addressed by the applicant and by submitter, Mr Brears. The Authority also noted that it had received three further submissions in opposition to the development. Those submissions were received after the period set for submissions in Section 49 of the *Planning Act 1999*. The Authority has power under section 49(8) to extend the time for lodging a submission, if so requested. Although no request was received, it is clear that the Authority can consider the matters raised in a submission lodged outside the time frame set by the Section 49. As noted in the NTCAT decision in *Association of Islamic Da'Wah in Australia Inc v Development Consent Authority [2019] NTCAT 14*, section 51(t) of the *Planning Act 1999* provides that the consent authority may, in considering a development application, take into account "other matters it thinks fit". The Authority considers the matters raised in the submissions to be substantial and those matters should be considered by the Authority.

The Application is presented as a development over Lots 7582, 6649 7583 and 3940, and Part Lots 6571 and 5949 Town of Darwin. The Statement of Effect acknowledges that those lots make up the subject site and that subdivision and consolidation of the abovementioned lots will be required to facilitate the development of the subject site. The site is complex and houses the Supreme Court, the Administrator's Offices and the new underground State Square Carpark. Although not included in the site, Parliament House is in the immediate locality and forms part of the precinct covered by the Civic and State Square Master Plan.

Given the complexity and significance of the site, the Authority considers that the proposed art gallery cannot be considered in isolation and must be considered in the context of the State Square Precinct as a whole, particularly the Supreme Court, Parliament House and Administrator's Office. The Authority considers that it does not have sufficient information to determine the Application.



2. In this context, the Authority requires the applicant to:
  - a) provide a more extensive consideration of Clause 5.5.3 (Commercial and Other Development in Zones... CB...) of the NT Planning Scheme 2020, in particular, how:
    - the proposal is sympathetic to the character of buildings in the immediate vicinity (sub-clause 3), particularly the Supreme Court and Administrator's Office;
    - the expanses of blank walls are minimised(sub-clause 4), particularly along the side that faces the Supreme Court;
    - on-site noise sources will be controlled to minimise noise intrusion (sub-clause 7), particularly to the Administrator's Office;
    - safe and convenient movement of vehicles and pedestrians to and from the site will be provided (sub-clause 10), particularly for jurors and emergency services;
    - convenient pedestrian links (incorporating access for the disabled) to other buildings and public spaces will be provided (subclause 11), particularly to/from the State Square underground carpark; and
    - protection for pedestrians from sun and rain will be provided, particularly to/from the State Square underground carpark (sub-clause 12);
  - b) undertake a car parking audit to clearly establish the number of car parking spaces being lost in the State Square Precinct, including the juror's carpark, against the number of car parking spaces gained, particularly through the State Square underground carpark, and how the number of spaces lost from the juror's car park and generated by the proposed art gallery fit in to the total number of parking spaces available in the State Square underground car park, to enable proper consideration of the proposal against Clause 5.2.4 (Vehicle Parking) of the NT Planning Scheme 2020;
  - c) provide detailed drawings of the proposed lot consolidation in order to consider its impact on the lots which relate to the Supreme Court (Lot 5949), Administrator's Office (Lots 6571 and 7583), and the Juror's carpark (Lots 6649 and 7582). Alternatively, the Applicant may wish to formally submit the development application for the lot consolidation for the Authority's consideration.
3. The Authority also requires the applicant to:
  - a) address the issues raised in the public submissions in more detail as they relate to Clause 5.5.3 (Commercial and Other Development in Zones... CB...) of the NT Planning Scheme 2020, to demonstrate that the submitter's concerns have been adequately addressed, with particular regard to sub-clause 3 in relation to the location of the proposed building and the extent to which it can be regarded as sympathetic to the character of buildings in the immediate vicinity, especially the Supreme Court and the Administrator's Offices, and sub-clause 10 in relation to the safe and convenient movement of vehicles and pedestrians to and from the site, particularly for jurors and emergency services; and
  - b) noting that the applicant indicated at the hearing that the plans had been amended, provide any updated plans, including any changes that may be made following consideration of all the above points.

- The plans will then be subject to third party peer review for a specialist opinion on the proposal. The review will allow for an independent assessment of the merits of the proposal focussing on sub-clauses 3 and 4 of Clause 5.5.3 (Commercial and Other Development in Zones... CB...) of the NT Planning Scheme 2020.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Notice of Deferral

**ITEM 3**

**PA2021/0200**

**84 SERVICED APARTMENTS (36 IN DUAL-KEY CONFIGURATION) AND A GROUND LEVEL COMMERCIAL TENANCY IN A 5 STOREY BUILDING INCLUDING ABOVE-GROUND CAR PARKING (LEVEL 1) LOT 2446 (13) DALY STREET, DARWIN CITY, TOWN OF DARWIN**

**APPLICANT**

Tropics Consultancy Group

Gerard Rosse (Tropics Consultancy Group) attended in person.

DAS tabled addendum addressing minor administrative changes.

**RESOLVED  
68/21**

That, the Development Consent Authority reduce the car parking requirements pursuant to Clause 5.2.4.2 (Reduction in Parking Requirements outside of Zone CB in Darwin) of the Northern Territory Planning Scheme 2020; vary the requirements of clause 5.4.6 (Private Open Space) and 5.4.7 (Communal Open Space) of the Northern Territory Planning Scheme 2020; and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 2446 (13) Daly Street, Town of Darwin for the purpose of 84 serviced apartments (36 in dual-key configuration) and a ground level commercial tenancy in a 5 storey building including above-ground car parking (level 1), subject to the following conditions:

**CONDITIONS PRECEDENT**

- 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:
  - external finishes including clear glass windows with views to and from the street at ground level;
  - confirmation of the varied façade materials used to screen the above ground car parking levels on level 1 and demonstration of an adequate level of screening to the car parking area being achieved;
  - bicycle parking facilities and associated bicycle parking devices that comply with Clause 5.3.7 (End of trip facilities in Zones HR, CB, C, SC and TC) of the NT Planning Scheme 2020;
  - ground floor access doors which do not open out;
  - site plan with net floor area of serviced apartments to include gymnasium;

- f) supporting information to demonstrate that the plans submitted have regard to the Community Safety Design Guide as referenced in Clause 5.5.3 (Commercial and Other Developments in Zone CB) sub-clause 1; and
  - g) swept path diagrams which demonstrate the port cochère can cater for vehicles such as shuttle buses with luggage trailers.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a landscaping management plan 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 must be generally in accordance with the submitted landscape concepts, except that the plan must show:
- a) 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; and
  - b) the provision of an irrigation system to all landscaped areas. All species selected must be to the satisfaction of the consent authority.
  - c) In addition to the above, the landscaping management plan is to address the health and management of all plant species, including growing conditions to demonstrate that the landscaping will be maintained for the life of the development
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a traffic impact assessment report is to be prepared by a suitably qualified traffic engineer and identify any necessary upgrades to the surrounding street network to the requirements of the City of Darwin. The report is to include a Road Safety Audit (RSA) to inform the suitability of the port cochère and Smith Street access points. The RSA shall also consider the implications for vehicles wishing to access the port cochère when coming from the north, and identify that adequate access sightlines for pedestrians, cyclists and vehicles is provided for all vehicle access points from the site.
4. Prior to the endorsement of plans and prior to commencement of works (including site preparation), in principle approval is required for the provision of awnings to the street frontages to the requirements of the City of Darwin and Power and Water Corporation. The awnings are to be generally in accordance with the submitted plans, and shall not reduce the achievement of active frontages below 75% of the total length of the site boundary to the street, to the satisfaction of the consent authority.
5. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), approval is required by the City of Darwin for any element of the building (separate to awnings) that is designed to be constructed or installed over the City of Darwin road reserve, to the satisfaction of the consent authority
6. 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, Council's

stormwater drain connection point/s, whether easements are required for the purposes of stormwater drainage over the lots and underground connection details.

7. 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.
8. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Policy 054, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.
9. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.

#### **GENERAL CONDITIONS**

10. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
11. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
12. 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, to the satisfaction of the consent authority.
13. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage and electricity facilities and telecommunication networks to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
14. All works recommended by the traffic impact assessment are to be completed to the requirements of the City of Darwin to the satisfaction of the consent authority.
15. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of City of Darwin, to the satisfaction of the consent authority.  
The owner shall:
  - a) remove disused vehicle and/ or pedestrian crossovers;
  - b) provide footpaths/cycleways;
  - c) collect stormwater and discharge it to the drainage network; and

- d) undertake reinstatement works;  
all to the technical requirements of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
16. 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
17. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin to the satisfaction of the consent authority.
18. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin to the satisfaction of the consent authority.
19. Before the use or occupation of the development starts, the area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
- a) constructed;
  - b) properly formed to such levels that they can be used in accordance with the plans;
  - c) surfaced with an all-weather-seal coat;
  - d) drained;
  - e) line marked to indicate each car space and all access lanes; and
  - f) clearly marked to show the direction of traffic along access lanes and driveways to the satisfaction of the consent authority.
- Car spaces, access lanes and driveways must be kept available for these purposes at all times.
20. 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.
21. 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.
22. All pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the consent authority.
23. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view, located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority.
24. All substation, fire booster and water meter arrangements are to be appropriately screened to soften the visual impact of such infrastructure on the streetscape, to ensure that the infrastructure is sympathetic to and blends in with the design of the building. Details will need to be resolved to the satisfaction of the consent authority in consultation with the Power and Water Corporation, and NT Fire and Emergency Services.

25. External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the consent authority.
26. No goods are to be stored or left exposed outside the buildings so as to be visible from any public street.

## 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. 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.
3. 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.
4. Notwithstanding the approved plans, any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin Policy Number 42 – Outdoor Advertising Signs Code.
5. City of Darwin advises that in accordance with City of Darwin By-Laws, prior to occupation, the applicant shall ensure that a building number is displayed in a position clearly visible from the street.
6. Any floodlighting or security lighting provided on site should be shielded in a manner to prevent the lighting being noticeable or causing nuisance to traffic.
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](mailto:info@ntbuild.com.au)) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
8. 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>

9. This development permit is not an approval to undertake building work. You are advised to contact a Northern Territory registered building certifier to seek a building permit as required by the Northern Territory *Building Act 1993* before commencing any demolition or construction works.
10. The applicant is advised to engage a Northern Territory registered building certifier to ensure that the intended use of any existing buildings or structures is permitted by occupancy certification in accordance with the *Building Act 1993*.
11. The development and use hereby permitted must be in accordance with Northern Territory legislation including (but not limited to) the *Building Act 1993*, the *Public and Environmental Health Act 2011* and the *Food Act 2004*.
12. The Building Advisory Services (BAS) branch of the Department of Infrastructure, Planning and Logistics advises that the applicant obtain a review of the structural design of the proposed development by a structural engineer registered in the Northern Territory and provide the review to the building certifier. The building certifier may take this report into consideration when granting a building permit and if relied upon by the building certifier in granting the building permit, provide the report to the Director of Building Control. BAS can be contacted via email ([bas@nt.gov.au](mailto:bas@nt.gov.au)) or by phone on 08 8999 8985.
13. This permit will expire if one of the following circumstances applies:
  - a) the development *and use is/are* not started within *two* years of the date of this permit; or
  - b) the development is not completed within *four* years of the date of this permit.

The consent authority may extend the periods referred to if a request is made in writing before the permit expires.

## REASONS FOR THE DECISION

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

The NT Planning Scheme 2020 (NTPS2020) applies to the land and serviced apartments and food-premises café/takeaway requires consent under Clause 1.8 (When development consent is required). It is identified as *Merit Assessable* under Clause 1.8(1)(b)(i), and therefore the strategic framework including the Central Darwin Area Plan, zone purpose and outcomes of Clause 4.10 (Zone CB), and Clause 5.2.3 (Buildings in Central Darwin), Clause 5.2.4 (Vehicle Parking), Clause 5.2.5 (Loading Bays), Clause 5.2.6 (Landscaping), Clause 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC), Clause 5.4.6 (Private Open Space), Clause 5.4.7 (Communal Open Space), Clause 5.4.8 (Building Design for Dwelling-Group, Dwelling-Multiple, Rooming Accommodation and Residential Care Facility), Clause 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, and FD) and Clause 5.5.11 (Food Premises) applicable to the application, need to be considered.

These clauses have been considered and it is found that the proposal, as conditioned, complies with the relevant requirements of the Planning Scheme except for Clause 5.2.4 (Vehicle Parking), Clause 5.4.6 (Private Open Space) and Clause 5.4.7 (Communal Open Space).

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 not to be in accordance with Clause 5.2.4 (Vehicle Parking), Clause 5.4.6 (Private Open Space) and Clause 5.4.7 (Communal Open Space) of the Northern Territory Planning Scheme 2020 as addressed below.

Clause 5.2.4 (Vehicle Parking) requires that a use or development specified is to provide the number of car parking spaces required for that development and is to be calculated in accordance with the formula specified. However, through Clause 5.2.4.3 (Reduction in Parking Requirements within Zone CB in Darwin), the proposal is supported with fewer car parking spaces than required by clause 5.2.4.1 (Parking Requirements) within Zone CB in Darwin. Specifically, the parking proposed is supported as the reduction to parking demand by virtue of the proximity to a suitable public bus stop and a public car park ensures that the 80 car parks proposed are sufficient for the intended use.

Clause 5.4.6 (Private Open Space) requires that a private open space provision to each apartment is to meet the minimum area and dimensions being 12m<sup>2</sup> with no dimension less than 2.8m. Each serviced apartment is provided with a balcony with dimensions ranging in size of between of 9m<sup>2</sup> to 17.1m<sup>2</sup>, with minimum dimension of 1.9m metres.

The size of the balconies is not dissimilar to other serviced apartments that are developed, which takes into account the short term nature of the occupation within the apartments. The quality of the communal open space area, including private landscaped deck with outdoor cooking facilities, plus pool and a gymnasium, would provide occupants with convenient access to space for domestic purposes (e.g. recreation).

A variation to Clause 5.4.6 (Private Open Space) for balconies with a minimum area of 9m<sup>2</sup> and minimum dimension of 1.9m (12m<sup>2</sup> and 2.8m is ordinarily required) is supported as the proposal meets the purpose of the clause and the zone purpose and outcomes.



Clause 7.6 (Communal Open Space) requires a minimum of 15% of the site, being not less than 6m wide at any point, to be communal open space. An area of 172m<sup>2</sup> of communal open space is proposed where 303m<sup>2</sup> is required. The area of compliant communal open space is limited to the gymnasium and pool/BBQ area at ground level.

The Authority notes that the proposal is for serviced apartments including studios which would likely be used for short term stays and not generate a great demand for the use of communal open space, noting also that a high level of amenity is provided within the communal areas (including gymnasium, pool and outdoor cooking facilities), each apartment has its own balcony and there is public open space nearby. The Authority considers that there are suitable areas for communal open space included in the proposal to meet the purpose of this clause, the zone purpose and outcomes for Zone CB. A variation to Clause 5.4.7 (Communal Open Space) is supported in this instance as the proposal meets the purpose of the clause and the zone purpose and outcomes.

3. Pursuant to section 51(1)(j) of the *Planning Act 1999*, the consent authority must take into consideration any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application.

One public submission was received during the exhibition period with respect to the proposal which raised concerns with the impact on amenity in terms of the building setback to the boundary of Smith Street, lack of tropical design, visible car parks and lack of publically accessible open space.

The Authority notes that the building design and setback to Smith Street meets the planning requirements, and the recommendation includes conditions which ensures the design details suitable screening of visible parking areas.

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

There are no land capability issues identified.

5. Pursuant to Section 51(1)(m) of the *Planning Act 1999*, the consent authority must consider the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

The application was circulated to the relevant authorities and comments received from these authorities are addressed by the

inclusion of conditions and/or notations on the development permit as required.

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

It is considered unlikely that the proposal will have a significant impact on the amenity as it is the type of development anticipated on the site through Zone CB. The permit conditions and notes will also assist in preventing any adverse impacts on amenity.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Notice of Consent and Development Permit

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

**SUZANNE PHILIP**  
Delegate

17 August 2021