



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 391 – FRIDAY 6 MAY 2022

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

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

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

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

COUNCIL REPRESENTATIVE: Cindy Robson, Brian Sellers, Charmaine Davis and Peter Heffernan

Meeting opened at 11.00 am and closed at 12.55 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 MIXED USE COMMERCIAL DEVELOPMENT COMPRISING SHOP/OFFICES/FOOD
PA2021/0454 PREMISES - RESTAURANT AND TWO DWELLINGS-GROUP IN 13 STOREY BUILDING
 WITH THREE LEVELS OF BASEMENT PARKING
 LOT 2377 (8) CAVENAGH STREET, DARWIN CITY, TOWN OF DARWIN
APPLICANT MasterPlan NT

Applicants:- Masterplan NT – Mark Hogan and Masterplan SA – Stewart Hockey attended. Also in attendance:-

- Representing Sandran Pty Ltd (Landowners) Development and Project Manager – Michael Grassi (Podia)
- Project Architects (Sissons Architects) – Nick Sissons

Submitter – Cunnington Rosse Town Planning and Consulting sent their apologies.

RESOLVED
30/22

That, the Development Consent Authority 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), 5.2.4.1 (Parking Requirements), 5.2.5 (Loading Bays), 5.4.7 (Communal Open Space) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 2377 (8) Cavenagh Street, Town of Darwin for the purpose of Mixed use commercial development comprising shop/offices/food premises - restaurant and two dwellings-group in 13 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) a wider loading bay/dock to accommodate an additional delivery truck.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), approval is required for the awnings to the three street frontages to the requirements of the City of Darwin and Power and Water Corporation (Water Services Division), 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 the street.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principal 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 from Litchfield Street and identify any necessary upgrades to the surrounding street network as a result of the implications of the development.
5. 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.
6. 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.
7. 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.
8. 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 from Litchfield Street.
 - (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.
9. 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.

10. 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

11. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.

19. Storage for waste disposal bins is to be provided to the requirements of City of Darwin, to the satisfaction of the consent authority.
20. All works recommended by the traffic impact assessment report are to be completed to the requirements of the City of Darwin, to the satisfaction of the consent authority.
21. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin.
22. 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.
23. 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.
24. Before the use commences the owner must, in accordance with Part 6 of the Planning Act, provide 113 car parking bays. Of those spaces, 79 parking spaces are to be provided within three basement levels, motorbike/bicycle parking spaces that equates to four (4) parking spaces, and 25 spaces are to be provided in the Litchfield Street Car Park. In accordance with section 70(5) of the Planning Act 1999, five (5) of the required parking bays may be provided through a monetary contribution to the City of Darwin. The contribution is to be calculated in accordance with the requirements of section 70(6) of the *Planning Act 1999*.
25. 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.
26. 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).
27. 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.
28. 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 Litchfield Street pavement and footpath.

29. 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.
30. 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.
31. 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
32. The landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
33. 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. 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.
2. Notwithstanding the approved plans, the demonstrated awning in the City of Darwin road reserve is subject to Council approval at no cost to Council.
3. 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.
4. Notwithstanding the approved plans, any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin Policy Number 42 – Outdoor Advertising Signs Code.
5. 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 the three on-street car parking bays in Litchfield Street.
6. 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.
7. 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.
8. The Department of Defence advises that advises that separate requests for assessment and approval must be submitted 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. Water Services advice that essential infrastructure is located in the road reserve adjacent to the property and that a separate approval for the use of cranes during construction should be submitted.
10. 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.
11. 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). The Power and Water Corporation should also be contacted to discuss multi-metering if unit tiling is intended.
12. 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.
13. 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-thenbn/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>.
14. 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.

The Northern Territory Planning Scheme 2020 (NTPS 2020) applies to the land, and Lot 2377 is centrally located in Zone CB (Central Business) and is surrounded by a mix of land uses accommodating a range of retail, commercial and high-rise residential and tourist accommodation land uses. The proposed mixed use commercial development comprising shop/offices/food premises - restaurant and two dwellings-group in 13 storey building with three levels of basement parking requires consent under Clause 1.8 (When development consent is required). Pursuant to sub-clause 1(b)(i) and 1(c)(i) of Clause 1.8 of the NTPS 2020, the proposed uses "office/shop/food premises-restaurant" are "Merit assessable", and "dwelling-group" is "Impact Assessable";

therefore, the strategic framework (Part 2 of the Scheme, including the Central Darwin Area Plan), 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), 5.2.5 (Loading Bays), 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC), 5.4.6 (Private Open Space), 5.4.7 (Communal Open Space), 5.4.8 (Building Design for Dwelling-Group, Dwelling-Multiple, Rooming Accommodation and Residential Care Facility), 5.5.3 (Commercial and Other Development in Zones HR, CV, CB,C SC, TC, OR, CP, FD and T) and 5.11 (Food Premises) apply.

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 to 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 development that is of high architectural quality and presents well to the street frontages in terms of pedestrian amenity and activation, particularly the Cavenagh Street and Bennett Street frontages.

The development proposed is a 13 storey mixed use building comprising offices, food premises-restaurant, two dwellings-group, and ground-level commercial tenancies. The ground floor of the building consists of a commercial lobby fronting Cavenagh Street, services and vehicle entries fronting Litchfield Street and commercial tenancies along Bennett Street frontage. The Central Darwin Area Plan identifies the site within Focus Area A1, which only specifies active frontages along Cavenagh Street and Bennett Street. The development provides high-quality public spaces through the large, landscaped public forecourt along the Cavenagh Street frontage and level 3 terrace. The development is found to integrate with the existing pedestrian network with awnings and landscaping incorporated into the design to improve the pedestrian experience. 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 that is not in accordance with a requirement set out in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:
 - (a) The purpose and administration clauses of the requirement; and
 - (b) The considerations listed under Clause 1.10(3) or 1.10(4).

The assessment has found that the proposal complies with the relevant Part 5 requirements except for Clauses 5.2.3 (Buildings in Central Darwin), 5.2.4 (Vehicle Parking), 5.2.5 (Loading Bays) and 5.4.7 (Communal Open Space).

Clause 5.2.3.2 (Volumetric Control in Central Darwin)

The clause requires that 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 assessment has found that Levels 6 (mid-way) – 13 of the building form part of Tier 2 as they are above the 25m height with non-compliances to the floor area, setbacks and dimensions. These levels form the extension of a taller Tier 1, up to a maximum height of 79m.

The Authority notes the assessment of the Development Assessment Services' and arguments presented by the applicant at the hearing, which concludes that:

- The building design addresses bulk and scale through coordinated facades, variations of materials, colours and finishes, and the overall form's banding. The non-compliances will not affect view corridors, the penetration of daylight or breezes for adjacent buildings, or the amenity of adjacent landowners or future development opportunities.
- The setback encroachment is similar to the building located on Lot 2365 along Cavenagh Street, recently approved by the Consent Authority under DP18/0297 (Manunda Place – Health House).
- The applicant has prepared comparison drawings demonstrating a hypothetical compliant building with perspectives from the surrounding area, which shows the impact on views from adjacent buildings would be striking, with harbour views above a floor level of 56m being obscured. The relatively low building form proposed results in a vastly improved amenity outcome for the development of adjoining sites.
- The subject site is bounded by roads on three sides, providing adequate separation, maintaining views, and allowing for airflow and daylight penetration.
- When compared to a compliant building, the proposal has a more compact and efficient form, which is more attractive and commercially viable, and provides greater activation levels to the streetscape and local surroundings.
- The terrace at level 03 provides an opening that allows an increased air permeability level through the site. The break will also reduce wind downdraft impacts from the commercial levels above.
- The basement provides the benefit of reducing the overall building height with the absence of podium level car parking, which is a positive design outcome. The building height and volume would have a far more significant impact on views and access to adjacent properties if podium car parking was employed.

- The site is of strategic importance, and the design is a superior outcome to an alternative building that complies with the relevant volumetric and parking controls. The development would provide a high-density workforce in this location, and the ground-level activity will result in significant economic and convivial streetscape outcomes.

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) *privacy for residents of adjoining properties; and*
- (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. Therefore, the main opportunity for views is from the upper levels of buildings and along the road corridors.

In relation to part (b), being the siting and mass to ensure daylight and breeze penetration between buildings, the Authority notes that the non-compliances as they relate to three street frontages at levels 6 (mid-way) to 12 are not impacted as the widths of the road reserve and open terrace at Level 3 allow for adequate daylight and breeze penetration between buildings. The Authority further notes that the application demonstrates that a compliant building (with a similar net floor area) will have more impact on the airflow, and the benefits of a shorter building that does not interrupt breeze circulation at higher levels are considered a superior design outcome to a compliant proposal.

In relation to part (c), the Authority notes that the privacy is not impacted given the building has three street frontages which provide adequate separation to adjacent sites. The 5m separation from the northwest boundary offers adequate separation for any future development of the adjoining site at Lot 2378.

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 variation, the siting and mass of the building do not impact on 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 appropriate to the site having regard to such matters as its location, nature, scale and impact on surrounding amenity. The Authority found that the design of the building is noted as innovative and responds to microclimates, minimise privacy, maximises passive surveillance and reduces the appearance of building mass compared to a compliant building (Zone Outcome 8 – Zone CB).

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%), 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 the full length of Cavenagh Street plus an awning to Bennett Street and Litchfield Street frontages, which enables an area within the site which is attractive, safe and functional for pedestrians, in providing basement car parking, and in providing building entrances and clear glass windows to the Cavenagh and Bennett Street frontages. The built form of the building has a clearly articulated base (podium), middle (open terrace) and top (commercial tower above). The terrace level (at level 4) provides a break in the built form with a publically accessible large outdoor landscaped with perimeter planters and raised planters. The assessment has found that Cavenagh Street is 100% active (31.57m length of the 31.57m site boundary), Bennett Street is 89% active (53m length of the 60.75m site boundary) with the covered pedestrian colonnade and clear glass windows and Litchfield Street is 11% active (7m length of the 60.75m site boundary) with a covered pedestrian colonnade. Non-active components at the street level include the following

- To Bennett Street, a blank wall of stairs providing access to the terrace at podium level comprising a length of 7m.
- To Litchfield Street, vehicle access to the basement car park in addition to the loading bay, part of the fire pump room and access, and part of the fire boosters and substation, comprising a length of 53m.

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 11% active street frontage to Litchfield Street is granted by the Authority as full compliance would be impractical to achieve as all service areas, loading bay and access to the basement car park are provided on Litchfield Street frontage. The Authority notes that as Litchfield Street is of the lowest order hierarchy (laneway), the benefits of creating non-active areas along Litchfield

Street frontage (by locating all service areas and access) is a good design outcome compared to creating non-active areas along Cavenagh and Bennett Street frontages, which require a high amenity pedestrian environment and have the potential to activate the city centre. The further notes that Litchfield Street is not depicted as an 'Activated Commercial Frontage' within the Central Darwin Area Plan.

Clause 5.2.4 Vehicle Parking

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 252.70 (~253) parking spaces are assessed as required, and 79 are provided in the development within three basement levels. The applicant seeks to reduce 174 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.

Sub-clause 1 provides the Authority with a discretion to determine that fewer car parking spaces are required for a 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 65% (164.4~165 spaces) reduction under categories 1(a), 2(b), 3(b) 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 proposal is within 200m walking distance of the Darwin Bus Interchange (15% reduction).
- Category 2(b) - The site is within 200m walking distance of the publicly accessible Nicholas Place car park (10% reduction).
- Category 3(b) - The proposed vertical landscape elements provided in the development equate to approximately 1015m² (53% approx.) of the site area (20% reduction); and

- 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's assessment concludes that 16 motorbike parking spaces and 10 excess bicycle parking spaces are provided in the development, which equates to four (4) 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 88 spaces.

DAS concludes that the development provides 79 parking spaces (within three basement levels), and considering the motorbike/bicycle parking spaces which equates to four (4) parking spaces, the development has a **shortfall of 5 spaces**.

The Authority notes that the Applicant sought to increase the amount of reduction for vertical landscaping to 25%, arguing that the provision of the integrated landscaping at ground level, within the public Terrace at Level 1 and the vertical landscaping proposed results in a public benefit that equates to the equivalent of providing 75% vertical landscaping, warranting the application of a 25% car parking reduction under category 3(a) of Table to clause 5.2.4.3. The Applicant abandoned that proposition at the hearing, advising that it accepted the DAS calculation of a 5 carpark shortfall and further indicated that it was prepared to make monetary payment to the City of Darwin for the five spaces.

At the hearing, Mr Stewart Hockey (applicant) and Mr Nick Sissons (Project Architects) gave an overview of the background of the proposed development and its architectural and landscaping design features. Mr Hockey and Mr Sisson argued that the publically accessible landscaped area provides a break in the building form, creates visual interest and improves the amenity for occupants by reducing heat load and creating shaded living spaces. Mr Sissons stressed that the terrace level also acts as a feature of the development, providing shade and softening and articulating the built form. This connects the higher levels of the building to the ground and surrounding setting.

The Authority at the hearing questioned the applicant on whether the basement Level 3 can be expanded to provide additional parking spaces to accommodate the shortfall; Mr Sissons explained that it is not possible to expand the basement Level 3 due to the geotechnical constraints. Mr Sissons stressed that the basement proposed has reached its logical capacity and further expansion is technically not feasible.

The Authority acknowledges that the proposed building provides a high level of pedestrian amenity through its high architectural quality, awnings and large open terrace at level 3, which will be accessible by

the public at all times. The Authority noted however that the NTPS 2020, under sub-clause 3(a) of Clause 5.2.4.3, considers the vertical landscaping as green walls, living walls or vertical gardens) that is fully vegetated, well integrated with the overall building design and publicly visible on the external building façade(s). As terrace level landscaping will not be visible from the street frontage, the Authority was unanimous in determining that a 25% reduction under category 3(a) cannot be applied to the development. The Authority determined to include a condition for a monetary payment to the City of Darwin for 5 spaces shortfall under section 70(6) of the *Planning Act 1999*.

In response to the question raised by the Authority regarding the reduction sought under Clause 5.2.4.3 (Reduction in Parking Requirements within Zone CB in Darwin), the Authority was addressed at length by Mr Hocking, Mr Sissons and Michael Grassi from Podia (referred to from hereon in collectively as the 'applicant'). The applicant stressed that the development proposes to utilise the reduction under Clause 5.2.4.3 by incorporating landscaping into the building design, locating all parking in the basement, thus providing an opportunity to include active uses and frontage towards the street, and proximity to the Litchfield Street Car Park. Mr Grassi stressed that the current parking demand for the site could be met by the car parking provided in the development and Litchfield Street Car Park, which is currently underutilised. Mr Grassi confirmed to the Authority that further access to the Litchfield Street car park can be provided to the development users as required.

The Planning Scheme in Clause 1.10 considers the exercise of discretion by the Authority and provides in subclause (5), where a proposed use or development is not in accordance with a requirement set out in Parts 3, 5 or 6, the Authority must be satisfied that the variation is appropriate having regard to the purpose and administration clauses of the requirement and the considerations listed under Clause 1.10(3) or 1.10(4). That sub-clause is not applicable in this case as the authority is not considering a variation to a requirement but the nature of the requirement itself. An exercise of the Authority's discretion under Clause 5.2.4.3 has the effect of setting a new requirement for car parking for the particular development application rather than varying the requirement. However the Authority notes the considerations listed in subclause (5). It further notes that Section 51(1) on the *Planning Act 1999* sets out the matters that the Authority must take into account in considering a development application and those are the matters that should inform the exercise of discretion by the Authority. They include, inter alia, any relevant planning scheme, public submissions, amenity and any other matters the Authority thinks fit.

The Authority has taken all comments into account and carefully considered the material provided with the application. 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 is not satisfied with the amount of reduction sought. In this case, having had regard to the various matters listed in Section 51(1), and the primary requirement in Clause 5.2.4.1 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 has determined that the amount of the reduction should be varied by an additional 25 spaces to the amount of 88 spaces assessed by DAS, so that the total parking car parking requirement for the development is 113 spaces. Of those spaces, 79 parking spaces are provided within three basement levels, the motorbike/bicycle parking spaces equates to four (4) parking spaces, and 25 spaces are to be provided in the Litchfield Street Car Park totalling 108 spaces. The shortfall is to be provided by way of a monetary payment to the City of Darwin for **5 car parking spaces**.

In reaching its determination with respect to the car parking reduction, the Authority has taken into account amenity issues including the nature of the site and the interface with Litchfield Street in particular, the concerns of the public submitter and the loss of 3 on-street publically available car parks. It also notes in respect of the 10% reduction under Category 2(b) of Clause 5.2.4.3, that it has its reservations about the availability of parking at Nicolas Place. Given the applicant indicated that further access to the Litchfield Street car park can be provided as required, the Authority determines to offset the 10% reduction sought under Category 2(b) and provide 25 car parking bays within Litchfield Street Car Park. Mr Grassi, on behalf of the Applicant, agreed to provide additional car parking to the development users as required.

The Authority notes that Clause 5.2.4.3, while providing a table with various possible reductions and suggested percentages, is silent as to 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.

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 12125m² and requires 6 loading bays. The development proposes a loading dock of 4.7m x 9m which is an equivalent area to 1 loading bay, 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.

A variation to provide one loading bay is considered appropriate 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 two van deliveries at a time.
- If the same net floor area were proposed as 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 one loading bay 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 Authority was mindful of the character of Litchfield Street, which is highly relied upon by surrounding uses for loading and unloading activities. The Authority questioned the applicant on the possibility of expanding the loading dock area to accommodate an additional delivery truck. The applicant agreed that minor design changes could be made to the building to reconfigure and expand the loading area and was amenable to including a condition to this effect. Condition Precedent 1 is included to reflect this requirement.

Clause 5.4.7 Communal Open Space

This clause applies only to two dwellings-group proposed at level 13 of the building.

Purpose

Ensure that suitable areas for communal open space are provided for dwellings-group, dwellings-multiple, residential care facilities and rooming accommodation.

Administration

1. *This clause does not apply to dwelling-group or dwelling-multiple where each dwelling has direct and independent access to private open space at ground level.*
2. *The consent authority may consent to a dwelling-multiple comprising serviced apartments in Zone TC that is not in accordance with sub-clause 3 only if it is satisfied it is consistent with the purpose of this clause and that the private open space associated with each dwelling provides appropriate opportunities for outdoor activities.*

The clause requires minimum of 15% of the site, being not less than 6m wide at any point, is to be communal open space.

The proposal does not provide any communal open space. The administration subsection of this clause does not provide guidance on how this clause can be varied by the consent authority.

Pursuant to Clause 1.10 (5), the consent authority may consent to a proposed use or development that is not in accordance with a requirement set out in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:

- (a) the purpose and administration clauses of the requirement; and*
- (b) the considerations listed under Clause 1.10(3) or 1.10(4).*

The Authority notes the DAS's assessment concludes the following:

- There are only two proposed dwellings on site. Therefore, the overall dwelling density of the site is not considered to necessitate the requirement of communal open space.
- The private open space provided for each dwelling exceeds the minimum 12m² requirement under the NTPS 2020. *[The proposal provides 24m² of private open space to the one-bedroom dwelling and 65m² of private open space to the three-bedroom dwelling]*
- The private open space provided to the dwellings includes built in planter boxes (not included as part of the area calculation) that allow landscaping opportunities above what would traditionally be afforded on a residential balcony in the city centre.
- The site is within 120m walking distance of Civic Park and within 200m walking distance of the State Square Precinct.
- The primary use of the site is as an office. The food premises and dwellings-group are secondary to the primary use.

The Authority, having regard to the Purpose and Administration of the clause is satisfied to grant a variation to the clause since each dwelling is expected to have a suitable area to provide for communal activities.

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

One public submission was received during the exhibition period under Section 49 of the *Planning Act 1999* with respect to the proposal. The submission was lodged by Cunnington Rosse Town Planning and Consulting on behalf of the Salsa Holdings Pty Ltd, operator of the Cavenagh Hotel and bottle shop, located at lots 2375 and 2376 Town of Darwin (16 and 12 Cavenagh Street).

The submission does not object to the proposed development; however, it submits that the loading and unloading of hotel and bottle shop are primarily undertaken from kerbside loading bays along Litchfield Street, and any disruption to the traffic on Litchfield Street during construction will significantly impact its operation. The submitter further submits that the construction traffic management must ensure no interruption to vehicles travelling along Litchfield Street to Cavenagh Street. The submitter also raises the potential issue of reverse amenity impacts on the development from the operations on the Cav hotel.

The Authority considers that the reverse amenity issues raised by the submitter can be considered in the context of Central Business zoning and inter-land use interface. The Authority notes that Zone CB is a flexible zone intended to provide diverse activities. The site falls within Focus Area A1 – City Centre Core in the Central Darwin Area Plan (CDAP). This Focus Area encourages explicitly mixed-use development (similar in nature), increased active frontages and pedestrian connections to enhance the overall vibrancy of the CBD. While the potential issue of reverse amenity raised by the applicant is acknowledged, the design of the building sufficiently mitigates conflicts and any concerns regarding loss of amenity. The Authority further notes that it is reasonable to consider that the pub-based business activities would primarily occur in the evening, outside of the office hours of operation. During the day, when the office and The Cav are concurrently in operation, the pub would generally be comparable to any other restaurant or café.

Regarding construction traffic, The City of Darwin has requested a condition on any permit requiring an environmental and construction management plan that will address traffic management during construction. This is included as Condition Precedent 06 on the permit.

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. 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 have been sought in relation to the capability of the land, including the proposed access arrangements, easements, and building heights.

The applicant at the hearing requested the Authority to remove the Condition Precedent 1 to provide amended plans showing 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 as the City of Darwin in its further submission has not raised any such requirement. Ms Cindy Robson from the City of Darwin confirmed to the Authority that recommended Condition Precedent is not required as considerable discussion on this requirement has taken place between the applicant and the City of Darwin. The recommended condition precedent is removed accordingly from the permit.

The Authority notes that the City of Darwin's further submission 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 recommended conditions and notes on the permit.

The Authority further notes that the City of Darwin requests a monetary contribution to remove three on-street car parks on Litchfield Street 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 a note on any permit issued.

All requirements of other service authorities are addressed through recommended conditions and notes on the permit.

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.

An assessment against community safety through environmental design has been undertaken as part of the technical assessment, and generally, the design employs principles of crime prevention through environmental design, including through activation of Cavenagh and Bennett Streets through commercial tenancies and glazing, with no areas of entrapment identified. The design includes glazing at upper levels, and the glass awning to the street allows for the continuation of views to the footpath below. The provision of the Terrace landscaping,

in conjunction with the ground level and vertical landscaping provides a built form that will contribute to the amenity of pedestrians and surrounding areas.

The application, however, includes limited activation to the Litchfield Street frontage, and this is separately identified as non-compliance. Access for persons with disabilities is expected to be reviewed as part of building requirements.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

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

SUZANNE PHILIP
Chair

13 May 2022