



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 401 – FRIDAY 2 DECEMBER 2022

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

MEMBERS PRESENT: Suzanne Philip (Chair), Marion Guppy and Mark Blackburn,
Peter Pangquee and Mick Palmer (items 1-3 only)

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Ann-Marie Reynolds, Amit Magotra (item 2 only), Emily Hardy and Monica Pham (Development Assessment Services)

COUNCIL REPRESENTATIVE: Conneil Brown (items 1, 2 & 4) Emma Struys (item 2)

Meeting opened at 10.15 am and closed at 3.50 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

PA2022/0270 CHANGES TO THE DEVELOPMENT APPROVED BY DP21/0322 FOR THE PURPOSE OF ALTERING THE LOCATION OF THE EDUCATION ESTABLISHMENT AND REMOVING THE THREE YEAR TIME LIMIT SECTION 4882 (25) BOWERLEE ROAD, BERRIMAH, HUNDRED OF BAGOT

APPLICANT Cunnington Rosse Town Planning and Consulting

Applicant: Gerard Rosse (Cunnington Rosse Town Planning and Consulting) and Mohammed Rahman (Australian Islamic Educational Trust – landowners) attended.

Submitters: Danny and Jane Maxwell sent their apologies and emailed a further submission, which was tabled by DAS.

**RESOLVED
88/22**

That, the Development Consent Authority vary the requirements of Clause 5.8.2 (Education Establishment) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(b) of the *Planning Act 1999*, alter the proposed development and consent to the application as altered to develop Section 4882 (25) Bowerlee Rd, Berrimah, Hundred of Bagot, for the purpose of changes to the development approved by DP21/0322 for the purpose of altering the location of the education establishment, 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 site plan showing the site in its entirety and details of the locations of all the classrooms and existing structures;
 - number of car parking spaces for long term parking and for setting down and picking up passengers, including bus- drop off area(s);
 - clarification that the development complies with the requirements of Clause 5.2.4.4 (Parking Layout);
 - vehicle access to the site is limited to Flight Path Road and
 - a 2.1m high colorbond fence in ‘woodland grey’ along the boundary of Section 4280 (42) Bowerlee Rd, Berrimah, Hundred of Bagot
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, to the satisfaction of the consent authority.

3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a comprehensive Traffic Impact Assessment Report is to be prepared by a suitably qualified traffic engineer in accordance with the Austroads Document Guide to Traffic Management Part 12: Traffic Impacts of Developments, in the report structure provided as Appendix C of that document, with particular attention to vehicular, pedestrian, cyclist and public transport issues and opportunities, to the requirements of City of Darwin and Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority. The Traffic Impact Assessment report is also to include turn-path diagrams demonstrating that the access/s are appropriately sized and designed so that a vehicle doesn't encroach the opposite traffic lanes when entering Vaughan Street as well as swept paths for the maximum sized vehicles entering and exiting the site. An intersection performance analysis to understand the impact on Flight Path Road and Amy Johnson Avenue intersection until such time that the signalised Flight Path Road/Secret Road and Vanderlin Drive intersection becomes available.
4. Prior to the endorsement of plans and prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Darwin stormwater drainage system shall be submitted to and approved by the City of Darwin and/or Land Development Unit of the Department of Infrastructure Planning and Logistics (as the case may be), to the satisfaction of the consent authority. The plan shall include details of site levels and Council's stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected underground (if required) to Council's system. The Stormwater management plan needs to consider all catchments that discharge into the area including all external catchments and the full future residential development proposal.
5. 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 City of Darwin, to the satisfaction of the consent authority.
6. Prior to the commencement of works (including site preparation), a waste management plan addressing the City of Darwin's Waste Management Guidelines must be prepared, to the requirements of the City of Darwin, to the satisfaction of the consent authority.
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 land and infrastructure, including 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.

GENERAL CONDITIONS

8. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
9. Within two months of the date of issue of the permit, the fence as detailed in the endorsed plans is to be completed, to the satisfaction of the consent authority.
10. The use of land for the purpose of an education establishment must cease five years from the date of issue of Development Permit DP21/0322 on 8 December 2026.
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. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage, electricity and telecommunication networks to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
Please refer to notations 2 and 3 for further information.
13. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin and/or Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics and/or Land Development Unit of the Department of Infrastructure Planning and Logistics (as the case may be), to the satisfaction of the consent authority.
14. 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.
15. All works recommended by the traffic impact assessment are to be completed to the requirements of the City of Darwin and the Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics to the satisfaction of the consent authority.
16. Upon completion of any works within or impacting upon the road reserve, the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin.
17. 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.

18. 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 parking spaces, access lanes and driveways must be kept available for these purposes at all times.
19. 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, in accordance with the requirements of City of Darwin, to the satisfaction of the consent authority.
20. Storage for waste disposal bins is to be provided to the requirements of City of Darwin to the satisfaction of the consent authority.
21. 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.
22. 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.
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. Before the *use/occupation of the development* starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
25. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.

NOTES

1. 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.
2. 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.
 3. 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>
 4. A "Permit to Work Within a Road Reserve" may be required from City of Darwin before commencement of any work within the road reserve.
 5. Approval by Council is required for the 230 metres of footpath proposed to be built as part of this application to the Vaughan Street road reserve.
 6. Sediment control measures are to be established and maintained, to prevent silt and sediment escaping the site or causing erosion. Building rubbish or debris must not be placed, or be permitted to be placed, on any adjoining public reserve, footpath or road, without first obtaining approval from City of Darwin.
 7. 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.
 8. 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.
 9. The site is subject to the 'Defence Areas Control Regulations (DACR)'. All structures, including temporary structures, higher than 15m above ground level, including, but not limited to, additional buildings, light poles, cranes used

during construction, vegetation etc., require approval from the Department of Defence.

10. 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.
11. The Department of Defence recommends that the proposed development be constructed of non-reflective building materials.
12. Darwin International Airport advises that there must be no site activity which would attract birds that could create a hazard for aircraft operations.
13. The Department of Defence has advised that organic waste and/ or storage of commercial waste bins associated with the proposed development might be attractive to vermin and/or birds and will potentially increase the risk of bird strike for aircraft, therefore organic waste should be managed appropriately.
14. Any new on-site wastewater management system is to be installed in accordance with the Code of Practice for Wastewater Management.
15. The Power and Water Corporation advises that full lot fire coverage cannot be achieved from existing hydrants. Internal firefighting arrangements must be made to the satisfaction of NT Fire and Rescue Service.
16. 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.
17. 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.

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 changes to the development approved by DP21/0322 for the purpose of altering the location of the education establishment and removing the three year

time limit requires consent under Clause 1.8 (When development consent is required). It is identified as Impact Assessable under Clause 4.21 (Zone R – Rural), therefore the strategic framework (Part 2 of the Scheme, including the Berrimah North Area Plan, zone purpose and outcomes of Clause 4.21 (Zone R – Rural), and Clauses 3.5 (LPA – Land in Proximity to Airports), 5.2.1 (General Height Control), 5.2.4 (Vehicle Parking), 5.2.6 (Landscaping) and 5.8.2 (Education Establishment), need to be considered.

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 5.8.2 (Education Establishment), as identified below.

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 5.8.2 (Education Establishment).

Clause 5.2.4.1 (Parking Requirements)

The purpose of this clause is to *ensure that sufficient off-street car parking, constructed to a standard and conveniently located, is provided to service the proposed use of a site.*

The car parking requirements for education establishment (listed in column 2) are *for a primary or secondary school: 1 for every classroom Plus 1 additional spaces plus an area for setting down and picking up passengers.*

The original proposal included five classrooms, therefore the proposal required six car parking spaces.

The application's statement of effect now proposes eight classrooms. Therefore the car parking requirement is nine car parking spaces. At the hearing, Mr Gerard Rosse (the applicant) confirmed that eight classrooms will be provided on the site. The Authority noted that the plans provided do not show all eight classrooms and request further information regarding the classrooms be provided on the amended plans.

The statement of effect indicates that *the proposal includes 20 car parking spaces for long term parking (the southern bays in the car parking area) and 20 car parking spaces for pick-ups and drop-offs (the northern bays in the car parking area).*

The applicant's deferral response indicated that *the majority of students are brought to the site by one of the school's two buses and currently only around 5 to 10 students are dropped off by parents. The school is looking to purchase a third school bus to service the additional students which will be accommodated as part of the expanding campus. Given these facts, the proposed drop off parking bays in the northern portion of the car parking area is unlikely result in any safety or queuing issues. The proponent is willing to accept a condition precedent requiring drop off car bays be signed and amended drawings to show a bus drop off area.*

The Authority notes that the site plan provided indicates *40 proposed new car parking and kids drop off spaces* which complies with the car parking requirements, however the plans do not specify which spaces are for long term parking and for setting down and picking up passengers, therefore, a condition precedent is included requesting amended plans that show the number of car parking spaces for long term parking and for setting down and picking up passengers, on any development permit issued.

Additionally, the Authority noted that the site plan provided shows an area labelled "existing entrance" along Bowerlee Road, the authority queried the applicant whether this area will also be used for setting down and picking up passengers. Mr Rosse clarified that all vehicular access will be from Flight Path Road which will lessen the impact on amenity created by vehicular noise. Mr Rosse indicated that his clients are looking to legitimize the access in the New Year and he is working with the land owners and operators to understand the 10 year plan as they intend to lodge a Planning Scheme Amendment application in the New Year to rezone the land to a more appropriate zone.

Mr Rosse noted that the intent is to cut off vehicle access from Bowerlee Road, and allow pedestrian access via the open space area which is proposed as part of a recently approved subdivision. Mr Rosse clarified that all vehicle access is intended to be provided from Flight Path Road not Bowerlee Road. The Authority queried the applicant whether a condition could be included on the development permit requiring no vehicle access be provided from Bowerlee Road and for vehicle access to the site only be provided from Flight Path Road once established. Mr Rosse advised that including such a condition is reasonable as that is their intent.

As a result, the Authority seeks amended plans to reflect the intent has outlined by the applicant and illustrate no vehicle access to the site will be provided from Bowerlee Road once the Flight Path Road access is established.

Clause (5.2.4.4) Parking Layout

The purpose of this clause is to *ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose.*

Sub-clause 4(b) requires *a car parking area is to (b) be sealed and well drained.*

The Authority notes that the original proposal was found not to be in accordance with this clause as it resulted in an unsealed car parking area and no additional landscaping provided in the setback between the car parking area and the road frontage.

The application now illustrates the car parking area will be situated further south, adjacent to the proposed road reserve (Flight Path Road). It also indicates the parking area will be sealed and well drained and no longer requires a variation to the landscaping requirements associated with the clause. However, details of the proposed treatment of the carpark and driveway and drainage are not shown on the plans. In addition, the site plan provided do not illustrate the site in its entirety and the proposed site plan does not illustrate the eight proposed structures.

The applicant's deferral response indicated that *the proponent is willing to address this as a condition precedent. Drainage of the car parking will be captured as part of the required stormwater plan.*

In light of the above, amended plans are required to show the site in its entirety and clearly identify the changes proposed as part of this application. The Authority also requests clarification that the development complies with the requirements of Clause 5.2.4.4 (Parking Layout) to ensure the driveway denoted as "new road" complies with the requirements of this clause.

The Authority notes that the City of Darwin also requires further information to support the proposed access to Flight Path Road, including the location and the number of accesses and a condition precedent is included reflecting this requirement.

Clause 5.8.2 (Education Establishment)

The purpose of Clause 5.8.2 is to *ensure an education establishment:*

- (a) *meets the needs of students and staff;*
- (b) *contributes positively to amenity of the surrounding area;*
- (c) *does not unreasonably interfere with the safe and efficient operation of the local road and pedestrian network; and*
- (d) *promotes access via public transport and active transport networks.*

Sub-clauses 2, 3 and 5 of Clause 5.8.2 require

- 2. *Locate pre-school, primary and secondary school facilities to maximise access by public transport, safe walking and cycling routes, and are provided with safe vehicular drop-off zones.*
- 3. *Provide a designated student car park in secondary schools.*
- 5. *Ensure mechanical plant and service areas are designed and screened to minimise adverse amenity impacts when viewed from adjoining streets and properties, and are not located where they adjoin an existing residential use.*

The Authority notes that the original proposal was found not to be in accordance with sub-clause 2 of Clause 5.8.2 because the proposal was not located to maximise access by public transport or safe walking and cycling routes.

At the time, the Authority deemed the requirement of a traffic impact assessment would likely consider the probable catchments of the school and the direction in which vehicles travel along Vanderlin Drive to turn into Bowerlee Road to access the site.

The application identifies the proximity of the development in relation to a proposed bus stop shown on the Area Plan, on Vanderlin Drive, is over 600m from the development. The road to the front of the site has an existing footpath, however this currently does not extend through to Vanderlin Drive. There is no drop-off zone for setting down of passengers, rather a car park with in excess of the minimum number of parking spaces. There is potential for conflict between pedestrians and vehicles, where lack of a dedicated set-down area with direct access to a path network is not provided.

Sub-clause 3 requires a designated student car park in secondary schools is provided, the applicant in the deferral response indicates that *the school currently only accommodates primary school students. It is anticipated that years 7 to 10 will provided for in the future, however these students are unlikely to be driving age.*

Regarding sub-clause 5, the plans do not identify where the mechanical plant equipment or service areas are located. However, the proposed location of the school well within the site means that the plant equipment would not be readily visible from the public realm.

As such, a variation is sought to sub-clauses 2.

The relevant administration to this clause is listed in sub-clause 1, *the consent authority may consent to an education establishment that is not in accordance with sub-clauses 2-5 only if it is satisfied it 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, nature, scale and impact on surrounding amenity.*

A variation to Clause 5.8.2 (Education Establishment) is still considered appropriate in this instance as:

- The proposed demountable structures will be able to meet the needs of students and staff. The significant size of the subject site allows for the school buildings to be set back approximately 56m from the neighbouring residential property (42 Bowerlee Rd), which minimises potential visual and noise amenity impacts. There also appears to be existing vegetation planted along the northern boundary of the site which will further screen the proposed development from neighbouring properties and assist with reducing noise.

- Regarding the *safe and efficient operation of the local road and pedestrian network*, a condition precedent has been recommended for the inclusion of a traffic impact assessment, to understand the impact on Flight Path Road and Amy Johnson Avenue intersection until such time that the signalised Flight Path Road/Secret Road and Vanderlin Drive intersection becomes available.

Development Permit DP21/0322 also included a time limit on the development permit, the Authority considered a time limited permit necessary to ensure that if the proposed location was to become permanent, a new application would need to be submitted and the consent authority could require the upgrade of infrastructure along Bowerlee Road if necessary. Furthermore, the Authority considered the current site for an education establishment was only appropriate due to the temporary nature of the use and that if it was intended that the site become permanent, it was preferable that the site be rezoned to a more appropriate zone to accommodate an education establishment.

As such, the Authority determined to extend the current timeframe from three years to five years to allow the proponent more time to explore other options as outlined in the previous approval.

At the hearing Mr Rosse advised that they've reviewed the Development Assessment Services report to the Development Consent Authority and have no issues with the conditions proposed. The applicant noted that although they have requested the removal of the time limit condition, they do not have an issue with the consent authority continuing to include the time limit and extending it from three to five years, rather than removing the time limit as it aligns with their intent to rezone the site over the next year.

3. 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 capability of the land has been previously considered through Development Permit DP21/0322, no land capability issues have been identified.

The site is connected to reticulated water, but is not connected to reticulated sewer. A note has been included on the development permit advising that any new on-site wastewater management system is to be installed in accordance with the Code of Practice for Wastewater Management.

The Authority notes that Water Services have advised that full lot fire coverage cannot be achieved from existing hydrants and internal firefighting arrangements must be made to the satisfaction of NT Fire and Rescue Service, a note has been included on the development permit regarding this. At the hearing, Mr Rosse advised that the requirements for providing firefighting arrangements fall under and will be addressed in the Building Certification process and prior to obtaining a certificate of occupancy require a development permit which reflects the changes proposed to the site.

In response to a question raised by the Authority at the hearing in relation to the registration status of the school, Mr Rosse advised that the education establishment has been registered with the Department Education.

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 education establishment is located well within the subject site and set back approximately 56m from the closest residential boundary. The proposal will not be visible from Vanderlin Drive and will only be partially visible from Bowerlee Road. The education establishment will accommodate approximately 75 primary school children, which is small in comparison to most schools. Noise associated with the development would be limited to regular school hours on weekdays, with most noise anticipated to be associated with children playing outdoors at recess and lunchtime. This is not considered to be unreasonable when considering the site is identified for light industrial uses in the Berrimah North Area Plan. A traffic impact assessment has also been recommended for inclusion on the development permit, to understand the impact on Flight Path Road and Amy Johnson Avenue intersection until such time that the signalised Flight Path Road/Secret Road and Vanderlin Drive intersection becomes available.

5. Pursuant to section 51(1)(t) of the *Planning Act 1999*, the consent authority must take into consideration other matters it think fit.

One late public submission was received on 1 September 2022 by Mr and Mrs Maxwell. The main issues raised in the submission relate to increased traffic, Bowerlee Road/Vanderlin Drive intersection safety, pedestrian safety, increased stormwater drainage and management of water runoff, impact on amenity and condition precedent on previous Development Permit DP21/0322 requiring a solid 2.1m high fence has not been provided and queried why there is no detailed master plan available for the development of the block.

A further submission was provided by Mr Maxwell which was circulated to the applicant and the Authority, the further submission commented on the lack of compliance of the previous approval issued in December 2021.

The Authority conveyed its disappointment to the applicant regarding the failure to comply with the conditions of the previous permit prior to the use commencing onsite as well as the failure to construct the fence which has also been raised in the submission.

Mr Rosse advised that he was not involved in the proposal at that point and had been engaged by the land owner to assist with legitimising the previous permit and addressing the current non-compliances. Mr Rosse noted that the application seeks to amend the previous approval for the site and summarised that the ultimate intent is to move the access, and associated areas closer to Flight Path Road.

Mr Rosse noted that the intent is remove the vehicle access allowing pedestrian access only from Bowerlee Road via the open space area which is proposed as part of the adjacent subdivision recently approved. Mr Rosse advised that vehicle access is intended from Flight Path Road only which will assist in minimising the impact on amenity for residents along Bowerlee Road. Mr Rosse also noted the proposal involves relocating the outdoor play area which is also anticipated to reduce amenity impacts on residents to the north of the site.

Mr Rosse indicated that he is working with the landowner and representatives from the school to lodge a Planning Scheme Amendment next year to rezone the land to a more appropriate zone. Mr Rosse noted that should the site be rezoned to Zone CP (Community Purpose); a development application would still be required for any changes to the education establishment due to the LPA - Land in Proximity to Airports overlay that applies to the site.

The Authority considers that most of the concerns raised in the submission can be addressed through the conditions recommended for inclusion on the development permit, including the five year time limit, traffic impact assessment, stormwater management plan and note regarding the wastewater management system.

The Authority notes that development permit DP21/0322 included the provision of a 2.1m high fence along the southern boundary of 42 Bowerlee Road to address concerns raised in relation to privacy and dust by the adjoining landowner.

Given the adjoining landowner raised similar concerns, the Authority considers that the fencing provision still necessary. Furthermore, as the education establishment is currently operating and will continue to operate while these approved amendments are being implemented; the Authority requires that the fence, which is required to be illustrated on amended plans, is to be constructed and completed within two months of the date of issue of the development permit.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

ITEM 2

PA2022/0393

MIXED-USE COMMERCIAL DEVELOPMENT IN A 14 STOREY BUILDING WITH THREE LEVELS OF BASEMENT PARKING

LOT 7587 (68) MITCHELL STREET, DARWIN CITY, TOWN OF DARWIN

APPLICANT

Cunnington Rosse Town Planning and Consulting

Applicant: Brad Cunnington and Alex Deutrom (Cunnington Rosse Town Planning and Consulting) attended.

Revised comments City of Darwin were tabled by DAS

**RESOLVED
89/22**

That, the Development Consent Authority, reduce the car parking requirements pursuant to Clause 5.2.4.3 (Reduction in Parking Requirements within Zone CB in Darwin) and vary the requirements of Clauses 5.2.3.2 (Volumetric Control in Central Darwin), 5.2.3.3 (Urban Design Requirements in Central Darwin), 5.2.5 (Loading Bays) and 5.5.6 (Alfresco Dining Areas in Zone CB in Central Darwin) 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 7587 (68) Mitchell Street, Town of Darwin for the purpose of a mixed-use commercial development in a 15 storey building with three levels of basement parking, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior the 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 and dimensions and must be generally in accordance with the plans submitted with the application but modified to show:
 - a) door openings internal to the site boundary or otherwise the written consent from the City of Darwin for doors that open into the road reserve;
 - b) provision of shading over pedestrian access from Peel Street frontage ;
 - c) provision for visitors' bicycle parking in the development; and
 - d) an annotation that bicycle parking and lockers are designed to Australian Standard AS2890.3 – Bicycle Parking to ensure compliance with Clause 5.3.7 (End of Trip Facilities);

2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), 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 (Water Services and Power Network Dvision), to the satisfaction of the consent authority. The awnings shall not reduce the achievement of active frontages below 75% of the total length of the site boundary to Mitchell Street and 32% of the total length of the site boundary to Mott Court.

3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for any element of the building design (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.
4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a comprehensive Traffic Impact Assessment report is to be prepared by a suitably qualified traffic engineer in accordance with the Austroads Document Guide to Traffic Management Part 12: Traffic Impacts of Developments, in the report structure provided as Appendix C of that document, with particular attention to vehicular, pedestrian, cyclist and public transport issues and opportunities to the requirement of the City of Darwin, to the satisfaction of the consent authority. The Traffic Impact Assessment report is to include swept paths for waste collection vehicles entering and exiting the site, safe pedestrian and cyclists movement around the development site, consideration of queuing or traffic blockage that can occur on Mitchell Street and Mott Court as a result of proposed development.

The report should identify any necessary upgrades to the surrounding street network as a result of the implications of the development. The developer will be required to institute all required upgrade measures resulting from the traffic assessment at no cost to City of Darwin. A Stage 2 independent Road Safety Audit is also required, which shall be submitted to City of Darwin for review and approval.

5. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the crossover, driveway to the site from the City of Darwin, to the satisfaction of the consent authority.
6. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), confirmation shall be required from the City of Darwin that the proposed pedestrian plaza through the site aligns with the existing and/ or new Right of Way easement alignment, to the satisfaction of the consent authority.
7. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the applicant is to provide written confirmation from the Power Networks division of the Power and Water Corporation that the proposed indoor subdivision design and power supply arrangements provided in the development are sufficient to provide serve the future development on the balance lot, to the satisfaction of the consent authority.
8. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the landscaping works within the City of Darwin road reserve, to the satisfaction of the consent authority.

9. 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.
10. Prior to the endorsement of plans and prior to the commencement (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Guidelines, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of:
 - (a) waste collection vehicle turning circles, confirming that a waste vehicle can enter and exist in a forward gear.
 - (b) bin enclosure design and size, which must demonstrate the storage of a sufficient number and type of bins.
 - (c) access to a fresh water supply and effluent resulting from cleaning the bins and enclosures must be discharged into the sewer system.
 - (d) An unimpeded concrete access path/to from the bin enclosure.
11. Prior to the endorsement of plans and 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. The plan shall also include community consultation for all businesses/residents which will be affected by the development during construction and traffic assessment using the CBD traffic model.
12. 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

13. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
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 owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, 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.

Please refer to notations 3 and 4 for further information.

16. 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.
17. 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.
18. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the City of Darwin, to the satisfaction of the consent authority.
19. 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.
20. 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 parking spaces, access lanes and driveways must be kept available for these purposes at all times.
21. 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.

22. If Council approval is obtained for in association with Conditions Precedent 2 and 3 and other encroachments into the City of Darwin Road Reserve building elements over City of Darwin road reserve, the applicant will be required to enter into appropriate agreements with the City of Darwin and the design specifications are to be to the satisfaction of General Manager, City of Darwin, to the satisfaction of the consent authority.
23. Storage for waste disposal bins is to be provided to the requirements of City of Darwin, to the satisfaction of the consent authority.
24. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin.
25. Upon completion of any works within or impacting upon existing road reserves, the infrastructure within the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin and returned to the condition as documented in the dilapidation report.
26. 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 and from view of neighbouring or nearby developments (or developments reasonably anticipated), 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. The use of angled louvered slats for screening purposes is acceptable, however the slat screening must be designed with a panel to gap ratio, such that the condenser units are not readily visible from any angle.
27. 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).
28. All balconies are to be internally drained and discharge is to be disposed of at ground level and in a manner consistent with stormwater disposal arrangements for the site to the satisfaction of the consent authority.
29. Any security boom, barrier or similar device controlling vehicular access to the premises must be located a minimum of six metres inside the property to allow vehicles to stand clear of the Mott Court pavement and footpath.
30. General building lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the consent authority.
31. The loading and unloading of goods from vehicles, including the loading of waste must only be carried out on the land within the designated loading bay and must not disrupt the circulation and parking of vehicles on the land.

32. The use and development must be managed so that the amenity of the area is not unduly affected, through the:
 - (a) transport of materials, goods or commodities to or from the land;
 - (b) loading of waste from the land;
 - (c) appearance of the building; or
 - (d) emission of noise or smells from the land
33. The landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
34. 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.
35. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building.

NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. 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/newdevelopments.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/newdevelopments/builders-designers.html>.
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. This development as approved by the Development Consent Authority (DCA) achieves a level of active interface deemed by the authority to provide 75% of the total length of the site boundary to Mitchell Street and 32% of the total length of the site boundary to Mott Court as active street frontage. Retaining this level of active frontage is considered by the DCA to be essential to this development achieving the purpose of clause 6.3.3 (Urban Design Requirements in Central Darwin). Any reduction in the percentage of active street frontage is unlikely to be supported, and will require full consideration

by the DCA at a meeting of the authority. Refer to “Design guidance to achieve active frontages and provide for services” for advice to active street frontages in relation to service authority requirements.

5. Notwithstanding the approved plans, the demonstrated awning in the City of Darwin road reserve is subject to Council approval at no cost to Council.
6. Notwithstanding the approved plans, any proposed works (including landscaping and awnings) within the City of Darwin’s road reserve is subject to approval and shall meet all requirements to the satisfaction of the City of Darwin, at no cost to Council.
7. 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.
8. The City of Darwin advises that a monetary contribution is paid to City of Darwin in line with Council’s Car Parking Contribution Plan – Central Business Zone, in lieu of the removal of seven on-street car parking bays in Litchfield Street.
9. The City of Darwin advises that the applicant shall ensure that a building number is displayed in position clearly visible from the street in accordance with Council's by- laws.
10. City of Darwin advises that the developer must protect and support adjacent properties and pedestrians during the basement excavation, and where necessary, underpin the adjoining premises to prevent any damage.
11. Power and Water has essential water and sewer infrastructure within the road reserve adjacent to Lot 7587 sewer easement. The developer is advised to take all necessary precautions including seeking direction from geotechnical experts to ensure the surrounds and foundations of PWC’s assets are not undermined during construction (especially as the development has proposed a basement carpark). The developer will be fully liable for any damages or undermining of any PWC assets during construction.
12. Water Services advice that the developer must contact Power and Water regarding temporary installation of cranes in the road reserve prior to building construction. The developer must propose structural protection of existing PWC assets affected by cranes and crane foundations, then obtain approval from PWC (and other service providers) prior to tower installation of the crane
13. There are statutory obligations under the *Waste Management and Pollution Control Act 1998* (the Act), that require all persons to take all measures that are reasonable and practicable to prevent or minimise pollution or environmental harm and reduce the amount of waste. The proponent is required to comply at all times with the Act, including the General Environmental Duty under Section 12 of the Act. There is also a requirement

to obtain an authorisation prior to conducting any of the activities listed in Schedule 2 of the Act. Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority (NT EPA) website: <https://ntepa.nt.gov.au/publications-andadvice/environmental-management>. To help satisfy the General Environmental Duty, the proponent is advised to take notice of the SCHEDULE OF ENVIRONMENTAL CONSIDERATIONS provided by DENR. The WMPC Act, administered by the NT EPA, is separate to and not reduced or affected in any way by other legislation administered by other departments or authorities. The NT EPA may take enforcement action or issue statutory instruments should there be non-compliance with the WMPC Act

14. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act* 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.
15. 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*.

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.

Lot 7587 is situated centrally within Darwin CBD and is surrounded by a mix of land uses and building heights. Zone CB (Central Business) is the predominant zone within the wider locality accommodating a range of retail, commercial and high-rise residential and tourist accommodation land uses. Pursuant to sub-clause 1(b)(i) of Clause 1.8 of the NTPS 2020, the proposed commercial uses "office/shop/food premises-café/restaurant" is "Merit assessable"; therefore, the strategic framework (Part 2 of the Scheme, including the Central Darwin Area Plan) for any variation to Part 5, zone purpose and outcomes of Clause 4.10 (Zone CB - Central Business), and Clauses 5.2.3.2 (Volumetric Control in Central Darwin), 5.2.3.3 Urban Design Requirements in Central Darwin, 5.2.4.1 Parking Requirements, 5.2.4.4 (Parking Layout), 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC, 5.5.3 (Commercial and Other Development in Zones HR, CV, CB,C SC, TC, OR, CP, FD T), 5.5.6 (Alfresco Dining Areas in Zone CB in Central Darwin) and 5.11 (Food Premises) apply. The proposed mixed-use commercial development comprising shop/offices/food premises – café/restaurant in 15 storey building with three levels of basement parking requires consent under Clause 1.8 (When development consent is required).

The purpose of Zone CB (Central Business) is to provide for a diversity of activities with a commitment to the separation of incompatible activities, and building form and design is expected to be sensitive to the needs of pedestrian movement and facilitate the creation of safe and active street frontages and public places and a vibrant commercial precinct. The building aligns with the broader intent of Zone CB in providing high architectural development. It presents well to the street frontage in terms of pedestrian amenity and activation, particularly Mitchell Street frontage.

The design includes awnings to Mitchell Street and Mott Court frontages and a publically accessible pedestrian plaza through the site with landscaping and open terraces that create an attractive outdoor public space in the development. The building façade along the Mitchell Street and Mott Court frontages is predominantly glass with vertical and horizontal sunshades. The open-plan offices on the upper levels provide open views of the street and harbour views. The assessment has found that the proposal will contribute to the overall mix of uses in Darwin City and is not inconsistent with the Central Darwin Area Plan and zone purpose.

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 assessment has found that the proposal complies with the relevant Part 5 requirements except for Clauses 5.2.3.2 (Volumetric Control in Central Darwin), 5.2.3.3 (Buildings in Central Darwin), 5.2.4.1 (Parking Requirements), 5.2.5 (Loading Bays) and 5.5.6 (Alfresco Dining Areas in Zone CB in Central Darwin).

Clause 5.2.3.2 (Volumetric Control in Central Darwin)

The clause requires that the development be constructed with a Tier 1 / podium up to 25m with 6m setbacks (applying to windows to habitable rooms, balconies and verandahs only), and a Tier 2 / tower above with a maximum floor area of 1200m² per tower, setback 6m from each boundary with building lengths of not more than 75% of the total length of each adjacent boundary.

The Authority notes the assessment of the Development Assessment Services (DAS) which found that the proposed development includes both Tier 1 (Podium) and Tier 2 (Tower) components. The assessment notes that the site has previously been excavated to accommodate basement parking; therefore, the ground level is taken from the finish level of basement 1 of the proposed development, which shows the ground level as a flat surface. The Tier 1 of the proposed development (taken to cease at 25m) comprises ground to level 6 (mid-way), and

Levels 6 (mid-way) to 15 of the building forms part of Tier 2 as they are above the 25m.

The DAS' assessment found the numerical non-compliances relating to setbacks and dimensions of Tier 2 as below:

- At levels 6 (mid-way) to 14, the setbacks of the building to Mitchell Street is 3m (2.55m to horizontal sunshades attached to the façade). To Mott Court is 0m. The setback to the southeast boundary is 3m (adjoining Lot 2187).
- At levels 6 (mid-way) to 14, the boundary length is 93.84% (45.77m) to the Mitchell Street frontage and 91% (32.5m) to southeast boundary (adjoining Lot 2187).
- In addition, levels 3 to 14 have the intrusion of horizontal sunshades that extend beyond the building line into the Mott Court road reserve.

The purpose of this clause is to ensure the siting and mass of buildings within Central Darwin promotes:

- (a) a built form that maximises the potential for view corridors to Darwin harbour;*
- (b) the penetration of daylight and breeze circulation between buildings;*
- (c) (c) privacy for residents of adjoining properties; and*
- (d) (d) a built form that reasonably anticipates the future development of adjoining sites.*

The Authority notes that; in relation to part (a), the clause ensures that the siting and mass of buildings promote a built form that maximises the potential for view corridors to Darwin harbour and having regard to part (d), it can be reasonably anticipated that other CBD lots can be developed in accordance with the volumetric controls, notwithstanding the views that may currently exist over undeveloped CBD lots. The main opportunity for views is from the upper levels of buildings, along road corridors. The Authority agreed with the DAS' and applicant's assessment which concludes that views along the Mitchell Street corridor are further impeded (or likely eliminated) by existing buildings on Mitchell Street with reduced front setbacks, including the 13 storey Hilton Darwin (Lot 4856) and the 14 storey Mitchell Centre tower (Lot 5566). The view corridor along Mott Court to the Darwin Harbour is impeded by the existing 14 storey C2 Esplanade development at Lot 8416. The greater impact of the setback encroachment on the views from adjoining Lot 2187 towards Darwin Harbour is along the southwest and northeast. The application demonstrates that future development built on the balance lot, in accordance with the volumetric controls, has the potential to eliminate any views along the Lot 2187 corridor completely. The Authority notes that the impact of a compliant building design on views from adjacent buildings would be striking, with harbour views above a floor level of 58m being obscured, and that the relatively low building form proposed results in a vastly improved amenity outcome for the development that could on adjoining sites.

In relation to part (b), being the siting and mass to ensure daylight and breeze penetration between buildings, the non-compliances as they

relate to two street frontages and adjoining lot 2187 at levels 6 – 15 are not impacted as the widths of the road reserve and setback of 3m (adjoining Lot 2187) allow for adequate daylight and breeze penetration between buildings.

In relation to part (c), the Authority notes that privacy is not impacted, given the building has two street frontages providing adequate separation to adjacent sites. The 3m separation from the southeast boundary offers adequate separation from the existing three-storey office building (located on Lot 2187).

The relevant Administration of the clause is:

The consent authority may consent to a development that is not in accordance with sub-clause 3 only if it is satisfied it is consistent with the purpose of this clause, and it is appropriate to the site having regard to such matters as its location, nature, scale and impact on surrounding amenity

The Authority is satisfied that, despite the variations, the assessment has found that siting and mass of the building do not impact existing or future view corridors to Darwin harbour, the penetration of daylight and breeze circulation between buildings, nor the privacy for residents of adjoining properties, beyond that which a complying design would. The design of the building is noted as innovative that responds to microclimates, maximises passive surveillance and reduces the appearance of building mass compared to a compliant building (Zone Outcome 8 – Zone CB).

The Authority further notes that the inclusion of the basement car parking as part of the design in reducing the overall building height shows merit as it reduces the overall mass of the building and also improves the appearance of the building in terms of its interaction with the public realm and the benefit of encouraging passive surveillance over surrounding public spaces through the office floors (rather than above-ground car parking levels). Furthermore, the increased height of the entrance lobby (beyond a typical store) with a pedestrian plaza has merit in achieving Objective 2.6 (Mixed Use Theme of Central Darwin Area Plan), which encourages development that contributes to the amenity of the public realm and reflects the character of the area. Retention of this feature is considered to result in a greater benefit than the impact on the volumetric controls and the corresponding increase in height.

Clause 5.2.3.3 (Urban Design Requirements in Central Darwin)

The purpose of Clause 5.2.3.3 is to *promote exemplary urban design in Central Darwin, provide a high amenity pedestrian environment, and contribute to interest and activity at the street level*. The clause has a number of requirements, including providing active street frontages (75%) to Mitchell Street frontage, providing awnings, and limiting services at the street level. The building is assessed as responding to a number of requirements of this clause, including providing a covered pedestrian colonnade to Mitchell Street plus an awning to Mott Court

frontages. The vibrant, active and covered pedestrian plaza at ground level linking Mitchell Street with Peel Street, with an opportunity to connect further with Smith Street, enables an area within the site that is attractive, safe and functional for pedestrians. The built form of the building has an articulated base (podium) and top (commercial tower above). The open terrace at level 1 provides a break in the built form with a publically accessible large outdoor landscaped with perimeter planters and raised planters.

The DAS' assessment found that Mitchell Street is 100% active, comprising a public forecourt, pedestrian plaza and commercial tenancies. The Mott Court frontage in relation to the development area is 43m in length, 13.70m of which is active (31.92%). Overall, the combined street frontage of the development area is 91.70m, 62.4m of which is active (64.7%). The assessment notes that the development along Peel Street frontage is limited to 3.5m wide pedestrian access to the development, and the remaining part of the boundary (38.45m) remains non-active and forms part of the future development on site.

The relevant Administration for clause 5 is:

The consent authority may consent to a development that is not in accordance with sub-clause 5 only if it is satisfied that compliance would be impractical.

A variation to Clause 5.2.3.3 to allow 31.92% active street frontage to Mott Street is granted as full compliance would be impractical to achieve as all service areas, loading bay and access to the basement car park are provided on Mott Street frontage. As Mott Court is of the lowest order hierarchy (with a cul-de-sac), the benefits of creating non-active areas along Mott Court Street frontage (by locating all service areas and access) is considered a good design outcome compared to creating non-active areas along Mitchell Street frontage, which require a high amenity pedestrian environment and have the potential to activate the city centre.

Sub-clause 6(a) of Clause 5.2.3.3 states - *Buildings in Central Darwin are to: (a) provide awnings to streets for the full extent of the site frontage that allow for the planting and growth of mature trees within the road reserve.*

The plans included an awning to the Mott Court frontage (to the extent of the frontage of the development area), and awnings for the majority of Mitchell Street frontage, except for a length of 13m which is non-compliant. In addition, no awnings are provided for Peel Street frontage.

At the hearing, Mr Brad Cunnington from Cunnington Rosse Town Planning and Consulting (applicant) gave an overview of the proposed development and its architectural and landscaping design features. Mr Cunnington explained that three small street trees will be planted in the Mitchell Street road reserve that will sit under the awning, and an additional two large street trees will be planted in the Mitchell Street

road reserve at the entrance to the plaza where the required awning will not restrict their growth to provide shading for pedestrians. Mr Cunnington stressed that notwithstanding the technical requirements of the NTPS 2020, the proposed arrangement is an excellent example of a performance based outcome.

The Authority noted the applicant's comments and also noted that the siting of the two large trees will provide shading for pedestrians. The Authority further notes that the City of Darwin, in its comments, have also agreed to this approach. A condition is included for the provision of awnings to the street frontages to the requirements of the City of Darwin and Power and Water Corporation. The condition requires that the awnings shall not reduce the achievement of active frontages below 75% of the total length of the site boundary to the street.

The Authority considers a variation to exclude a full length of the awning to Peel Street frontage appropriate as the development along Peel Street is limited to 3.5m wide pedestrian access provided to the development. The Authority determined that an awning to the entire length of Peel Street can be provided as part of future development on balance land.

Clause 5.2.4 Vehicle Parking

Clause 5.2.4.1 (Parking Requirements)

The purpose of the clause is to ensure that sufficient off-street car parking, constructed to a standard and conveniently located, is provided to service the proposed use of a site.

The Authority notes the assessment of DAS, which found that 270.75 (~271) parking spaces are assessed as required, and 143 are provided in the development within three basement levels. The applicant seeks to reduce 128 parking spaces under Clause 5.2.4.3 (Reduction in Parking Requirements within Zone CB in Darwin) of the NTPS 2020.

Clause 5.2.4.3 (Reduction in Parking Requirements within Zone CB in Darwin)

The purpose of the clause is to provide for a use or development with fewer spaces than required by Clause 5.2.4.1 within Zone CB in Darwin.

The clause allows for parking reduction based on four different categories.

Sub-clause 1 allows the Authority to determine that fewer car parking spaces are required for development than those otherwise prescribed by the Scheme. The table to the clause provides a variety of considerations and associated percentages which may be taken into account by the Authority in determining whether to reduce the parking requirement. Four different categories in that table may be applicable in this case. Sub-clause 2 provides two further categories of considerations for the Authority in exercising its discretion, namely,

allowing for a reduction of one car parking space for every 3 motorcycle parking spaces (to a maximum of one motorcycle parking space for every 25 (or more) and a further reduction of one car parking space for every 10 excess bicycle parking spaces up to 2% of the number of car parking spaces.

Having regard to sub-clause 1, the Authority notes that DAS's assessment concludes that a 45% (121.95~122 spaces) reduction under categories 1(a), 2(a), 3(d) and 4(a) of table to Clause 5.2.4.3 can be applied due to the following (reduction applied under each category):

- Category 1(a) - The proposed development is within 200m walking distance of the bus stop (No. 178) located on Mitchell Street. (15% reduction).
- Category 2(a) - The site is within 200m walking distance of Dragonfly car park, which has a combined total of 100 car parking spaces or more (10% reduction).
- Category 3(d) - The proposed vertical landscape elements provided in the development equate to approximately 12% of the development area (10% reduction). The Authority supported the application of a 10% car parking reduction under category 3(d) of Table to clause 5.2.4.3 by providing vertical landscaping equivalent to the development area as the proposed landscaping is fully vegetated, well-integrated with the overall building design and publicly visible on the external building façade(s) fronting key pedestrians. Furthermore, the landscaping also acts as a feature of the development, providing shade and softening, articulating the built form, and connecting the higher levels of the building to the ground and surrounding setting. It is noted that the CDAP also identifies promoting building design that incorporates planting on structures. This vertical landscaping can contribute to buildings' energy and create microclimates with reduced temperatures.
- Category 4(a) - All parking provided in the development is in the basement (20% reduction).

Having regard to sub-clause 2, the Authority noted DAS' assessment concludes that 11 motorbike parking spaces and 22 excess bicycle parking spaces are provided in the development, which equates to five (5) parking spaces.

After considering the reductions sought under sub-clauses 1 and 2, DAS calculates the total parking car parking requirement for the development is 122 spaces. DAS concludes that the development provides 143 parking spaces (within three basement levels), and considering the motorbike/bicycle parking spaces, which equates to four (5) parking spaces, the development has a surplus of 26 spaces.

The Authority noted that the reduction of car parking requirements under Clause 5.2.4.3 is at its discretion. It acknowledges the various calculations made by DAS and the Applicant in relation to the percentage reductions under the clause and while it supports a reduction in the car parking requirements it wishes to highlight that

Clause 5.2.4.3, while providing a table with various possible reductions and suggested percentages, does not provide further guidance regarding its application, apart from providing that only one reduction per category is permitted. The Applicant and DAS have chosen to apply the percentage reduction in each category to the whole parking requirement. It equally could be assessed so that, once a percentage reduction under a category is applied, the parking requirement is thereby reduced and the percentage reduction applied under the next category is calculated on the parking requirement so reduced. Such a method is presumably within the DCA's discretion, particularly in a case such as this where multiple categories for reduction are being relied upon, and would result in a substantially smaller reduction overall.

The Authority also notes that, in exercising its discretion, it is always open to it under Clause 1.10.6 to impose a condition requiring a higher standard of development than is set out in a requirement of Parts 3, 5 or 6. The determined that 143 parking spaces provided in three basement levels are adequate for the proposed development.

Clause 5.2.5 (Loading Bays)

The purpose of this clause is to provide for the loading and unloading of vehicles associated with the use of the land. The clause provides:

The net floor area of the development is 13273m² and requires 6.6 (~7 loading bays). The development proposes a loading dock that can accommodate two compliant loading bays, with a clearance of 4.5m.

Administration

The consent authority may consent to a use or development that is not in accordance with sub-clauses 2 and 3 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.

The Authority considers a variation to provide two loading bays (instead of seven) is appropriate in this instance due to the following:

- The loading requirements of Clause 5.2.5 may not consider an office development of this size.
- The deliveries are expected to be of a scale more appropriate to van-type deliveries than those requiring the dimensions given by this clause. It is noted that the loading dock size is adequate to accommodate more than two van deliveries at a time.
- If the same net floor area were proposed for another use as listed in sub-clause (a), then one loading bay would be required for a single occupation of a net floor area of 10000m² or less.
- The design of the loading area is currently recommended to be addressed in relation to the urban design requirements of Clause 5.2.3.3.
- The provision of two loading bays is considered acceptable given the predominant use of the building as offices and as the expected delivery needs for offices are lower than other retail uses.

- The loading dock size can accommodate four 4.5 tonnes light rigid vehicles (Furniture Removal Truck) and two Medium Rigid Trucks (large truck).

Clause 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC)

The purpose of this clause is to ensure that new commercial and high-density residential buildings provide sufficient, safe, quality and convenient end of trip facilities to enable active travel choices by residents, visitors, workers and customers for the proposed use of the site.

The Authority notes that the proposed development exceeds the requirement of this clause; however, no short-term visitor bicycle parking facility is provided in the development.

Mr Cunnington agreed that the provision of visitor bicycle parking facilities could be taken into account in addition to providing an adequate number of end of trip facilities in the proposed development, and was amenable to the inclusion of a condition to this effect.

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

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

The application has been assessed generally compliant with the requirements of this clause.

Sub-clause 12 of Clause 5.5.3 states – *the building provide protection for pedestrian from sun and rain.*

The DAS' assessment found that the development provides safe and convenient movement of vehicles and pedestrians to and from the site by including separate access to the basement car park from Mott Court and the inclusion of a ground-level pedestrian plaza linking Peel and Mitchell Streets. The assessment notes that most of the pedestrian plaza through the site is covered except for the connection to Peel Street. The Authority questioned the applicant on the possibility of providing shading to Peel Street pedestrian access. The notes that the Peel Street pedestrian access is located close to the Dragonfly car park and therefore is likely to be used more by the occupants of the office. The Authority further notes that a 10% reduction in car parking requirements is based on the criteria that the pedestrian access from Peel Street is within 200m of the public car park.

In response to the question raised by the Authority, Mr Cunnington explained that the proposed pedestrian access from Peel Street is temporary and would be integrated into the future development that will occur on the balance area. Mr Cunnington agreed that any shading to Peel Street pedestrian access would contribute to the amenity of the

public realm and was amenable to the inclusion of a condition to this effect.

Clause 5.5.6 (Al Fresco Dining Areas in Zone CB in Central Darwin)

The purpose of the clause is to provide for the establishment of alfresco dining areas that contribute positively to the amenity, safety and activation of streets in the Darwin's Central Business area

The Authority considers a variation to allow the alfresco dining area not located at ground level is appropriate as it is directly accessible and visible from the pedestrian plaza and will encourage public use of the space and extend the hours of activity. Furthermore, this connects level 1 of the building to the ground and surrounding setting. The proposed alfresco area will also contribute to the function of the pedestrian plaza through the high visibility of premises and promote interaction between pedestrians and retail premises and ambience. The Authority notes that the landscaping incorporated into the design will enhance the streetscape and create an attractive outdoor public space.

3. 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. and 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 overall height and scale of the development are largely consistent with that anticipated in the Darwin CBD with respect to the land's capability and the effect on surrounding properties. Comments from the City of Darwin, Power and Water Corporation, Department of Defence and Darwin International Airport were sought in relation to the capability of the land, including the proposed access arrangements, easements, and building heights.

The Authority notes that the City of Darwin's further submission (tabled by the DAS) states that most matters raised in its first submission have been resolved, with other issues to be addressed through conditions of consent. These matters include submitting a stormwater management plan, traffic impact assessment report, an environmental and construction management plan, a dilapidation report, a waste management plan, and approval for awnings and crossover. All requirements are addressed through conditions and notes on the permit.

The Authority further notes that the City of Darwin requests a monetary contribution to remove seven on-street car parks on Mott Court to provide access to the basement car park and loading dock. As the removal of on-street car parks is outside the site boundary and has no relation to the on-site parking shortfall, a condition to provide a monetary contribution to the Council under S70(5) of the *Planning Act 1999* is not warranted. The requirement is addressed through the inclusion of a note on the permit.

The Authority required a number of other servicing matters to be addressed through conditions of consent. The Authority considers that these requirements, combined with standard conditions relating to the connection and upgrade of utility services and the provision and treatment of easements, will ensure that the land is developed in accordance with its physical capabilities and will ensure that utility and infrastructure requirements of the relevant agencies are appropriately addressed.

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.

Sub-clause 1 allows the Authority to determine that fewer car parking spaces are required for development than those otherwise prescribed by the Scheme. The table to the clause provides a variety of considerations and associated percentages which may be taken into account by the Authority in determining whether to reduce the parking requirement. Four different categories in that table may be applicable in this case. Sub-clause 2 provides two further categories of considerations for the Authority in exercising its discretion, namely, allowing for a reduction of one car parking space for every 3 motorcycle parking spaces (to a maximum of one motorcycle parking space for every 25 (or more) and a further reduction of one car parking space for every 10 excess bicycle parking spaces up to 2% of the number of car parking spaces.

The development, however, seeks variations to Clauses 5.2.3.2 (Volumetric Controls in Central Darwin) and 5.2.3.3 (Urban Design Requirements in Central Darwin). The Authority is satisfied that despite the variations, the siting and mass of the building do not impact existing or future view corridors to Darwin harbour, the penetration of daylight and breeze circulation between buildings, nor the privacy for residents of adjoining properties, beyond that which a complying design would.

Regarding limited activation of Mott Court frontage, the Authority notes that the benefits of creating non-active areas along Mott Court Street frontage (by locating all service areas and access) is a good design outcome compared to creating non-active areas along Mitchell Street frontage, which require a high amenity pedestrian environment and have the potential to activate the city centre.

Conditions requiring shading over Peel Street pedestrian access and visitors' bicycle parking facility in the proposed development will improve the amenity of the area and occupants.

In response to a question raised by the Authority at the hearing in relation to the public safety measure around the excavated balance site, Mr Cunningham explained that the balance area would be cordoned off similar to existing hoarding around Peel Street, Smith Street and a portion of Mott Court frontage.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

ITEM 3

PA2022/0247 DWELLING-GROUP (4 X 5 BEDROOM AND 1 X 4 BEDROOM) IN 3 X 2 STOREY BUILDINGS WITH REDUCED SETBACKS TO THE PRIMARY STREET LOT 1798 (6) WEDDELL STREET, PARAP, TOWN OF DARWIN

APPLICANT Cunnington Rosse Town Planning and Consulting

Applicant: Brad Cunnington and Alexander Deutrom (Cunnington Rosse Town Planning and Consulting), John Glynatsis (landowners) and Darron Lyons (The Red Shed – Designer) attended.

Submitters who attended: Richard Coates, Savvas Savvas (representing Michael Hatton) and John Punch & Elizabeth Benson

Submitters who sent their apologies: Ann Gastin and Michael Hatton.

Mr Savvas tabled ground floor plans that showed fall of the land, stormwater pit locations;

John & Libby Punch tabled a further submission and a plan showing sightlines visual massing of the proposed development and air conditioner site lines from the proposed development and their residence.

**RESOLVED
90/22**

That, the Development Consent Authority vary the requirements of Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and Clause 5.4.6 (Private Open Space) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the Planning Act 1999, consent to the application to develop Lot 1798 (6) Weddell Street, Parap, Town of Darwin for the purpose of Dwelling-group (4 x 5 bedroom and 1 x 4 bedroom) in 3 x 2 storey buildings with reduced setbacks to the primary street, 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 removal 'air conditioning inverters notice' notation on the development plans; and
 - (b) Swept path diagrams from a suitably qualified traffic engineer for internal manoeuvrability of cars within the development.
2. Prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Darwin stormwater drainage system shall be submitted to and approved by 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. The plan shall also indicate how stormwater will be collected on the site and

connected underground to Council's system or an alternate approved connection.

3. Prior to the commencement of works (including site preparation), in principle approval is required for the crossovers and driveways to the site with the applicant providing an engineer's traffic assessment from the City of Darwin road reserve, to the satisfaction of the consent authority.
4. Prior to the commencement of works (including site preparation), the applicant is to prepare a Site Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP should specifically address the impact to Council owned public spaces and include a waste management plan for disposal of waste to Shoal Bay, traffic control for affected City of Darwin roads, haulage routes, storm water drainage & sediment control, use of City of Darwin land, and how this land will be managed during the construction phase.
5. Prior to the commencement of works (including site preparation), 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.
6. 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 Guidelines, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.

GENERAL CONDITIONS

7. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
8. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage, electricity and telecommunication networks to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

Please refer to notations 1, 8 and 9 for further information.

9. 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.
10. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
11. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or site is to be created.

12. 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 and powerconnections@powerwater.com.au.
13. Upon completion of any works within or impacting upon existing road reserves, the road reserves shall be rehabilitated to the standards and requirements of the City of Darwin and returned to the condition as documented in the dilapidation.
14. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the 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.
15. Storage for waste disposal bins is to be provided to the requirements of 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. Before the use/occupation of the development starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
18. 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.
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 parking spaces, access lanes and driveways must be kept available for these purposes at all times.
20. The private open space areas of each dwelling shall be screened on each boundary by:
- (a) the erection of a solid wall or screen fence not less than 1.8 metres high: or
(b) fenced to a height not less than 1.8 metres high and planted with dense vegetation.
21. 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.
22. All balconies are to be internally drained and discharge is to be disposed of at ground level and in a manner consistent with stormwater disposal arrangements for the site to the satisfaction of the consent authority.
23. 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.
24. 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) 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. 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).
3. 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.

4. Outdoor kitchens and air conditioning units must be located behind solid walls as illustrated on the drawings endorsed.
5. 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.
6. 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.
7. Sediment control measures are to be established and maintained, to prevent silt and sediment escaping the site or causing erosion. Building rubbish or debris must not be placed, or be permitted to be placed, on any adjoining public reserve, footpath or road, without first obtaining approval from City of Darwin.
8. All developers, including owner-builders, are required to comply with Commonwealth telecommunications requirements. Under Commonwealth law, developers are generally required to provide fibre-ready pit and pipe in their developments at their expense. Developers may be able to access an exemption from these arrangements in some circumstances. For more information visit www.infrastructure.gov.au/tind
9. 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>
10. A Compliance Certificate under the *Swimming Pool Safety Act 2004* issued by the Swimming Pool Safety Authority is required for the swimming pools prior to the commencement of the development.

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 dwelling-group requires consent under Clause 1.8 (When development consent is required). It is identified as *Merit Assessable* under Clause 4.3 Zone LMR (Low-Medium Density Residential), therefore the Darwin Inner Suburbs Area Plan as strategic framework, Clause 4.3 Zone LMR (Low-Medium

Density Residential), 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), 5.4.3.1 (Additional Setback Requirements for Residential Building longer than 18 metres and for Residential Buildings over 4 storeys in Height), 5.4.6 (Private Open Space) and 5.4.8 (Building Design for Dwelling-Group, Dwelling Multiple, Rooming Accommodation and Residential Care Facility), 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 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), and Clause 5.4.6 (Private 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).

Clause 5.4.3 Building Setbacks of Residential Building and Ancillary Structures

Purpose

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.*

Administratively, “the consent authority may consent to a development that is not in accordance with sub-clauses 6-8 only if it is satisfied that the reduced setback is consistent with the purpose of this clause and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property”. The application proposes a zero lot line setback of arbours along the primary street frontage (western boundary), adjoining Weddell Street which would normally require a setback of 4.5m for ancillary structures without external walls.

The applicant has justified the variation in their statement of effect, stating that the arbours are “consistent with the purpose of the clause in that it is compatible with the streetscape, will not create adverse building massing, does not create overlooking opportunities and will not inhibit breeze penetration”. When considering the zone purpose and administration, the arbours are assessed as unlikely to create adverse building massing, noting that the structures are open style and

consistent with other residential development in Zone LMR. The arbours provide a varied maximum overall height to the dwellings-group of 2.5m, in comparison to 2.9m for the ceiling height of the ground level to further minimise building massing. The applicant indicated that the intent is for vines to grow on the arbours, further reducing any impact and softening the appearance through landscaping. It is noted the structures are non-habitable and positioned along the primary street frontage, and, therefore, unlikely to allow for overlooking to adjoining land.

The arbours are considered unlikely to cause adverse impact to the amenity and appearance of the site and adjoining land. As the structures are open style and unlikely to impact on breeze penetration, it is considered appropriate to vary Clause 5.4.3 (Building Setbacks of Residential Building and Ancillary Structures) in this instance.

It is also noted that the application originally proposed a variation to the rear of the site (along the eastern boundary) under Clause 5.4.3.1 (Additional Setback Requirements for Residential Buildings longer than 18 metres and for Residential Buildings over 4 storeys in Height) which has been amended. The proposed setback has been amended from 1m to 2.5m, which complies with the requirements of both Clause 5.4.3 and 5.4.3.1 and is considered a better outcome for the site and surrounding area.

Clause 5.4.6 (Private Open Space)

Purpose

“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.”*

Administratively, *“The consent authority may consent to private open space that is not in accordance with sub-clauses 4 and 5 only if is satisfied it 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”*. The application proposes a variation to the private open space requirements of Area A (45m² open vertically to the sky, with no dimension less than 1.5m) for Units 3 to 5 to the rear. The private open space provided is 25m² instead of 45m².

The Authority considers that the private open space provided is an extension of each dwelling-group, providing outlook for the dwellings and access via the open style kitchen, living and dining areas. The space is appropriate size for domestic purposes, landscaping and tree planting and allow stormwater infiltration.

Swimming pools have been proposed for Units 3 and 5, which have not been included within the private open space areas calculated. The Authority considers the swimming pools form part of the function of the dwelling and enhance the residential environment, in keeping with the purpose of the clause. If the area surrounding the swimming pools is included, private open space is calculated at 39.4m², which is more compliant with the Scheme requirements. It is noted that, although Unit 4 does not have a proposed swimming pool, it has an overall outdoor area of 59m² with 39.4m² open to the sky and permeable. Part A open space requirements have been improved for Unit 4 by the balcony setback being amended from 1m to 2.5m.

Units 3 and 5 also include arbours along the northern and southern, rear boundaries with adjoining landscaping that provides an additional area of approximately 20m². The applicant has stated in their assessment "However, if the area under the arbours is taken as being vertically open to the sky (similar to an area under a tree) then Units 3 and 5 comply".

The Authority considers the variation to the private open space requirements is acceptable due to its location providing ground level access and is in keeping with the scale of the site. The private open space is partly open to the sky and will provide landscaping and deep-tree planting for the amenity of the site and surrounding area.

In regard to the variations assessed above, the Authority notes that the only setback variation sought relates to the arbours along the primary street frontage, and considers their inclusion an attractive addition to the development.

Furthermore, the variations sought to the private open space requirements are a result of the swimming pools proposed which are considered to enhance the residential environment.

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

Five (5) public submissions were received during the exhibition period under Section 49 of the *Planning Act 1999* with respect to the proposal. In response to the submissions the applicant provided amended plans and a written response to issues raised, which was re-circulated for a period of two weeks to provide comment.

Various issues were raised in relation to proposed density, dwelling occupancy, car parking and traffic concerns, noise, stormwater, private open space, the lack of detail for the original development plans submitted and building design/ potential amenity issues.

At the meeting, Ms. Elizabeth Benson spoke to her submission and advised the consent authority that she was unaware further comments on the additional information submitted by the applicant could be provided to Development Assessment Services (DAS) prior to the hearing. The Chair advised Ms. Benson that DAS simply requests, as an administrative matter, further comments to be made within certain timeframes to enable those comments to be included in its report to the DCA and any submission made at the hearing would be an extension of her original submission which the Authority would consider in determining the application. The Chair further noted Section 51(t) of the *Planning Act 1999* which allows the Authority to consider such other matters it thinks fit. The Chair confirmed there is no loss of standing when considering comments providing in writing or verbally at the hearing.

Ms. Benson spoke to her submission and advised that the development remains a massive invasion of privacy and the density of the development will impact on the amenity of the neighbourhood. Ms. Benson stated that the balconies and bedroom windows from Units 2 and 3 overlook their master bedroom as well as the open space to the rear of their property. Ms. Benson noted there are six air conditioning units and two outdoor kitchens which are only meters from the shared boundary and their bedroom windows. Ms. Benson stated that it was erroneous to assume that these installations meet the zoning outcomes of part 4 which requires the building design to provide a sympathetic interface and privacy between neighbours. Ms Benson opined that the proposal does not comply with Clause 5.4.8 (Building Design for Dwelling-group, Dwelling-multiple, Rooming Accommodation and Residential Care Facility) sub-clause 7 to avoid overlooking of private open space and habitable rooms.

Ms Benson identified some of the concerns raised in their submission were incorporated within the amended plans but not all. For instance, in regard to overlooking to adjoining, northern lot some window sill heights have been raised for the proposed units but not all. Ms Benson referred to a diagram showing the western north facing balconies and master bedroom of unit 2 into the adjoining master bedroom and living room to the northern, adjoining dwelling. The diagram also shows bedroom 4 of Unit 2 and a bedroom of Unit 3 into the adjoining, northern second bedroom. Various possible points of overlooking were also identified on the diagram into the dwelling-independent. Ms Benson stated the building massing does not provide a sympathetic interface to the adjoining lot and there is a conflict of land use zones between Zone LR (Low Density Residential) and Zone LMR (Low Medium Density Residential).

Mr Punch and Ms Benson also referred to a diagram of the potential impact of air conditioning units and outdoor kitchens, and indicated their preference for a 2.4m solid block wall along the affected boundary. Concern in relation to the ground levels was also raised, noting that the levels would impact on stormwater drainage.

A larger setback for landscaping was requested by Ms Benson, which would provide a concession for the adjoining zoning (Zone LR) and a balance between the existing lifestyle of the area and proposed development. It was highlighted by Ms Benson that they purchased their property in good faith and in the belief that they would be living in a single dwelling neighbourhood and the proposed dwellings-group are not conducive with the adjoining zoning of LR (Low Density Residential).

Mr Coates addressed the consent authority and spoke to his submission. Mr Coates advised that although the development of dwellings-group can be applied for in Zone LMR, the proposed variations with the NT Planning Scheme 2020 suggest the development is non-compliant and therefore not appropriate.

In response, Mr Cunnington, the applicant, addressed the issues raised by the submitters. He indicated that a solid block wall along the boundaries of the subject site is not a preferred outcome as it will restrict airflow completely. The proposed use of slats promote airflow and the outdoor kitchens are located behind solid block wall areas. In relation to the number of people occupying the proposed units Mr Cunnington responded that this is not a criteria addressed by NTPS 2020 and is beyond the scope of the authority. As far as potential overlooking issues are concerned, Mr Cunnington indicated that, in comparison to other jurisdictions, there is not a measure for overlooking in the NT Planning Scheme 2020.

Mr Savvas Savvas presented on behalf of Michael Hatton (submitter) in relation to stormwater drainage provision. A plan for the potential drainage network was tabled at the meeting by Mr Savvas, with Mr Cunnington noting this could be considered by the proponent, however, the proponent would rely on City of Darwin for stormwater drainage design. Mr Cunnington noted there was no requirement for stormwater to be addressed prior to the issuing of a development permit, noting a condition precedent has been recommended prior to works commencing.

The Authority has taken all comments into account and carefully considered the submitters' concerns and the applicant's response to the matters raised. The Authority notes that the subject land was rezoned in 2015 from SD to MD, thereby opening the site to higher density development. Under the current scheme, zone MD has transitioned to LMR (Low Medium Residential). The application must be considered in the context of its current zoning and compliance with the NTPS 2020. It is classified as Merit Assessable indicating it is a use which is expected in the Zone. The Scheme dictates and constrains the Authority's method of determination and those factors which are relevant to the exercise of its discretions. In considering consent to this Merit Assessable application, the Authority is required by, the NTPS 2020 Clause 1.10(3) to take into account the relevant requirements in Part 5,

including their purpose. Clause 1.10(3) also requires the Authority to look at the purpose and outcomes of the zone and any applicable component of an area plan, however, those two considerations are only relevant to a variation of the Part 5 requirements.

In this case the DAS Report identifies two non-compliances. If an application is not in accordance with a requirement in Part 5, Clause 1.10(5) directs that the Authority must be satisfied that the variation is appropriate having regard to *the purpose and administration clauses of the requirement; and any the considerations listed under Clause 1.10(3)*. The non-compliances have been discussed in paragraph 2 above and the Authority is satisfied that the variations are appropriate.

Aside from the two variations sought, the proposed development is compliant with the requirements of the NTPS 2020. The level of compliance achieved with the requirements of the NTPS 2020 is considered to demonstrate that unreasonable amenity impacts on the surrounding area are unlikely as a result.

The Authority notes that the proposed development meets the car parking and dwelling density requirements listed under Clause 5.2.4 (Vehicle Parking) and Clause 5.4.1 (Residential Density Limitations).

In respect of overlooking, Clause 5.4.8(7) provides that a dwelling-group should *avoid overlooking of private open spaces and habitable rooms of adjacent residences on the same and adjacent sites*. The Authority considers that the use of the word "should" indicates that this amounts to a recommendation or guideline and not a mandatory requirement. The Scheme does not otherwise regulate overlooking. The Authority notes that the applicant had made adjustments to the plans to reduce potential overlooking and that the proposed development both meets setback requirement listed under Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and proposes a 1.8m high fence which will provide adequate screening at the ground level. Further, the Authority notes that the revised plans submitted illustrate that the outdoor kitchens and air conditioning units are to be located behind solid block walls. Swept paths have also been included as a condition precedent to ensure appropriate manoeuvrability of vehicles within the subject site.

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 site is serviced with reticulated water, power and sewerage. The site has one street frontage. Weddell Street, with vehicular and pedestrian access in an established residential area. The site is not identified as being located within a primary or secondary storm surge

area, and there are no other known physical characteristics that would render the site unsuitable for development. No adverse service authority comments have been received for the application.

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.

“Amenity” is defined in Section 3 of that Act in the following terms - “in relation to a locality or building, means any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable.”

In considering amenity, the nature of the zone and expected uses in such zone must be considered. The potential impact on the existing and future amenity of the area in which the land is situated was considered in the rezoning process; when Lot 1798 was rezoned from Zone LR (Low Density Residential) to LMR (Low-Medium Density Residential). The site was determined by the then Minister for Lands and Planning to be appropriate for in fill development for dwellings-group.

The current proposal is considered in the context of its present zoning and compliance with the requirements of the NTPS 2020. The assessment found that development achieves most minimum standards and exceeds them in some respects.

Despite the non-compliance with Clauses 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and 5.4.6 (Private Open Space), the assessment concludes that the scale of the built form is anticipated to be compatible with the streetscape and with any development that may be reasonably anticipated within the locality. The non-compliances are unlikely to impact on the amenity of the surrounding properties. The reduced setbacks to the primary street are unlikely to be immediately apparent from the street due the building articulation, and open style of the arbours. Landscaping and mix of materials and finishes have also been incorporated for the overall building design and to reduce massing. Private open space has been assessed above and the variation is considered appropriate.

Furthermore, the development is well articulated with staggered building façades, use of various building materials and extensive landscaping to enhance visual amenity and interest when viewed from the street. Landscaping along the northern, western and southern boundaries with mixed fencing materials minimise any overlooking issues towards neighbouring development while allowing breeze penetration. Overall, the development is anticipated within the zone and overall meets the objectives of the zone purpose and its outcomes.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

ITEM 4

PA2022/0395

ALTERATIONS AND ADDITIONS INCLUDING FITNESS CENTRE, CAFÉ AND ANCILLARY MEDICAL-CLINIC TO AN EXISTING LEISURE AND RECREATION FACILITY (CASUARINA SWIMMING POOL) WITH A HEIGHT EXCEEDING 8.5M LOT 6249 (17) GSELL STREET, CASUARINA, TOWN OF NIGHTCLIFF

APPLICANT

Cunnington Rosse Town Planning and Consulting

Pursuant to section 97 of the *Planning Act 1999*, Peter Pangquee and Mick Palmer, Community Members of the Development Consent Authority disclosed an interest and were not present during, contributed to or took part in the deliberation or decision of the Division in relation to Item 4.

Applicant: Brad Cunnington (Cunnington Rosse Town Planning and Consulting), Lyle Hebb (City of Darwin - landowner) and Irma Lamaya (Co-Lab Architecture) attended.

**RESOLVED
91/22**

That, the Development Consent Authority vary the requirements of Clauses 5.2.1 (General Height Control) and 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 Lot 6249 (17) Gsell St, Casuarina, Town of Nightcliff for the purpose of alterations and additions including fitness centre, ancillary medical-clinic and ancillary food premises-restaurant to an existing leisure and recreation facility (Casuarina swimming pool) with a height exceeding 8.5m, subject to the following conditions:

GENERAL CONDITIONS

1. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
2. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage, electricity and telecommunication networks to the development/each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
Please refer to notations 2 and 3 for further information.
3. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
4. 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.
5. 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.

6. 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 parking spaces, access lanes and driveways must be kept available for these purposes at all times.
7. 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, in accordance with the requirements of City of Darwin, to the satisfaction of the consent authority.
8. Storage for waste disposal bins is to be provided to the requirements of City of Darwin to the satisfaction of the consent authority.
9. 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.
10. 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.
11. 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.
12. Before the use/occupation of the development starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
13. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.

NOTES

1. 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.
2. 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.
 3. 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>.
 4. The existing water and sewerage easements within Lot 6249 are still required. Structures must not be located on or over a water supply or sewerage easement, or where no easement exists such as within a road reserve without obtaining the prior written approval of Power and Water.
 5. A Compliance Certificate under the *Swimming Pool Safety Act 2004* issued by the Swimming Pool Safety Authority is required for the swimming pool/s prior to the commencement of the use.
 6. 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*.
 7. 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.
 8. 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.

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 alterations and additions including fitness centre, ancillary medical-clinic and ancillary food premises-restaurant to an existing leisure and recreation facility (Casuarina swimming pool) with a height exceeding 8.5m under Clause 1.8 (When development consent is required). *Leisure and recreation* is identified as *Merit Assessable* under Clause 4.18 (Zone OR – Organised Recreation). *Food premises-restaurant* as an ancillary use is *Merit Assessable* under Clause 1.9(1)(b) and the development of the *medical clinic* as an ancillary use is *Impact Assessable* in Zone OR, pursuant to Clause 1.9(1)(c)(ii) of the NTPS 2020, as the use is ancillary to the primary use of the land. The strategic framework (Part 2 of the Scheme, including Darwin Regional Land Use Plan 2015), zone purpose and outcomes of Clause 4.18 (Zone OR – Organised Recreation) and Clauses 5.2.1 (General Height Control), 5.2.4 (Vehicle Parking), 5.2.6 (Landscaping), 5.5.3 (Commercial and Other Developments in Zones HR, CV, CB, C, SC, TC, OR, CP, FD, and T), 5.5.11 (Food Premises) and 5.8.5 (Leisure and Recreation), need to be considered.

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 5.2.1 (General Height Control) and 5.2.4.4 (Parking Layout), as identified below.

At the hearing, the applicant, Mr Brad Cunnington, spoke to the purpose of the application which includes upgrades to the existing swimming pool and includes additional uses such as the gymnasium and ancillary uses such as the café, allied health (medical clinic) and community spaces. The applicant raised no issues with the recommendation or conditions included in the DAS report.

Mr Cunnington noted that the café is ancillary and the level of assessment under clause 1.9 of the NTPS 2020 applies rather than the level of assessment in Clause 4.18 (Zone OR – Organised Recreation).

The Authority notes that a medical clinic would be prohibited in Zone OR and queried the applicant regarding how the medical clinic is ancillary to the primary leisure and recreation use. Mr Cunnington clarified that the medical clinic is entirely ancillary as it is subordinate and auxiliary to the primary use. Mr Cunnington noted that the occupants of the medical clinic facilities will be service providers that need access to the pool as part of their services, such as physiotherapist and occupational therapists. Council will put out a tender for the space and undergo a selection process for provides that must have access to the pool facilities and otherwise cannot be considered ancillary. The Authority is satisfied that the proposed medical clinic as detailed by the

applicant is an ancillary use, however stresses that if not ancillary the Authority would have no power to consent to such a use.

The Authority queried how the fitness centre will be used and the applicant advised the fitness centre will be run as an independent use to the pool, where users would be able access the gymnasium separate to the pool area.

The Authority queried access to the community room, medical clinic, café and fitness centre. Mr Cunnington confirmed that access to these facilities is provided from the pool and on their own, outside of hours of operation of the pool which is the intent.

Regarding parenting rooms, Mr Cunnington noted the ambiguity in the NTPS 2020 as to what needs to be provided, however clarified that parenting facilities are provided in the UAT toilet of the gym which are available to the public and that no child minding facilities are provided as this is not typically provided in public swimming pools. The Authority is satisfied with the applicant's response and notes that the parenting facilities are sufficient for the nature and use of the development.

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).
3. 5.2.1 (General Height Control)
The purpose of this clause is to *ensure that the height of buildings in a zone is consistent with development provided for by that zone.*

Sub-clause 4 of Clause 5.2.1 states that *the height of any part of a building is not to exceed 8.5m above the ground level.*

The proposal has been found not to be in accordance with Clause 5.2.1 (General Height Control), because the three shade structures over the 50 pool area (2 shade structures) and 25m pool (1 shade structure) are 8.535m high, where the NTPS 2020 requirement is 8.5m.

The relevant administration to this clause is listed in sub-clause 3, *the consent authority may consent to a development that is not in accordance with sub-clause 4 if it considers the height of the building or structure achieves the zone purpose, having regard to such matters as its location, nature, scale and potential impact on adjoining property.*

The Authority considers a variation to this clause appropriate in this instance as the proposal is consistent with the purpose of Clause 5.2.1 in that:

- the shade structures are well set back (approximately 78m) from the residential area to the east and (approximately 18m) from the land in Zone C (Commercial) to the west;
- the proposal results in a minor intrusion of 0.035m into the height requirement;
- due to the curved design of the shade structure, only the side end portion of the structure exceeds the height restriction; and
- the shade structure is open in nature, minimising visual bulk and allowing for breeze penetration.

5.2.4.4 (Parking Layout)

The purpose of this clause is to *ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose.*

Sub-clause 4(g) and (i) of Clause 5.2.4.4 states that *a car parking area is to (g) be not less than 3m from a road, and the area between the car parking area and the road is to be landscaped with species designed to lessen the visual impact of the car parking area and (i) have driveways with a minimum width of 6m for two-way traffic flow or 3.5m for one-way traffic flow.*

The proposed development does not comply with clause 5.2.4.4 as:

- no additional landscaping is provided in the setback between the car parking area and the road frontages for the Angelo St/Gsell St car parking area;
- the driveway width is less than 3.5m for one way traffic for the first car parking spaces along the Gsell Street entrance (Refer to Figure 5 below); and
- the car parking area access from Trower Road has a driveway width between 5.5m to 3m (Refer to Figure 6 below).

The relevant administration to this clause is listed in sub-clause 1, *the consent authority may consent to a car parking area that is not in accordance with sub-clause 4 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.*

Mr Cunnington commented that his position on the nature of the existing car parking layout differs from Development Assessment Services (DAS). The applicant's opinion is that the existing layout forming existing works and an existing building is protected as an existing use in the *Planning Act 1999*, whereas the approach from DAS is that the formed car parking area is subject to a variation as it has been established without a landscaped setback and requires a driveway width variation.

The Authority notes that the DAS report to the DCA and Mr Cunnington's position on the matter. Nevertheless, the Authority considers the protection of existing works (under s.35 of the *Planning Act 1999*) does not apply in this instance as section 35 of the *Planning*

Act 1999 refers to the protection of existing works after the commencement of a conflicting provision of a planning scheme. In this instance, neither the existing or proposed works conflict current planning provisions within the NTPS 2020. In addition, the car parking area was developed in association with the existing leisure and recreation facility and not as a primary, standalone use.

The Authority considers a variation to Clause 5.2.4.4 appropriate in this instance as the proposal is consistent with the purpose of the clause in that the car parking area along the northern portion on the site is an existing car parking area and the location of the driveways makes it difficult to provide a 3m wide landscaped area along the setback between the car parking area, as providing the 3m landscaping area would result in a non-compliant driveway width. It is noted that extensive landscaping is provided throughout the site where some landscaping is also in the car parking area.

The non-compliant aspect of the driveway width is considered minor as it only relates to the first car park spaces along the Gsell Street entrance and is for a 0.5m reduction to the 3.5 m width requirement.

The non-compliant aspect of the driveway access from Trower Road is considered appropriate in this instance as the area will not be for public access and will be for service and maintenance staff access only. The proposed driveway width will result in only one way traffic in certain spots and as such passing vehicles will be required to wait and allow vehicles to pass by. The Authority considers that this is unlikely to result in adverse impacts on the local road network or internal functionality as usage of this car parking area will be less frequent than the public car parking area as it is primarily for service and maintenance staff.

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 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.

5. 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 alterations and additions to an existing leisure and recreation facility considered consistent with the purpose and requirements of Zone OR (Organised Recreation). Where the development does not comply with the relevant clauses of the NTPS

2020, the impact on existing and future amenity has been considered and a variation has only been supported in cases where this amenity will not unduly be impacted upon.

FOR: 3

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

Chair

12 December 2022