



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 389 – FRIDAY 18 MARCH 2022

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

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

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Ann-Marie Reynolds and Julie Hillier (Development Assessment Services)

COUNCIL REPRESENTATIVE: Nil

Meeting opened at 10.15 am and closed at 12.50 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 **OFFICES, MEDICAL CLINIC (WITH ONE CONSULTING ROOM) AND CLUB IN**
PA2022/0023 **AN EXISTING TWO-STOREY BUILDING**
 LOT 1723 (39) STUART HIGHWAY, STUART PARK, TOWN OF DARWIN
APPLICANT Cunnington Rosse Town Planning and Consulting

Applicant - Brad Cunnington (Cunnington Rosse Town Planning and Consulting) attended.

Submitter - Chandini Kumar and Simon Tonkin (via videolink) (MasterPlan) and Nigel Dwyer (Element Constructions) attended.

RESOLVED
13/22

That, the Development Consent Authority approve a reduction in car parking numbers in accordance with Clause 5.2.4.2 (Reduction in Parking Requirements outside of Zone CB in Darwin), vary the requirements of Clauses 5.2.4.4 (Parking Layout), 5.2.5 (Loading Bays) and 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 17223 (39) Stuart Highway, Stuart Park, Town of Darwin, for the purpose of club with ancillary office and medical clinic (one consulting room) in an existing two-storey building, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans submitted with the application but modified to show:
 - (a) the location of the medical consulting room used as part of the ancillary medical clinic.
2. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with the City of Darwin's Waste Management Guidelines must be prepared and approved by the City of Darwin, to the satisfaction of the consent authority.

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. 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.
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. 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.
7. Before the use or occupation of the development starts, the area set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - (a) constructed;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather-seal coat;
 - (d) drained;
 - (e) line marked to indicate each car space and all access lanes; and
 - (f) clearly marked to show the direction of traffic along access lanes and driveways to the satisfaction of the consent authority.

Car parking spaces, access lanes and driveways must be kept available for these purposes at all times.
8. 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.
9. Provision must be made on the land for the storage and collection of garbage and other solid waste. This area must be graded and drained and screened from public view to the satisfaction of City of Darwin and the consent authority.

NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (powerdevelopment@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. Notwithstanding the approved plans, all signage is subject to City of Darwin approval, at no cost to Council.

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 application was exhibited as 'offices, medical clinic (with one consulting room) and club in an existing two-storey building'. It is the applicant's opinion that the proposal is an 'undefined' use, with the application written as such. Upon further assessment of the information submitted and in finalising the recommendation to the consent authority, Development Assessment Services (DAS) considered the use as 'offices and medical clinic'.

The Authority notes the undefined use, a 'veterans support centre', put forward by the applicant, the use as advertised and the findings in the DAS report however, considers the application for a 'veterans support centre' to be a 'club with ancillary office and medical clinic (one consulting room)'. The proposed 'veteran's support centre' will be run by Mates4Mates, a registered charity, for current and ex-serving Australian Defence Force personnel and access to the facility is for eligible members only and their immediate families. The support centre will provide social connection activities and include physical rehabilitation, psychological support, rehabilitation adventure challenges, education and employment support.

Despite having similarly characteristics to a community centre, which is defined in schedule 2 of the NTPS 2020 as "*a building or part of a building used for providing artistic, social or cultural facilities and community support services to the public...*"; the Authority considers that as the proposal will be operated as a centre for the provision of support services to veterans and their family members only, and is therefore consistent with the definition of a club, which the NTPS 2020 defines as "*premises used by persons associated for social, political, sporting, athletic or other similar purposes for social interaction or entertainment...*". The Authority considers the medical clinic, limited to one medical consulting room, and the office, as proposed, are ancillary to the primary purpose of a club.

The NT Planning Scheme 2020 (NTPS 2020) applies to the land and a club with ancillary office and medical clinic requires consent under Clause 1.8 (When development consent is required). It is identified as *Impact Assessable* under Clause 4.12 Zone SC (Service Commercial), therefore the strategic framework (Part 2 of the Scheme, including the Darwin Regional Land Use Plan and Darwin Inner Suburbs Area Plan are relevant to this application), zone purpose and outcomes of Clause 4.12 Zone SC (Service Commercial) and Clauses 5.2.1 (General Height Control), 5.2.4 (Vehicle Parking), 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC), 5.5.2 (Plot Ratios in Commercial Zones), 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T),

5.5.4 (Expansion of Existing Development in Zones CB, SC and TC) need to be considered.

These clauses have been considered and it is found that the proposal complies with the relevant requirements of the Planning Scheme except for Clauses 5.2.4.1 (Parking Requirements), 5.2.4.4 (Parking Layout), 5.2.5 (Loading Bays) and 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T).

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 4 of the NT Planning Scheme 2020, the consent authority in considering an application for a use or development identified as Impact Assessable the consent authority must take into account all of the following:
 - a. any relevant requirements, including the purpose of the requirements, as set out in Parts 5 or 6;
 - b. any Overlays and associated requirements in Part 3 that apply to the land;
 - c. the guidance provided by the relevant zone purpose and outcomes in Part 4; and
 - d. any component of the Strategic Framework relevant to the land as set out in Part 2.

The Darwin Inner Suburbs Area Plan provides a framework to guide progressive growth and development within the Inner Suburbs of Darwin. It provides a more specific vision and goals for the areas that make up Darwin's inner suburbs.

The site is within the Stuart Highway, Stuart Park Activity Centre with the Stuart Highway, Stuart Park Concept Plan identifying the land for future mixed use including residential, commercial, showroom and other uses such as health related facilities.

The development is considered to be consistent with planning principles, concepts and design objectives under section 3.2 'Activity Centres and Tourist Commercial Area', given the mix of commercial uses proposed.

The land is within Zone SC (Service Commercial) where the purpose of Clause 4.12 is to 'facilitate destination retailing, commercial and other activities that individually require a large floor area for handling, display and storage of bulky goods, or activities, in locations that enable convenient access by the broader regional population.'

The proposed use is considered within the range of development that is reasonably expected within the zone, however consideration of its appropriateness in relation to Zone Outcome 3 required further discussion.

Zone Outcome Clause 4.12 subclause (3) states that commercial activities including bar-public, bar-small, club, food premises-café/take

away, food premises-fast food outlet, medical clinic, office and shop, are acceptable where they are subordinate to the primary development on the site and provide support to service commercial activities, and/or directly support and are compatible with the ongoing service commercial use of the zone.

While zone outcome 3 refers to the defined uses of club, medical clinic and office as subordinate, other zone outcomes provide for a diverse mix of uses in the zone, such as industry-light and motor repair station, which could potentially have a greater amenity impact than the use proposed in this location.

Most relevant to the proposal is Zone Outcome 8 which states that developments are operated in a manner to ensure that there is no unreasonable loss of amenity for surrounding premises, having regard to the mixed use nature of the zone.

The application has demonstrated that the proposed use is considered to accord with the purpose and outcomes of the zone and will have a significantly reduced impact on the existing service commercial area, compared to other uses that could be considered in the zone.

Clause 5.2.1.4 (Parking Requirements)

The site has an existing area parking layout with 12 spaces available. The use of the site for club with ancillary office and medical clinic requires 16 spaces based on the net floor area of the plans in accordance with Clause 5.2.1.4 (Parking Requirements) noting that the parking requirement for the areas identified as club does not have a corresponding parking requirement as it does not include components relating to a lounge bar, beer garden, bar or dining.

The application was considered against Clause 5.2.4.2 (Reduction in Parking Requirements outside of Zone CB in Darwin).

The purpose of Clause 5.2.4.2 is to *'provide for a use or development with fewer car parking spaces than required by clause 5.2.4.1 outside of Zone CB in Darwin'*.

Administration of the clause permits the consent authority to consent to a use or development with fewer car parking spaces than required by column 2 of the table to clause 5.2.4.1 (Parking Requirements) if it is satisfied that a reduction is appropriate for the use or development, having considered all the matters at sub-clause 2.

Subclause 2 requires that an application to reduce the number of **car parking spaces** is to demonstrate the reduction is appropriate with regard to:

- (a) the zoning of the land, the use or development or proposed use or development of the land and the possible future use or development of the land;
- (b) the provision of **car parking spaces** in the vicinity of the land; and

- (c) the availability of public transport in the vicinity of the land; or
- (d) the use or development relates to a *heritage place*.

At the meeting, Mr Brad Cunnington (the applicant) advised that while the facility was intended to provide support services to approximately 150 people, activities within the centre will be capped at a maximum of 10 attendees, occurring twice weekly. All individual client bookings (including physiotherapy appointments) would be scheduled for 60 minutes, with no appointment overlap. This is deliberate in order to provide appropriate support services to the centres clientele.

In addition Mr Cunnington noted that while staff are likely to use the onsite parking, there is sufficient on-street kerbside parking along both Ramirez Road and the Stuart Highway, and public car parking (in four separate areas) is provided within the central median of the Stuart Highway.

Mr Cunnington noted in his application that information provided by the RSL Queensland indicates a strong reliance on public transport by members accessing support services and the subject land is located immediately adjacent bus stop 103, within 10 metres of the Stuart Highway pedestrian entrance. Bus stop 103 is serviced by routes 8, 10, OL1 and OL2, providing access to and from population centres including the Darwin northern suburbs, Palmerston and the Darwin CBD.

In this instance, the Authority considers a reduction in the car parking numbers can be considered appropriate for the site as the proposal as presented is unlikely to conflict with the existing businesses in the locality and there is available public transport and parking identified in the immediate locality. As such a monetary contribution in lieu of an on-site car parking shortfall is not required.

5.2.4.4 (Parking Layout)

The car parking area was found not to be in accordance with Clause 5.2.4.4 (Parking Layout) as the car parking space dimensions varied between 2.4m x 5.6m to 3m x 5.4m, instead of the required 2.5m x 5.5m and therefore considered unlikely that vehicles will be able to enter and exit the site in a forward gear. In addition, a landscaped area of 3m between the car parking area and the Ramirez Road frontage is not achieved. The non-compliance with this clause occurs largely due to the existing built-form and its placement on the site as developed through DV222.

A variation to this clause is considered appropriate in this instance as the proposal is consistent with the purpose of Clause 5.2.4.4 in that it seeks to ensure the car parking area is appropriate and maintained for its intended purpose. The applicant asserts the car parking area will be consistent with Australian Standards.

Administratively, the consent authority may consent to a car parking area that is not in accordance with requirements of clause if it is satisfied that the non-compliance will not result in adverse impacts on the local road network or internal functionality of the car parking area; and unreasonably impact on the amenity of the surrounding locality.

The site is an existing built-form otherwise restricting the provision of additional spaces and landscaping. The upgrades to the car parking area proposed under this application are considered to vastly improve the appearance of the site and remains consistent with the purpose of the clause.

Clause 5.2.5 (Loading Bays)

The proposal was found not to be in accordance with Clause 5.2.5 (Loading Bays) because the proposal does not provide a dedicated loading bay.

The application indicated that, while no loading bay is provided, delivery services are sporadic and minimum in nature and that refuse collection can occur from Ramirez Road without impacting the local road network.

The consent authority may consent to a use or development that is not in accordance with requirements only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and that the non-compliance will not result in adverse impacts on the local road network nor the number or availability of car parking spaces.

A variation is considered appropriate in this instance as development of the site under DV222 did not include provision for a loading bay, the built form restricts the ability to provide additional loading facilities, and the absence of a loading bay for the proposed use it not considered to result in adverse impacts.

Clause 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T)

The proposed has been found not to be in accordance with Clause 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T).

The purpose of this clause is to promote site responsive designs of commercial, civic, community, recreational, tourist and mixed use development which are attractive and pleasant and contribute to a safe environment.

Despite the age of the built-form, the existing design coupled with upgrades proposed, enables the development to perform well against the requirements of this clause. The redevelopment is sympathetic to surrounding development, allows for passive surveillance of public spaces, provides end of trip facilities including showers and bicycle parking, and will provide for safe and convenient movement of vehicles and pedestrians to and from the site. The development's ability to meet

the remaining requirements relating to loading areas, landscaping and energy efficiency are restricted by the existing nature of the building and are the reason for the identified non-compliance with this clause.

The application considers the objectives of the Community Safety Design Guide, indicating that the proposed development will increase activity to, from and within the site thereby increasing opportunities for passive surveillance and avoidance of entrapment locations due to the reactivation of the Stuart Highway frontage.

In this instance the non-compliance is likely to result in less impact to surrounding properties and the proposal is considered to accord with the purpose of the clause.

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

Ms Chandini Kumar (submitter) spoke to the submission lodged by MasterPlan on behalf of its client, the landowner of adjacent Lot 6902. Ms Kumar emphasised that the adjacent landowner does not object to the development of the site and highlighted that the on-site parking provided and the consequences it may have on the future amenity of the area and operations on the adjacent site as a may become a convenient alternator for visitors of the applicants site. Ms Kumar noted that the parking demand in the application was largely based on the use of the site as an office and respectfully requested the consent authority consider a more appropriate parking rate such as that generated by a community centre or club.

The Authority notes that submitters concerns. As the facility will provide services to veterans and their family members, and will not be open to the general public, the Authority considers the use cannot be categorised as a community centre. In addition, the use of office and medical clinic are ancillary and the application indicates only one consulting room will be used in association with the medical clinic. For clarity, a condition precedent has been included which requires amended plans to clearly illustrate the medical consulting room which will be used as part of the ancillary medical clinic.

The application for a 'veterans support centre' is considered by the Authority to be a 'club with ancillary office and medical clinic (one consulting room)'. The areas identified within the application that are considered to be associated with the club use do not have a corresponding parking rate as they are not areas utilised for as bar, lounge bar or beer garden.

While subclause 6 of Clause 1.10 of the NTPS 2020 enables the consent authority to impose a condition requiring a higher standard of development than is set out in a requirement of Parts 3, 5 or 6; the

Authority considered it unwarranted in this instance. The additional information provided by the applicant in response to the submission guided consideration of likely impacts of the on-site parking shortfall against the requirements of Clause 5.2.4.2 (Reduction in Parking Requirements outside of Zone CB in Darwin).

The Authority did however note that the demand for disabled parking for the use may be higher in this instance and may need to be reviewed by the operator in the future.

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 site is located in Zone SC (Service Commercial) and the range of surrounding land uses are not likely to be overly sensitive to the proposed use of offices and medical clinic, given the mixed use nature of the zone.

The proposed use as a club with ancillary office and medical clinic (one consulting room) , referred to in the application as a 'veteran support centre' will have a significantly reduced impact on the existing service commercial area, compared to other uses that could be considered in the zone. Improvements to the existing building will provide for an increased appearance and are not considered to adversely affect the amenity of the area.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

ITEM 2
PA2022/0015

SUBDIVISION TO CREATE TWO LOTS

APPLICANT

LOT 837 (13) VALDER CRESCENT, RAPID CREEK, TOWN OF NIGHTCLIFF
One Planning Consult

Applicant - Israel Kgosiemang (One Planning Consult) and Patrick Bowden (Landowner) attended.

Submitter – Margaret Clinch attended.

**RESOLVED
13/22**

That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse to consent to the application to develop Lot 837 (13) Valder Crescent, Town of Nightcliff for the purpose of subdivision to create two lots, for the following reasons:

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 subdivision of land requires consent under Clause 1.8 (When development consent is required). It is identified as *Impact Assessable* under Clause 1.8(1)(c)(ii). In determining an impact assessable application, the Authority is required by sub-clause 4 of Clause 1.10 of Part 1 the NTPS2020 to consider the following matters –

- (a) any relevant requirements, including the purpose of the requirements, as set out in Parts 5 or 6;
- (b) any Overlays and associated requirements in Part 3 that apply to the land;
- (c) the guidance provided by the relevant zone purpose and outcomes in Part 4; and
- (d) any component of the Strategic Framework relevant to the land as set out in Part 2.

As an impact assessable application, the strategic framework (Part 2 of the Scheme, including the Darwin Regional Land Use Plan 2015 and Darwin Mid Suburbs Area Plan 2016 which are relevant to this application), Part 3 Overlays, zone purpose and outcomes of Clause 4.2 – Zone LR (Low Density Residential) and Clause 6.2 (Subdivision in Zones LR, LMR, MR and HR) need to be considered. These clauses have been considered and it is found that the proposal complies with the relevant requirements of the Planning Scheme except for Clause 6.2.1 (Lot Size and Configuration in Residential Subdivisions).

NTPS 2020 states that the purpose of Zone LR is to 'provide predominantly for low rise urban residential development comprising individual houses and uses compatible with residential amenity, in locations where full reticulated services are available'.

The relevant zone outcome states that 'building design, site layout and landscaping provide a sympathetic interface to the adjoining public spaces and between neighbours, provides privacy and attractive outdoor spaces' (Outcome 6).

Additionally, the purpose of the NTPS 2020 clause specifically relating to lot size and configuration (Clause 6.2.1 - Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR) is to 'ensure that subdivision of land for urban residential purposes creates lots of a size, configuration and orientation suitable for residential development at a density envisaged by the zone'.

Mr Israel Kgosiemang (applicant) spoke to the application. Mr Kgosiemang noted that the site is an area where lots are in close proximity to a number of amenities, services and transport and both proposed lots would be developed in accordance with the zone requirements.

Lot 837 Valder Crescent is a largely rectangular Lot with a street frontage of 28.635m and is subject to a sewage easement which affects a portion of the rear of the block. The proposed subdivision will result in two blocks, zoned LR and of 770 m² each. The proposed Lots A and B will be long thin blocks with street frontages of 14.375m and 14.32m, respectively, and side boundary lengths of approximately 50m. Neither proposed lot can comply with the requirements of Clause 6.2.1 as it relates to lot sizes and building envelope requirements. Lot sizes for land zoned LR are required to be 800 square metres. There is a degree of tolerance, in that applications for lots that are slightly smaller (up to 5% of the required minimum) can be considered by the DCA but anything larger is beyond the Authority's power to determine. Clause 6.2.1 further specifically requires that the proposed lots conform with building envelope requirements, in this case, of 17m x 17m exclusive of any boundary setbacks or service authority easements. Neither proposed lot can comply with that requirement and limit the opportunity for siting of dwellings and ancillary buildings.

The Authority notes that existing lots on Valder Road, Johnston Place, Cummins Street, Chapman Road and Nightcliff Road have an area typically over 800m² and a configuration that exceeds the minimum building envelope requirement. The proposed lots have a width of 14.32m and 14.375 however lots on Valder Road have frontages typically in excess of 20m in width enabling a building envelope of 17m wide to accommodate a dwelling exclusive of any building setbacks

The Authority notes that the requirements in Clause 6.2.1 are minimum requirements, not maximums. A departure from those requirements requires the exercise of a discretion by the Authority. If an application does not meet the requirements set out in Parts 3, 5 or 6, the Authority is given a discretion by sub-clause 5 Clause 1.10 of the NTPS to consent to a variation to those requirements. That discretion can only

be exercised if the Authority 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 requirement that the Authority be so satisfied is the threshold for the exercise of the Authority's discretion. It informs the Authority that an application could be approved. Having decided that there is power to vary a development requirement, the Authority must determine whether it is appropriate to exercise its discretion to do so. In making any determination in respect of a development application, the Authority is mandated by the *Planning Act 1988* to consider the matters listed in Section 51(1).

Section 51(1)(n) of the *Planning Act 1999*(n) requires the Authority to consider *the potential impact on the existing and future amenity of the area in which the land is situated*. Further, both the relevant zone purpose and the purpose of Clause 6.2.1 direct the Authority to consider the character and amenity of the immediate locality and how a subdivision of land will impact on it. As such, the Authority considers that the proposed subdivision design is not in keeping with the character of the street and the immediate area.

The proposal has been found to not be in accordance with sub-clause 5 and sub-clause 6 of Clause 6.2.1 (Lot Size and Configuration in Residential Subdivisions), as the subdivision would result in two lots less than the required minimum lot size of 800m² and each lot would have a building envelope with dimensions less than the required 17m x 17m.

The application proposes two lots, each with an area measuring 770m² rather than the minimum 800m² required by the zone, a reduction of some 3.75%. In addition, the application seeks a variation to the building envelope width, proposing dimensions which vary from 11.6m at the front to 13.5m at the rear of the lots. The proposed front dimension of the building envelope achieves only 68% of the 17m minimum requirement.

The Authority notes that existing lots on Valder Road, Johnston Place, Cummins Street, Chapman Road and Nightcliff Road have an area typically over 800m² and a configuration that exceeds the minimum building envelope requirement. The proposed lots have a width of 14.3m however lots on Valder Road are typically in excess of 20m wide enabling a building envelope of 17m wide to accommodate a dwelling exclusive of any building setbacks. Therefore the lot configuration of 11.6m x 17m is considered to limit the type and location of future dwellings and impact the established neighbourhood character. The Authority notes that the DAS Report on page 13 contains a zoning map for the area indicating blocks in the vicinity which may not meet the 17m building envelope requirement. However, the blocks so indicated are all located in cul-de-sacs, form part of the original subdivision design for the neighbourhood and are all well in excess of the minimum lot size.

The Authority considers the existing mix of lot sizes in Darwin includes lots that exceed the minimum size for the zone, such as in Rapid Creek and Nightcliff, and that these larger lots are unique, forming part of the character and amenity of those locations. The larger lots provide the opportunity for generous setbacks, consistent with the typical built form in the area, and sustainable building design through maximising opportunities for passive cooling through breeze penetration, tree planting for shade, orientation to reduce solar heat gain.

The purpose of Clause 6.2.1 is to ensure that subdivision of land for urban residential purposes creates lots of a size, configuration and orientation suitable for residential development at a density envisaged by the zone.

The purpose of Zone LR is to provide predominantly for low rise urban residential development comprising individual houses and uses compatible with residential amenity, in locations where full reticulated services are available. The Zone LR outcomes include:

- Dwellings and outbuildings are set back in a manner sympathetic to neighbours, the streetscape and scale and character of surrounding development.
- Building design, site layout and landscaping provide a sympathetic interface to the adjoining public spaces and between neighbours, provides privacy and attractive outdoor spaces.

The proposal is considered to be inconsistent with the purpose of Clause 6.2.1 (Lot Size and Configuration in Residential Subdivisions) and the zone purpose; while the proposal will enable each lot to be developed in accordance with the minimum development requirements within Zone LR except for minimum lot size; the configuration will not enable dwellings and outbuildings to be setback in a sympathetic manner with respect to the neighbours, the streetscape and character of surrounding development. The Authority is not persuaded that it should exercise its discretion to approve the variations required to both the required minimum lot sizes and building envelope plans as proposed by the present application.

2. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent authority must take into consideration any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application and pursuant to section 51(1)(t) any other matters it thinks fit.

Four written objections were received in relation to the application including from the land owner/resident of the adjoining property to the north and south which raised concern regarding, amongst other things, the impact on the existing amenity and character of the area, in particular due to the reduced lot size and narrow lot frontage, in addition to the presence of a sewerage easement which reduces the potential area of usable land to build.

Submissions identify a feature of the established neighbourhood is the large suburban lots and were concerned that the subdivision would change the built form with dwellings built to the 1.5m minimum side boundary building setback rather than enabling generous side setbacks together with trees.

Ms Margaret Clinch attended the meeting and spoke to her submission. Ms Clinch noted the lot is marginal in size and too narrow to support subdivision, highlighting the site is not identified as an area of change and the proposal is not consistent with community expectation.

Ms Clinch informed the Authority that due to IT difficulties, she was unable to submit her submission electronically prior to the close of exhibition on Friday 18 February 2022. Hence it was submitted the following Monday, 21 February 2022. Ms Clinch stated that she was assured her submission would be accepted and considered.

The Authority advised Ms Clinch that while the submission was received outside the exhibition period, it was included in the report prepared by Development Assessment Services which has been considered by the Authority and given weight under section 51(1)(t) of the *Planning Act 1999*

The Authority considers the character of the existing street, Valder Road, and surrounding streets, including Johnston Place, Cummins Street, Chapman Road are defined by larger lots and wide street frontages which are unique to the area. These lots provide opportunities for generous setbacks, consistent with the typical built form in the area, and sustainable building design through maximising opportunities for passive cooling through breeze penetration and landscaping to provide suitable screening between neighbours. Having considered all the matters before it, the Authority does not consider that the Applicant has provided sufficient justification to persuade the Authority to exercise its discretion to waive compliance with both the minimum Lot size and building envelope requirements.

FOR: 3

AGAINST: 2

ABSTAIN: 0

NOTE: Member, Mark Blackburn, supported the development application as proposed and considers that:

1. he agrees with each reason listed in Section 9 but also notes that the minimum frontage of each block are 14.32m and 14.327m respectively and that for a 17m building frontage (17m x17m) for a 20 m frontage block equates will result in 85% building mass at the frontage of each site. In contrast he notes for a 11.6m for a 14.32m frontage equates to 81% development of the frontage of the site and 11.6m for a 14.327m equates to around 81% of the building mass at the frontage of the site. Noting the impact of development on the proposed subdivision frontages as considered are significantly less intense than for any two 20 m frontage with a required 17m envelope; and

2. he considers all the issues raised by the Submitters were addressed in Section 9 of the report. Furthermore, if the block was not subdivided the owner of the block could develop a single two storey building on the site within the proposed neighbouring boundaries as outlined in the proposed subdivision; there are no neighbours opposite to the proposed subdivision. The subdivision has no direct line of sight impact as there are no neighbours opposite and there are other properties in the neighbourhood that are on properties greater than 600m² and the building envelopes are not 17m X 17m.

ACTION: Notice of Refusal

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

SUZANNE PHILIP
Chair

28 March 2022