



## **DEVELOPMENT CONSENT AUTHORITY**

### **DARWIN DIVISION**

### **MINUTES**

**MEETING No. 313 – FRIDAY 20 APRIL 2018**

**BILLABONG ROOM  
NOVOTEL DARWIN ATRIUM  
100 THE ESPLANADE  
DARWIN**

**MEMBERS PRESENT:** Suzanne Philip (Chair), Doug Phillips (not Item 6), John Gleeson, Mick Palmer and Sherry Cullen

**APOLOGIES:** Nil

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), Anthony Brennan (Items 4-7) Dawn Parkes, Sarah Silva, Adelle Godfrey (Items 1-3) and Ben Wollinski (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** David Burrow and James Whyte (Item 7 only)

**Meeting opened at 9.00 am and closed at 5.15 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**                    **CHANGE OF USE FROM WAREHOUSE TO LIGHT INDUSTRY**  
**PA2018/0103**            **(MICROBREWERY) WITH ANCILLARY OFFICE AND SHOP (CELLAR DOOR)**  
                                 **(UNIT 2)**  
**APPLICANT**            **LOT 9232 (14) TANG STREET, TOWN OF NIGHTCLIFF**  
                                 **ELTON CONSULTING**

Mrs Hanna Steevens (Elton Consulting) and Mr Chris Brown (Head Brewer) attended.

**RESOLVED**            That the Development Consent Authority reduce the car parking requirements  
**48/18**                    pursuant to Clause 6.5.2 (Reduction in Parking Requirements), and vary the requirements of Clauses 6.5.3 (Parking Layout), 6.6 (Loading Bays), 9.1.1 (Industrial Setbacks) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act*, consent to the application to develop Lot 9232 (14) Tang Street, Town of Nightcliff for the purpose of a change of use from warehouse to light industry (microbrewery) with ancillary office and shop (cellar door) (Unit 2), 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 land must enter into agreements with the relevant authorities for the provision of water supply, sewerage, and electricity services to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
3. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin to the satisfaction of the consent authority.
4. The loading and unloading of goods from vehicles 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.
5. The car parking shown on the endorsed plan/s must be available at all times for the exclusive use of the occupants of the development and their visitors.
6. The cellar door use may operate only on a fortnightly basis between the hours of 5pm and 10pm.

**NOTES:**

1. The City of Darwin advises that any works on/over Council property shall be subject to separate approval, at no cost to Council.
2. The City of Darwin advises that notwithstanding the approved plans, all signage is subject to Council approval, at no cost to Council.

3. The development and use hereby permitted should be designed, constructed, registered and operate in accordance with the National Construction Code of Australia, the NT Public Health Act and Regulations, the *NT Food Act* and National Food Safety Standards.
4. 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.

### REASONS FOR THE DECISION

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

The application is for a light industry (microbrewery) with ancillary office and shop (cellar door) which is consistent with the primary purpose of Zone LI (Light Industry) of the Northern Territory Planning Scheme in providing for light industry uses or development activities that will not by the nature of their operations, detrimentally affect adjoining or nearby land. The shop component comprises a fortnightly cellar door evening (5pm – 10pm), for beer tastings plus a food van for up to 30 people. The fortnightly cellar door, although a regular event is ancillary to the primary use of the land as light industry.

2. An assessment against Clause 6.5.1 (Parking Requirements) identifies 5 car parking spaces are required to provide for the regular business hours component of the use, and separately 9 spaces for the fortnightly evening cellar door component. As only 3 spaces are available on site, a shortfall was identified. A reduction to the parking required under Clause 6.5.1 (Parking Requirements), pursuant to Clause 6.5.2 (Reduction in Parking Requirements) of the Scheme is granted as a microbrewery with one staff member only is deemed to be a less intensive use of the land compared to typical light industrial premises of similar size, and since there is expected to be availability of parking spaces along Tang Street after hours to provide for the fortnightly cellar door event.
3. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the Planning Scheme, the consent authority may consent to a development that does not meet the standard set out in Parts 4 and 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

The use will rely on a loading bay of small length, 5m when 7.5m is required by Clause 6.6 (Loading Bays) of the Planning Scheme. A variation to this clause is granted as the use will still allow for practical loading as smaller delivery vehicles are confirmed for the use and also given the position of the roller doors allowing an expansion in the loading area as it opens into the building. The loading area is also

noted as being consistent with that provided in the original warehouse construction.

Also, the original warehouse construction was approved with a 1m landscaped area along the front of the site, which has since been sealed. The consent authority grants a variation to the requirements of Clauses 9.1.1 (Industrial Setbacks) and 6.5.3 (Parking Layout) which would normally require the provision of landscaping along the front of the site. The application relates to the change of use of the existing building only. The consent authority heard that the proponent intends on temporary/portable adornments during the cellar door activity which may result in some improvements to the appearance of the site at these times.

4. Pursuant to section 51(m) of the *Planning Act*, the consent authority must take into consideration the public utilities or infrastructure provided in the area in which the land is situated.

Comments were received from a number of service authorities regarding servicing requirements. It is noted that the site is currently serviced but upgrades may be required and therefore applicable conditions and notes are included on the development permit to reflect servicing requirements.

5. Pursuant to section 51(n) of the *Planning Act*, 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 applicant has outlined that the microbrewery processes will include the generation of vapour for limited times and whilst this may create a smell, the vapour emissions are not expected to be unpleasant or adversely affect surrounding light industrial properties. The bottling of beer is another process which has the potential to generate some level of noise, however the consent authority considered that the extent of this noise would not detrimentally impact adjoining land. The parking assessment has shown that despite less parking being provided on site than technically required, given the specific nature of the use proposed, less parking is expected to be required during business hours, with on-street parking expected to be available for the evening component.

**ACTION:** Notice of Consent and Development Permit

**ITEM 2  
PA2018/0086**

**40 X 2 BEDROOM MULTIPLE DWELLINGS, 37 MOTEL ROOMS AND  
GROUND LEVEL COMMERCIAL TENANCIES IN AN 18 STOREY BUILDING  
INCLUDING 1 BASEMENT LEVEL AND 5 ABOVE-GROUND CAR PARKING  
LEVELS**

**APPLICANT**

**LOT 2445 (9) DALY STREET, TOWN OF DARWIN  
NORTHERN PLANNING CONSULTANTS PTY LTD**

DAS tabled a late submission.

Mr Brad Cunnington (Northern Planning Consultants Pty Ltd), Mr Moses John (Jackman Gooden Architect) and Mr Michael Tolios attended.

Mr Cunnington tabled a south western elevation of a proposed development in Daly Street.

Submitter: Altitude Management represented by Ms Alicia Tollner attended.

**RESOLVED  
49/18**

That, pursuant to section 46(4)(b) of the *Planning Act*, the Development Consent Authority defer consideration of the application to develop Lot 2445 (9) Daly Street, Town of Darwin for the purpose of 40 x 2 bedroom multiple dwellings, 37 motel rooms and ground level commercial tenancies in an 18 storey building including 1 basement level and 5 above-ground car parking levels, to require the applicant to provide the following additional information that the Authority considers necessary in order to enable the proper consideration of the application:

- The submission of amended plans demonstrating the location of a drop-off zone to the Daly Street frontage, to provide for expected vehicles servicing visitors to the motel.

**REASONS FOR THE DECISION**

1. The request for amended plans demonstrating an option for a drop-off zone to the Daly Street frontage is to consider how vehicles servicing visitors to the motel can be accommodated as part of the development.
2. The amended plans will allow the consent authority the opportunity to seek comments from the City of Darwin in relation to this component prior to determining the application.

**RESOLVED  
50/18**

That, pursuant to section 86 of the *Planning Act*, the Authority delegates to the Chair, or in the Chair's absence any one of the other members of the Darwin Division the power under section 53 of the Act, to determine the application to develop Lot 2445 (9) Daly Street, Town of Darwin for the purpose of 40 x 2 bedroom multiple dwellings, 37 motel rooms and ground level commercial tenancies in an 18 storey building including 1 basement level and 5 above-ground car parking levels subject to:

- The submission of amended plans demonstrating the location of a drop-off zone to the Daly Street frontage, to provide for expected vehicles servicing visitors to the motel.

Further subject to conditions as determined by the delegate.

**ACTION:** Advice to Applicant

**ITEM 3  
PA2018/0054  
APPLICANT**

**CARPORT ADDITION TO AN EXISTING SINGLE DWELLING WITH A  
REDUCED FRONT SETBACK  
LOT 6616 (6) KAILIS STREET, TOWN OF NIGHTCLIFF  
DPL DEVELOPMENT**

Mr Darron Lyons (DLP Development) attended.

**RESOLVED  
51/18**

That, pursuant to section 46(4)(b) of the *Planning Act*, the Development Consent Authority defer consideration of the application to develop Lot 6616 (6) Kailis Street, Town of Nightcliff for the purpose of a carport addition to an existing

single dwelling with a reduced front setback, to require the applicant to provide the following additional information that the Authority considers necessary in order to enable the proper consideration of the application:

- The submission of amended plans demonstrating a front setback not exceeding 2.5m to the columns and 1.9m to the eaves. All setbacks must be clearly identified on the plans.

#### **REASONS FOR THE DECISION**

1. The consent authority determined that a more compliant front setback could be achieved and after discussion with the applicant considered that a 2.5m setback (1.9m to the eaves) would be a suitable compromise to achieve greater compliance yet still provide the necessary protection for the owner's vehicles.

#### **RESOLVED 52/18**

That, pursuant to section 86 of the *Planning Act*, the Authority delegates to the Chair, or in the Chair's absence any one of the other members of the Darwin Division the power under section 53 of the Act, to determine the application to develop Lot 6616 (6) Kailis Street, Town of Nightcliff for the purpose of a carport addition to an existing single dwelling with a reduced front setback subject to:

- The submission of amended plans demonstrating a front setback not exceeding 2.5m to the columns and 1.9m to the eaves. All setbacks must be clearly identified on the plans.

Further subject to conditions as determined by the delegate.

**ACTION:** Advice to Applicant

#### **ITEM 4 PA2018/0059**

#### **ANCILLARY STRUCTURE ADDITIONS (POOL HOUSE AND BBQ AREA) TO AN EXISTING SINGLE DWELLING WITH REDUCED SIDE AND REAR SETBACKS**

#### **APPLICANT**

**LOT 3781 (13) LARRAKEYAH TERRACE, TOWN OF DARWIN  
JUNE D'ROZARIO**

Ms June D'Rozario and Mr George Tsirbas (landowner) attended.

Submitters in attendance: - Mr Ian Lea and Ms Janine Anketell attended.

Mr Lea tabled further information and a photo showing his view.

#### **RESOLVED 53/18**

That, the Development Consent Authority vary the requirements of Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act*, consent to the application to develop Lot 3781 (13) Larrakeyah Terrace, Town of Darwin for the purpose of ancillary structure additions (pool house and bbq area), subject to the following conditions:

#### **CONDITIONS PRECEDENT**

1. Prior to the commencement of works (including site preparation), a schematic plan demonstrating the on-site collection of stormwater and its

discharge into the 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 stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected to the underground system.

## **GENERAL CONDITIONS**

2. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
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. The owner of the land must enter into agreements with the relevant authorities for the provision of electricity facilities to the land shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
5. 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. Stormwater is to be directed away from the adjacent boundary with Lot 3780 (20) Packard Street, Town of Darwin.
6. The owner must implement necessary measures to ensure that the narrow space created by the reduced setback between the bbq area and the boundary with adjacent Lot 3780 (20) Packard Street, Town of Darwin is maintained and kept free from weeds.

## **NOTES:**

1. This development permit does not grant building approval. You are advised to contact a registered private Building Certifier to ensure that you have attained all necessary approvals before commencing construction works.
2. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
3. There are statutory obligations under the *Weeds Management Act* to take all practical measures to manage weeds on the property. For advice on weed management please contact the Department of Environment and Natural Resources.

## **REASONS FOR THE DECISION**

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

The primary purpose of Zone SD (Single Dwelling Residential) is to provide for low density urban developments. The development is for a pool house and bbq area addition to the existing dwelling and will not change the residential use of the site.



The Authority noted that the pool house and bbq area was originally intended to be open in nature (which would have been permitted development) and that the inclusion of doors (in respect to the pool house) and a roof (in respect to the bbq area) is the reason for the retrospective nature of the application. The Authority heard from the applicant that it was decided to enclose the structures to reduce noise transmission from this area into neighbouring properties as well as to provide protection to the equipment from the weather. For this reason a variation to Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures) of the NT Planning Scheme is now required.

2. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the Northern Territory Planning Scheme the Authority may consent to a development that does not meet the standard set out in Part 4 and 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

#### Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures)

The purpose of Clause 7.3 is to ensure residential buildings and ancillary structures are located so:

- they are compatible with the streetscape and surrounding development including residential buildings on the same site;
- as to minimise any adverse effects of building massing when viewed from adjoining land and the street;
- as to avoid undue overlooking of adjoining properties; and
- as to encourage breeze penetration through and between buildings.

The Authority considered the variation sought in context with the abovementioned purpose of Clause 7.3 and that the structures would both be permitted forms of development if it was not for the inclusion of doors and a roof respectively.

The pool house is a small structure (6m<sup>2</sup>) with a specific function to house the pool filter and associated equipment. The structure would be a permitted form of development under Clause 1.3 (Exceptions) of the NT Planning Scheme if either (a) it did not contain doors or (b) if the structure was made wider to allow the doors to be positioned at least 1.5m from the boundary (currently located 1.2m from the boundary). The Authority considered that the inclusion of doors would aid in reducing any associated noise from the pool pump and that enclosing the structure would result in a more visually aesthetic product as it will screen the pool equipment from view.

The bbq area mostly consists of a blockwork wall which does not require planning approval. The addition of a roof triggers the requirement to gain planning approval for the structure and therefore the Authority considered whether or not the addition of the roof would affect compliance with the purpose of Clause 7.3. In respect to the location of the bbq area the Authority noted that the subject lot is slightly irregular in shape (parallelogram) and the siting of the dwelling and pool limits the opportunities for larger and more practical areas of private open space. By locating the bbq area in the far rear corner, the



areas of private open space within the site are maximised. The Authority observed that the neighbouring property at 22 Packard Street does not have any windows at ground level that face the affected boundary but a section of first floor window and a balcony area overlook the bbq area. By providing a roof over the bbq area, any potential privacy or smoke impacts to this property (and to 20 Packard Street) are expected to be minimised.

Conditions requiring submission of a stormwater management plan to the City of Darwin council; that stormwater is to be directed away from the adjoining property; and that the owner implements practical measures for the maintenance and control of weeds within the narrow space created between the bbq area and the adjoining boundary by the reduced setback, are considered necessary to ensure that the proposed development remains compatible with surrounding development.

For the reasons stated above, the Authority has determined to grant a variation to Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures) to allow for a 0m setback to the pool house (1.5m required) and a 0.2m - 0.7m setback to the bbq area (1m required).

3. Pursuant to section 51(e) of the *Planning Act*, the consent authority must take into account any submissions made under section 49, in relation to the development application.

One submission was received during exhibition of this proposal from the owner of adjacent Lot 3780 (20) Packard Street, Town of Darwin. Mr Lea raised concerns regarding landscaping on the subject site and more specifically, requested that any landscaping to the west of the proposed pool house be maintained to a maximum height of 3m so as to not restrict his current views of the harbour.

During the meeting the Authority heard from Mr Lea who explained that the main basis for his submission was to find some resolution in relation to the landscaping and the obstruction of views that he was afforded when he first purchased his property. Mr Lea explained that these views were in fact one of the selling points of the property when it was on the market. Mr Lea tabled further information outlining his concerns which included a number of pictures showing various views from his property over recent years.

Mr Lea raised concern in relation to the location of the proposed bbq area and with the potential for problems such as weed management to arise with the narrow space created behind the bbq area and his adjoining boundary.

The Authority considered Mr Lea's submission in detail and in addition raised concern with the finish of the blockwork wall (facing Mr Lea's property) and with the potential for stormwater to drain onto the adjacent property given the reduced setback.

The landowner was present at the meeting and confirmed that he had previously spoken with Mr Lea and that the blockwork wall would be finished and painted in an agreed colour. The landowner explained that any further works on the bbq area have been postponed until the relevant approvals have been granted.

The Authority determined that conditions requiring submission of a stormwater plan to the City of Darwin council; that stormwater is to be directed away from the adjoining property; and that the owner implements practical measures for the maintenance and control of weeds within the narrow space created between the bbq area and the adjoining boundary by the reduced setback, are considered necessary to not only ensure that the proposed development remains compatible with surrounding development but also in an effort to alleviate some of Mr Lea's concerns.

As there is no landscaping required by the relevant requirements of the Northern Territory Planning Scheme in relation to the current proposal, the Authority is not justified in imposing conditions relating to the maintenance of existing landscaping. The Authority does however sympathise with Mr Lea and encourage the landowners to continue discussions for an amicable outcome.

4. Pursuant to Section 51(j) of the *Planning Act*, the consent authority must take into consideration the capability of the land to which the proposed development relates, 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 is retrospective (although it is noted that the bbq area is still under construction) and the site has already been developed with a single dwelling which gives some indication that the land is capable of supporting the proposed development. Provided that stormwater is adequately controlled on-site which is a condition of approval, no land capability issues are expected. The Department of Environment and Natural Resources has assessed the information contained in the application and has not identified any issues of concern in relation to land capability.

5. Pursuant to Section 51(n) of the *Planning Act*, 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 development accords with the type of development ordinarily permitted and anticipated within a residential zone. The reduced setbacks which trigger the requirement for planning approval are considered to have no additional impact on the amenity of the area in comparison to compliant setbacks. Appropriate conditions and notes have been applied to the development permit to further ensure that the existing amenity of the area is maintained.

It is noted that Mr Lea would like the inclusion of relevant conditions to ensure the height of existing landscaping on the subject site does not exceed a height of 3m and cites this section of the Act in requiring such conditions. The Authority acknowledges that the existing landscaping

may impact on Mr Lea's amenity but unfortunately it cannot impose conditions relating to existing landscaping that does not form part of the current development.

**ACTION:** Notice of Consent and Development Permit

**ITEM 5**  
**PA2018/0081**  
**APPLICANT**

**3-STOREY UNDERGROUND CARPARK (450 SPACES)**  
**LOT 3940 (25) MITCHELL STREET, TOWN OF DARWIN**  
**DEPARTMENT OF INFRASTRUCTURE PLANNING AND LOGISTICS**

DAS tabled an amended recommendation which includes changes to the conditions precedent to allow for archaeological investigations.

Mr Tim O'Neill and Mr John Harrison (Department of Infrastructure, Planning and Logistics) attended.

Submitter Mr Gerry Wood MLA attended.

**RESOLVED**  
**54/18**

That, pursuant to section 53(a) of the *Planning Act*, the Development Consent Authority, consent to the application to develop Lot 3940 (25) Mitchell Street, Town of Darwin for the purpose of a 3-storey underground carpark (450 spaces), subject to the following conditions:

**CONDITIONS PRECEDENT**

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation, but excluding any Archaeological Investigations required by the Heritage Branch, DTC), the applicant is to provide in principle approval from the Power and Water Corporation (Water Services) for any proposed building encroachment within the sewerage easement at the rear southern corner of the site.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation, but excluding any Archaeological Investigations required by the Heritage Branch, DTC), a landscape plan to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and must show:
  - a) a survey (including botanical names) of all existing vegetation to be retained and/or removed;
  - b) details of surface finishes of pathways and driveways;
  - c) a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant;
  - d) provision of an in ground irrigation system to all landscaped areas;
  - e) details of any proposed lighting;
  - f) details of any public facilities;
  - g) provision for hosting public events; and
  - h) provision of bicycle racks at surface level.All species selected must be to the satisfaction of the consent authority.

3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation, but excluding any Archaeological Investigations required by the Heritage Branch, DTC), a traffic impact assessment report is to be prepared by a suitably qualified traffic engineer with attention to vehicular, pedestrian, cyclist and public transport issues, including:
  - a) an assessment of the suitability for access from Herbert Street, Bennet Street and Mitchell Street which considers pre and post development volumes; and
  - b) details of the extent to which the carpark will be utilised as a public or private car park and the intent of its occupancy in terms of short term (High turnover or all day parking).

The report should identify any necessary upgrades to the surrounding street network to the requirements of the City of Darwin, to the satisfaction of the consent authority.
4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation, but excluding any Archaeological Investigations required by the Heritage Branch, DTC), a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Darwin's 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. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council's system.
5. Prior to the commencement of works (including site preparation, but excluding any Archaeological Investigations required by the Heritage Branch, DTC), a qualified person experienced in the investigation and assessment of contaminated land, must provide clearance that the grounds of the site are free of contaminants. This clearance will form part of this permit and must be provided to the Environment Division of the Department of Environment and Natural Resources, to the satisfaction of the consent authority.
6. Prior to the commencement of works (including site preparation, but excluding any Archaeological Investigations required by the Heritage Branch, DTC), a Construction Environmental Management Plan (CEMP) for the management and operation of the use must be prepared to the requirements of an independent suitably qualified professional and submitted to and approved by the consent authority upon the advice of City of Darwin. When approved, the CEMP will be endorsed and will then form part of the permit. The use must at all times be conducted in accordance with the endorsed plan. The CEMP must include:
  - (a) waste management;
  - (b) traffic control;
  - (c) haulage routes;
  - (d) stormwater drainage;
  - (e) use of City of Darwin land; and
  - (e) day to day management requirements for the use.
7. Prior to the commencement of works (including site preparation, but excluding any Archaeological Investigations required by the Heritage Branch, DTC), 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

8. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
9. The use and/ or development as shown on the endorsed plans must not be altered without the further consent 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. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage and electricity facilities to the land shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
12. 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.
13. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of City of Darwin, to the satisfaction of the consent authority. The owner shall:
  - (a) remove disused vehicle and/ or pedestrian crossovers;
  - (b) provide footpaths/cycleways;
  - (c) collect stormwater and discharge it to the drainage network; and
  - (d) undertake reinstatement works.All to the technical requirements of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
14. Before the use of the development starts, the areas set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
  - (a) constructed;
  - (b) properly formed to such levels that they can be used in accordance with the plans;
  - (c) surfaced with an all-weather-seal coat;
  - (d) drained;
  - (e) line marked to indicate each car space and all access lanes; and
  - (f) clearly marked to show the direction of traffic along access lanes and drivewaysto the satisfaction of the consent authority.  
Car spaces, access lanes and driveways must be kept available for these purposes at all times.
15. Before the use 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.
16. 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.

17. 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.
18. 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.
19. Storage for waste bins is to be provided to the requirements of the City of Darwin to the satisfaction of the consent authority.
20. Appropriate soil erosion, sediment and dust control measures must be effectively implemented throughout the construction stage of the development and all disturbed soil surfaces must be suitably stabilised against erosion at completion of works, to the satisfaction of the consent authority.
21. Dust control measures must be employed throughout the construction stage of the development to the requirements of the Environment division of the Department of Environment and Natural Resources, to the satisfaction of the consent authority.

**NOTES:**

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerdevelopmentnorth@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. 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.
3. Notwithstanding the approved plans, all signage is subject to City of Darwin approval, at no cost of Council.
4. The City of Darwin advises that all street trees shall be protected at all times during construction. Any tree on a footpath, which is damaged or removed during construction, shall be replaced, to the satisfaction of the General Manager Infrastructure, City of Darwin. A Tree Protection Zone (TPZ) shall be constructed for all existing trees to be retained within the development, in accordance with Australian Standards – AS 4970-2009 "Protection of Trees on Development Sites".
5. A "Permit to Work Within a Road Reserve" will be required from the City of Darwin before commencement of any work within the road reserve.
6. The permit holder is advised that it is an offence to disturb or destroy prescribed archaeological places without consent under the *Heritage Act*. Should any heritage or archaeological material be discovered during the



clearing operation, cease operation and please phone Heritage Branch of the Department of Tourism and Culture.

7. The permit holder is advised that the proposal may have assessment implications under the *Waste Management and Pollution Control Act*. More information can be found on the Northern Territory Environment Protection Authority website at: <https://ntepa.nt.gov.au/waste-pollution>. The applicant is encouraged to contact the NT EPA on (08) 8924 4218 or [ntepa@nt.gov.au](mailto:ntepa@nt.gov.au).
8. The Environment Division of the Department of Environment and Natural Resources advises that during the excavation, the basement may fill with turbid sediment laden stormwater. The proponent should ensure that any pit-water discharged from the development is in accordance with their document *Guidelines to prevent pollution from building sites*.
9. The Environment division of the Department of Environment and Natural Resources advises that construction work should be conducted in accordance with the Authority's Noise Guidelines for Development Sites in the Northern Territory. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.
10. 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](mailto: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(a) of the *Planning Act*, the consent authority must take into consideration the planning scheme that applies to the land to which the application relates.

The proposed development is a 3-storey underground carpark, ancillary to existing development within the central business area. The carpark is to be established, used and maintained predominantly for the purpose of vehicle parking and will also be utilised as a Public Cyclone Shelter in emergency situations.

The proposed development was assessed against the relevant requirements of the NT Planning Scheme and was found to be fully compliant.

The applicant advised that the intended outcome is to relocate all of the existing surface level carparking underground (currently located adjacent to Parliament House and the Supreme Court) to facilitate redevelopment of the Civic Precinct into a cool, green space. However, additional landscaping to the roof top slab will be delayed until whole of precinct concept plans are finalised and will be installed as a separate project. Notwithstanding this, a landscape plan is required to be submitted to show details of what will be removed and retained during the construction process and to ensure that the roof top slab is



reinstated with at least the same level of landscaping as existing to ensure that the same level of amenity is achieved while the whole of precinct concept plans are finalised and implemented.

The application states that Crime Prevention through Environmental Design (CPTED) principles have been incorporated into the carpark design to improve sightlines and passive surveillance throughout the facility. Attention has been paid to good quality lighting and CCTV throughout the new facility. Toilet and shower facilities have been incorporated as well as bike racks at the surface level. Details of these additions are required to be submitted through amended plans.

2. Pursuant to section 51(e) of the *Planning Act*, the consent authority must take into account any submissions made under section 49, in relation to the development application.

The application was advertised in the NT News on 2<sup>nd</sup> March 2018 and placed on public exhibition for a period of two weeks. A total of three public submissions were received under section 49(1) of the *Planning Act*.

Concerns raised in written submissions included the cost of the development that could be better spent on more sustainable, cost effective development (such as a more practical carpark location, a light rail or upgraded transport system to reduce cars in the city) and the outdated concepts within the City Centre Master Plan 2015. Concerns were also raised in relation to the noise and traffic impacts resulting from the excavation of the site and it was suggested that landscaping should be part of the plan and not put off to a later date.

One public submitter was present on the day and spoke further to their original submission. They placed importance on the landscaping of the site and while they acknowledged that the details of this could be provided through amended plans, they noted that this does not give the public an opportunity to see the plans. The submitter noted the 'schematic' landscape plan that was shown but suggested that a more detailed plan was necessary that included details such as what was existing and proposed and the inclusion of appropriate species for the location.

Given the basement carpark below, a question was raised of whether or not shade trees would in fact be able to be planted given the shallow soil depths.

The submitter also raised concern with potential traffic and pedestrian issues associated with access and commented on the lack of traffic assessment provided within the application.

In considering the traffic concerns the Authority heard from the applicant that a traffic impact assessment report had recently been submitted to the City of Darwin for their review. A condition precedent requiring its submission to the requirements of the City of Darwin has been included on the development permit. The Authority noted that it is common practice to include such a requirement as a condition precedent to allow the controlling agency (the City of Darwin in this

instance) sufficient time to review the document. If the outcome of the traffic impact assessment report is such that it substantially changes the design of the proposed development then further consent will be required.

In response to the comments on landscaping the applicant accepted that they would have to submit a more detailed landscaping plan as had been requested through a recommended condition precedent. They reiterated however that the development of the underground carpark was an enabling project to allow the rest of the civic precinct to be developed in accordance with plans forming part of a separate project that was being undertaken between the Northern Territory Government, Charles Darwin University and the City of Darwin. The applicant stated that it was more appropriate for the final landscaping of the site to be undertaken at the same time as the rest of the precinct to allow for a seamless outcome.

The Authority acknowledged that the current proposal was for an underground car park on one site and that the whole of precinct concept involving multiple sites would be undertaken as a separate project. The Authority were satisfied that the subject site would be landscaped appropriately on completion of the development to provide the same level of amenity as what is currently on site and specific details of this landscaping could be provided through amended plans which have been required as a condition of consent. The Authority were mindful that this plan will not be available to the public but considered that the whole of precinct concept plans will be available for public comment and that the plan that forms part of this development will just ensure that the same level of landscaping as current exists is reinstated upon completion of the development.

Conditions requiring a stormwater management plan, an Environmental and Construction Management Plan and a dilapidation report, as well as a notation referring to the NT Environment Protection Authority (NT EPA) Noise Guidelines for Development Sites in the Northern Territory detailing recommended hours of construction to minimise noise related nuisance in the general vicinity of the site within the construction phase of the development have all been applied to the development permit.

3. Pursuant to section 51(h) of the *Planning Act*, the consent authority must take into account the merits of the proposed development as demonstrated in the application

The applicant stated that the merits include that 'the new carpark will enable the transformation of the area from an expansive heat generating bitumen carpark to a tropical, people friendly space that Territorians can be proud of. The carpark will operate on a 24 hour basis providing a safe and secure environment for the public to park afterhours and for special events in and around the precinct. It also addresses an identified shortage in cyclone shelter facilities making it an important public asset'.

4. Pursuant to section 51(j) of the *Planning Act*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development. Also, pursuant to section 51(m) of the *Planning Act*, the consent authority must take into account the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land, and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

Condition precedent 1 of the recommendation requires that any encroachment issues of the carpark on an existing sewerage easement located within the southern rear corner of the site, are resolved with the Power and Water Corporation.

The Environment division of the Department of Environment and Natural Resources have identified that the historic use of the site suggests that the soils may contain contaminates and have requested a site investigation be prepared. This is addressed through condition precedent 5 of the recommendation.

All other service authority requirements have been addressed through standard conditions and/or notations and no other land capability concerns were identified as part of the assessment.

5. Pursuant to section 51(n) of the *Planning Act*, 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 Authority determined that as long as the ground level landscaping is reinstated to provide the same level of amenity as currently exists, the development of this underground carpark has the potential to impact positively on the existing and future amenity of the area through enabling a separate whole of precinct project to take place that aims to remove a number of existing ground level car parks and replace them with green, cooling spaces.

6. Pursuant to section 51(r) of the *Planning Act*, the consent authority must take into account any potential impact on natural, social, cultural or heritage values, including, for example, the heritage significance of a heritage place or object under the *Heritage Act*.

Given the history of the site it is highly likely that subsurface historic remnants are located within the boundaries of the site. The Heritage division of the Department of Tourism and Culture have advised that they have been liaising with the applicant and an agreement is in place to mitigate any potential loss of artefactual material. A notation referring to obligations under the *Heritage Act* is included within the recommendation as well as an exemption within the conditions precedent to allow archaeological investigations to progress.

**ACTION:** Notice of Consent and Development Permit

**ITEM 6  
PA2018/0092  
APPLICANT**

**CHANGE OF USE FROM WAREHOUSE TO MOTOR REPAIR STATION  
LOT 2520 (3) DUKE STREET, TOWN OF DARWIN  
MASTERPLAN (NT)**

Mr Jack Priestley (Masterplan NT) attended and tabled a landscaping and parking plan and vehicle count for Duke Street.

**RESOLVED  
55/18**

That, pursuant to section 46(4)(b) of the *Planning Act*, the Development Consent Authority defer consideration of the application to develop Lot 2520 (3) Duke Street, Town of Darwin, for the purpose of a change of use from warehouse to motor repair station to require the applicant to provide the following additional information that the Authority considers necessary in order to enable the proper consideration of the application:

1. The submission of amended plans demonstrating:
  - Compliance with the requirements of Clause 6.5.3 (Parking Layout), including dimensions and a landscaping schedule showing appropriate species and quantities to be planted, or where these requirements cannot be met, detailed reasons and demonstration of special circumstances (pursuant to Clause 2.5 of the NT Planning Scheme) to justify the granting of consent.
  - Compliance with the requirements of Clause 8.3 (Setbacks for Commercial Uses...) in-particular the non-discretionary component of sub-clause 3. Details should include fencing type and height and a landscaping schedule showing appropriate species and quantities to be planted to achieve a visual screen to the adjacent zone MD land.
  - The provision of landscaping within the Duke Street road reserve, to the requirements of the City of Darwin.
2. Identification and detailed justification (pursuant to Clause 2.5 of the NT Planning Scheme) for any shortfall in the car parking requirements under Clause 6.5.1 (Parking Requirements) of the NT Planning Scheme.
3. In principle support from the City of Darwin for the proposed access arrangements.
4. Any amendments to the application that arise as a result of the above information request.

**REASONS FOR THE DECISION**

1. The Authority noted the amended plans tabled by the applicant but determined that deferral of the application was necessary to allow sufficient time to assess the material. The Authority further determined that in principle support from the City of Darwin in relation to the proposed access arrangements is necessary to ensure that no further changes are required to the parking layout.
2. The Authority determined that the landscaping of the Duke Street road reserve adjacent to the site would assist with improving the amenity of the area and that these details should be provided through amended plans in consultation with the City of Darwin.
3. The proposed parking layout does not comply with the purpose of Clause 6.5.3 (Parking Layout) and it is considered that greater

compliance can be achieved. Once compliance with Clause 6.5.3 is achieved and/or appropriate variations are considered, it will then be possible to determine the number of parking spaces provided on site. Once the number of parking spaces provided on site is determined, only then will it be possible to determine whether or not a reduction under Clause 6.5.2 (Reduction in Parking Requirements) is appropriate.

4. The proposal does not comply with a non-discretionary requirement of Clause 8.3 (Setbacks for Commercial Uses Adjacent to Land in Zones SD, MD, MR, or HR). The Authority do not have the discretion to vary this requirement and therefore the application needs to be amended to ensure that compliance can be achieved.

**RESOLVED  
56/18**

That, pursuant to section 86 of the *Planning Act*, the Authority delegates to the Chair, or in the Chair's absence any one of the other members of the Darwin Division the power under section 53 of the Act, to determine the application to develop Lot 2520 (3) Duke Street, Town of Darwin, for the purpose of a change of use from warehouse to motor repair station subject to:

1. The submission of amended plans demonstrating:
  - Compliance with the requirements of Clause 6.5.3 (Parking Layout), including dimensions and a landscaping schedule showing appropriate species and quantities to be planted, or where these requirements cannot be met, detailed reasons and demonstration of special circumstances (pursuant to Clause 2.5 of the NT Planning Scheme) to justify the granting of consent.
  - Compliance with the requirements of Clause 8.3 (Setbacks for Commercial Uses...) in-particular the non-discretionary component of sub-clause 3. Details should include fencing type and height and a landscaping schedule showing appropriate species and quantities to be planted to achieve a visual screen to the adjacent zone MD land.
  - The provision of landscaping within the Duke Street road reserve, to the requirements of the City of Darwin.
2. Identification and detailed justification (pursuant to Clause 2.5 of the NT Planning Scheme) for any shortfall in the car parking requirements under Clause 6.5.1 (Parking Requirements) of the NT Planning Scheme.
3. In principle support from the City of Darwin for the proposed access arrangements.
4. Any amendments to the application that arise as a result of the above information request.

Further subject to conditions as determined by the delegate.

**ACTION:** Advice to Applicant

ITEM 7  
PA2018/0087

**24 X 1, 54 X 2 AND 37 X 3 BEDROOM MULTIPLE DWELLINGS AND  
GROUND LEVEL COMMERCIAL TENANCIES IN A 7 STOREY BUILDING  
(COMPRISING 2 TOWERS) PLUS 1 LEVEL OF BASEMENT CAR PARKING  
LOT 7820 (4) BLAKE STREET, TOWN OF DARWIN  
APPLICANT  
JUNE D'ROZARIO AND ASSOCIATES PTY LTD**

Ms June D'Rozario (June D'Rozario and Associates Pty Ltd), Mr Michael and Mrs Gina Makrylos (landowners and developers) attended.

Ms D'Rozario tabled a response to issues raised in public objections.

Submitters who sent their apologies:- Ms Darlene Chin, The Hon Michael Gunner MLA, Ms Kate Duncan, Mr Ron O'Brien, Ms Louise Fogg, Ms Sharon Scurr and Mrs Sue Bradley.

Submitters in attendance:- PAn: The Planning Action Network (represented by Ms Margaret Clinch), Mrs Christine O'Brien (representing Mr Ron O'Brien), Mr Ashley Hornsey, Mr Darryl Thomas, Mr Kelvin Costello & Ms Mary Wignell, Mr Hugh Bradley (also representing Mrs Sue Bradley and Ms Kate Duncan), Mr Jon Potter, Ms Catherine McAlpine, Mr Sam & Mrs Sue Condon, Ms Jan Gibbett, Mr John Flynn, Ms Lucy Gregg, Mr Bret Hood and 2 other people who attended once the meeting had commenced.

Submitters who tabled documents:

Ms Gibbett – a google map and five photographs of the area;

Mr Bradley – plans of tower 1 and tower 2 showing rooms that have no windows and no flow through ventilation; and

A copy of the Building Code of Australia on Lifts.

**RESOLVED  
57/18**

That the Development Consent Authority vary the requirements of clause 6.5.3 (Parking Layout) and clause 7.5 (Private Open Space) of the Northern Territory Planning Scheme and, pursuant to section 53(a) of the *Planning Act*, consent to the application to develop Lot 7820 (4) Blake Street, Town of Darwin for the purpose of 24 x 1, 54 x 2 and 37 x 3 bedroom and ground level commercial tenancies in a 7 storey building (comprising 2 towers) plus 1 level of basement car parking, subject to the following conditions:

#### **CONDITIONS PRECEDENT**

1. Prior to the endorsement of plans and prior to 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 must be generally in accordance with the plans submitted with the application but modified to show:
  - (a) revised plans marking Bays 12, 23 and 88 at basement level as 'small car bays'.
  - (b) the provision and details of awnings along the Blake Street and Gardens Hill Crescent elevations to cover the commercial development.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), written confirmation from a qualified traffic engineer that the car parking spaces associated with the development comply with the relevant Australian Standards for car parking must be provided in instances where the car parking does not comply with the



minimum requirements of Clause 6.5.3 (Parking Layout) of the Northern Territory Planning Scheme, 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 Traffic Impact Assessment report is to be prepared by a suitably qualified traffic engineer with attention to vehicular, pedestrian, cyclist and public transport issues, including swept paths for waste collection vehicles, and identifying any necessary upgrades to the surrounding street network to the requirements of the City of Darwin, to the satisfaction of the consent authority.
4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), approval is required by the City of Darwin for any element of the building (separate to awnings) that is designed to be constructed or installed over the City of Darwin road reserve, to the satisfaction of the consent authority.
5. 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 underground 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 connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected to the underground or an alternate approved connection.
6. Prior to the commencement of works (including site preparation), a qualified person experienced in the investigation and assessment of contaminated land, must provide clearance that the grounds of the site are free of contaminants. This clearance will form part of this permit and must be provided to the Environment Division of the Department of Environment and Natural Resources, to the satisfaction of the consent authority.
7. Prior to the commencement of works (including site preparation), the applicant is to prepare an environmental and construction management plan to the requirements of the City of Darwin, to the satisfaction of the consent authority. The plan is to address construction access, haulage routes, public access, waste management and the use of Council land during construction.
8. 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.
9. Prior to the commencement of works (including site preparation), a waste management plan shall be submitted and approved by the City of Darwin to the satisfaction of the consent authority.

#### **GENERAL CONDITIONS**

10. The works carried out under this permit shall be in accordance with the plans endorsed as forming part of this permit.
11. The use and development as shown on the endorsed plans must not be altered without the further consent of the consent authority.



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. Appropriate soil erosion, sediment and dust control measures must be effectively implemented throughout the construction stage of the development and all disturbed soil surfaces must be suitably stabilised against erosion at completion of works, to the satisfaction of the Consent Authority.
16. Dust control measures must be employed throughout the construction stage of the development to the requirements of the Environment division of the Department of Environment and Natural Resources, to the satisfaction of the consent authority.
17. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of, and be at no cost to the City of Darwin, to the satisfaction of the consent authority.
18. 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 and to the satisfaction of the consent authority.
19. Before the use or occupation of the development starts, the areas set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
  - (a) constructed;
  - (b) properly formed to such levels that they can be used in accordance with the plans;
  - (c) surfaced with an all-weather-seal coat;
  - (d) drained;
  - (e) line marked to indicate each car space and all access lanes; and
  - (f) clearly marked to show the direction of traffic along access lanes and driveways;to the satisfaction of the consent authority.  
Car spaces, access lanes and driveways must be kept available for these purposes at all times.
20. 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.

21. The car parking shown on the endorsed plans must be available at all times for the exclusive use of the occupants of the development and their visitors. The loading and unloading of goods from vehicles 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.
22. Storage and collection for waste disposal bins is to be provided to the requirements of City of Darwin to the satisfaction of the consent authority.
23. All air conditioning condensers are to be appropriately screened from public view, located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority.
24. All 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.
25. 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.
26. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building.
27. 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 Fire and Emergency Services.
28. External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the consent authority.
29. Before the use / occupation of the development starts, all works identified within the Traffic Impact Assessment report and any other works as required by City of Darwin are to be undertaken to the requirements of, and at no cost to, City of Darwin, to the satisfaction of the consent authority.
30. Before the occupation of the development starts the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
31. 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.
32. 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.

33. Before a certificate of compliance is issued and pursuant to section 34 of the *Land Title Act*, a Caution Notice shall be lodged with the Registrar General on Lot 7820 (4) Blake Street, Town of Darwin. The Caution Notice is to state that: "this dwelling is located in close proximity to the Darwin Amphitheatre and you may experience high levels of noise during events". Evidence of lodgement on the parcel shall be provided to the satisfaction of the consent authority.
34. Confirmation shall be provided to Development Assessment Services (in the form of an email addressed to the Power and Water Corporation) from a suitable qualified professional—confirming that all new number labels have been correctly installed at the Customer's Metering Panel(s) and water meters (where applicable). Please provide a copy of an email addressed to both [landdevelopmentnorth@powerwater.com.au](mailto:landdevelopmentnorth@powerwater.com.au) and [powerconnections@powerwater.com.au](mailto:powerconnections@powerwater.com.au).
35. A Compliance Certificate under the *Swimming Pool Safety Act* issued by the Swimming Pool Safety Authority is required for the swimming pool/s prior to the commencement of the use/development to the satisfaction of the consent authority.

**NOTES:**

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section ([landdevelopmentnorth@powerwater.com.au](mailto:landdevelopmentnorth@powerwater.com.au)) and Power Network Engineering Section ([powerconnections@powerwater.com.au](mailto:powerconnections@powerwater.com.au)) should be contacted via email a minimum of 1 month prior to construction works commencing to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/ or surrounding infrastructure.
2. You are advised to contact NBN Co prior to commencing construction to determine if you development is in an NBN-eligible area. This will help identify the relevant telecommunication network servicing requirements for the development. To register, please complete the pre-qualification forms located at [www.nbnco.com.au/newdevelopments](http://www.nbnco.com.au/newdevelopments). For more information, please contact the NBN Co New Developments Team on 1800 687 626 or email [newdevelopments@nbnco.com.au](mailto:newdevelopments@nbnco.com.au).
3. Notwithstanding the approved plans, the demonstrated awning in the City of Darwin road reserve is subject to Council approval at no cost to Council.
4. 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.
5. Notwithstanding the approved plans, all signage is subject to City of Darwin approval, at no cost of Council.
6. The City of Darwin advises that all street trees shall be protected at all times during construction. Any tree on a footpath, which is damaged or removed during construction, shall be replaced, to the satisfaction of the General Manager Infrastructure, City of Darwin. A Tree Protection Zone (TPZ) shall be constructed for all existing trees to be retained within the development, in

accordance with Australian Standards – AS 4970-2009 “Protection of Trees on Development Sites”.

7. A “Permit to Work Within a Road Reserve” will be required from the City of Darwin before commencement of any work within the road reserve.
8. 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.
9. The 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.
10. The Water Services division of the Power and Water Corporation advise that they should be contacted regarding the temporary installation of cranes in the road reserve prior to construction.
11. 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.
12. The site is subject to the ‘Defence Areas Control Regulations (DACR)’. All structures, including temporary structures, higher than 45m 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.
13. External lighting installed as part of the development is to consider section 9.21 “Lighting in the Vicinity of Aerodromes” of the CASA Manual of Standards Part 139, available at: <http://www.comlaw.gov.au/Details/F2014C01301>.
14. The Department of Defence advises organic waste and/or storage of commercial bins should be managed as to prevent the attraction of vermin and/or birds, which may create a hazard to aircraft operations.
15. The Environment division of the Department of Environment and Natural Resources advises that during the excavation, the basement may fill with turbid sediment laden stormwater. The proponent should ensure that any pit-water discharged from the development is in accordance with their document *Guidelines to prevent pollution from building sites*.
16. The Environment division of the Department of Environment and Natural Resources advises that construction work should be conducted in accordance with the Authority’s Noise Guidelines for Development Sites. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.

17. The permit holder is advised that the proposal may have assessment implications under the *Waste Management and Pollution Control Act*. More information can be found on the Northern Territory Environment Protection Authority website at: <https://ntepa.nt.gov.au/waste-pollution>. The applicant is encouraged to contact the NT EPA on (08) 8924 4218 or [ntepa@nt.gov.au](mailto:ntepa@nt.gov.au).
18. The permit holder is advised that it is an offence to disturb or destroy prescribed archaeological places without consent under the *Heritage Act*. Should any heritage or archaeological material be discovered during the clearing operation, cease operation and please phone Heritage Branch of the Department of Tourism and Culture.
19. Professional advice regarding implementation of soil erosion control and dust control measures to be employed throughout the construction phase of the development are available from Department of Environment and Natural Resources.
20. This development permit does not grant "building approval". The Building Code of Australia requires that certain structures within 900mm of a boundary meet minimum fire resistance level requirements and you are advised to contact a registered private building certifier to ensure that you have attained all necessary approvals before commencing works.
21. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5362 ([surveylandrecords@nt.gov.au](mailto:surveylandrecords@nt.gov.au)).
22. 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 Nomination Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Building should be contacted via email ([info@ntbuild.com.au](mailto:info@ntbuild.com.au)) or by phone (08 8936 4070) to determine if the proposed works are subject to the Act.

## **REASONS FOR THE DECISION**

1. The Authority noted that the proposed development of 4 Blake Street has had a protracted, complex and controversial history. Originally zoned Community Purpose, following the procedures set out in Part 2 of the Planning Act for amendments to the Planning Scheme, including, but not limited to, public exhibition, a public hearing and the preparation of a report by the Reporting Body detailing the matters set out in section 24, the then Minister for Lands and Planning exercised his power under Section 25(2)(c) on 9<sup>th</sup> July 2015 to effectively rezone the property. This was done by creating a Specific Use Zone, SD46, which applies exclusively and in its entirety to 4 Blake Street. Subsequently, a development application was lodged on behalf of Kalhmera Pty Ltd. The then Authority determined that application by way of approval dated 18<sup>th</sup> July 2017. That approval was the subject of a successful appeal to NTCAT by one of the submitters, Susanne Bradley, and on the 30<sup>th</sup> November 2017 the Authority's approval of the proposed development was revoked. On 26<sup>th</sup> February 2018 a fresh Development Application was lodged on behalf of Kalhmera Pty Ltd to be considered at the present Hearing. The Authority noted that throughout the history of this matter there has been strong and

persistent public opposition to both the rezoning and the Development Applications in respect of 4 Blake Street.

2. It was urged on behalf of the submitters that, as a threshold issue, the Authority consider the question of whether or not the application should be referred to the Minister as a significant development proposal under section 50A of the *Planning Act*. The Authority concluded that the proposal was not a significant development proposal and therefore did not require referral to the Minister.

In reaching its conclusion the Authority determined that all of the issues that might have contributed to the proposal being considered a significant development proposal had previously been addressed and determined in 2015 through the rezoning proposal which resulted in the introduction of Specific Use Zone SD46. In the course of that process, a Report for the Minister was prepared under Section 24 which was required to deal with issues raised in submissions, at the hearing and during any consultations. It is the Authority's opinion that during and subsequent to this process the Minister had ample opportunity to intervene with a proposed development of the site and no such advances were, or have been, made. Further, the Authority noted that for the purposes of Section 50A, and as a result of the rezoning of the land to Specific Use Zone SD46, the proposed development does not affect strategic planning; will not have a significant impact on the natural environment; and will not have a significant impact on the existing amenity of the land or other land as required by that Section.

The Authority further confirms the above statements by drawing attention to service authority comments in which no environmental or amenity impacts have been raised by the relevant agencies, or are capable of being addressed through standard conditions of consent.

The Authority noted that since the introduction of significant development proposals into the *Planning Act* in 2012 only three proposals have been referred to the Minister and these related to large parcels of land; proposed significant changes to land use policy; were inconsistent with the applicable Area Plans at the time; and had potential for significant environmental impacts. While the Authority acknowledges the size of the parcel of land may not always be determinative in deciding whether a development application is "significant" as required by Part 5 Division 2A, the current proposal is consistent with the current zoning of the land and the applicable Area Plan; and, given that zoning, will not have a significant impact on the natural environment or on the existing amenity of the land or other land. It is noted that amenity is further discussed in reason 8.

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



The application proposes a mixed use development comprising commercial uses and multiple dwellings which is consistent with the primary purpose of Zone SD46 (Specific Use Darwin No. 46) *to facilitate the use and development of the land for a predominately residential development, with complementary commercial activities.*

The Authority was satisfied with the Technical Assessment provided by Development Assessment Services which concluded that the proposed development complies with the non-discretionary requirements of Zone SD46 and all discretionary requirements of Zone SD46, excepting minor variations sought to Clause 6.5.3 (Parking Layout) and Clause 7.5 (Private Open Space) which are discussed further below.

4. While compliance is discussed in detail in the Technical Assessment the Authority further discussed the requirement of Clause 3(a) for a 'landmark development'. Clause 3(a) of SD46 requires that development is to contribute to improving the amenity of the Blake Street Precinct as an inner-city mixed use area by *creating a landmark development through high architectural quality and distinctive streetscapes.*

In considering the 'landmark development' requirement, the Authority was guided by President Bruxner's comments in *Bradley v Development Consent Authority & Kalhmera Pty Ltd* [2017] NTCAT 922. In relation to the previous application for development of 4 Blake Street, the Authority took the view that the 'landmark development' requirement of Zone SD46 must be read within the context of the overall zone requirements including various limitations on scale, density and area allowed for commercial uses and that to do otherwise would be to defeat the fundamental purpose of the zone. While unnecessary for him to reach a final conclusion as to whether the previous development satisfied the 'landmark development' requirement, President Bruxner specifically addressed that aspect of the Authority's reasoning, stating *"I agree that the 'landmark development' requirement in Clause 3(a) is to be construed having regard to the other provisions of Zone SD46 (as well as applicable provisions of the NTPS)."* President Bruxner further noted that *"I also agree that those provisions may mean that there are constraints upon the shape and character a 'landmark development' at 4 Blake Street is able to take."*

A number of submitters sought to rely on opinions provided by architects in relation to the previous development application. Those opinions were given prior to the Appeal and must be read in light of the specific comments made in the NTCAT decision in relation to 'landmark development' referred to above.

President Bruxner further commented that *"It is important, however, to recognise that the constraints upon what may constitute a 'landmark development' at 4 Blake Street are set by what is possible within the NTPS requirements affecting the use and development of that land rather than by the outer edges of what is permissible."* The Authority considered that compliance with what is strictly permissible within the zone does not, of itself, render a development 'landmark'. The



Authority was required to determine whether, within the constraints of the zone, the development complied with the requirement of clause 3(a) of SD46.

The Authority noted the statement within the application which states that *“the proposed development will be a landmark, because it will be a prominent and conspicuous building in the Blake Street Precinct. Its prominence and conspicuousness arise from building height relative to existing buildings in the Blake Street Precinct, its architectural quality and landscape design, all of which will make the building stand out against its background.”*

The Authority also noted the inclusion of a review of the proposal by Principal Architect and Urban Designer Leslie Curtis of Interplan Architects Pty Ltd who concluded that *“In the absence of a technical definition for the term “landmark development” the ordinary meaning of the word prevails, not as opined by any individual but as defined by the dictionary. This ordinary meaning, applied in the context of SD46, is informed by well-established urban design theory (i.e. Lynch, 1960) and reasonable consideration of what constitutes a high quality design response to the local context.*

*Prescriptive extraneous design standards formulated for different locations do not form part of the planning scheme and should not be selectively introduced for assessment purposes. SD46 is concerned with ensuring a “landmark development” outcome is provided for the site that exhibits a high quality of design and distinctive streetscapes. The concept of what constitutes high quality can be subjective but is certainly relative to contextual expectations. In my opinion, a fair assessment of the proposed development, having regard to the context and reasonable expectations would conclude the proposal demonstrates a high quality design response that will positively contribute to and create a distinctive streetscape and will also provide a legible landmark that enhances the image and identity of the locality.”*

Notwithstanding the above views, the Authority are clear in that in determining whether or not the proposal is a ‘landmark development’, this has to be determined through high architectural quality and distinctive streetscapes as prescribed in Clause 3(a) of SD46.

In their assessment Development Assessment Services’ found that *“the external finishes schedule and landscaping ensures that a high quality development can be achieved. The inclusion of commercial uses at the Gardens Hill Crescent / Blake Street intersection, plus landscaping (including road reserves adjacent to the site) and a pedestrian building entrance, can contribute towards achievement of a distinctive streetscape. A combination of architectural embellishments including vertical and horizontal slating, the use of both solid and glass balustrading, varied paint treatments and building setbacks, variation in landscaping and wide expanses of communal areas create visual interest and an attractive building. Commercial tenancies to be located on the ground floor including a café are unique in the context of existing development in the area, and create additional opportunities for the surrounding area, including to the businesses located on the opposite side of Gardens Hill Crescent and the Channel 9 offices located to the*

*rear of the site on Lot 7819. The development is inclusive of active interfaces, attractive facades, compliant site coverage and landscaping, and can contribute towards improved pedestrian amenity. The development accords with the maximum number of dwellings dictated by the zoning provisions, and is likely to take advantage of views in the area including towards Mindil Beach and the George Brown Darwin Botanic Gardens. The views from any future development reasonably anticipated in the area are unlikely to be affected.”*

For the reasons above, the Authority was satisfied that that the proposal will result in a development that is of high architectural quality with distinctive streetscapes.

The Authority acknowledged that the statement of effect submitted with the application material correctly identified that “landmark” is not defined in the *Planning Act* or NT Planning Scheme. The statement of effect concluded that the ordinary meaning is applied to the term, and includes definitions from the Macquarie Dictionary “a prominent or distinguishing feature, part, event etc.”; Concise Oxford Dictionary “conspicuous object in district etc.”; and Australian Oxford Dictionary “conspicuous and easily recognised feature of a landscape”. However, the Authority further noted that in determining whether or not the proposal was a ‘landmark development’, the specific guides provided in SD46 3(a) are determinative - high architectural quality and distinctive streetscapes.

Within the context of a development proposal, the key physical characteristics required to be considered a landmark are singularity some aspect that is unique and readily identifiable. The Authority agreed with DAS’ view that the development is unique and would be readily identifiable. Its identity arises from the building height relative to the existing buildings in the area, and its uniqueness from its character as a high density mixed use residential development.

The Authority noted that a question was raised by a submitter as to whether ‘high architectural quality’ should apply to the internal design of the building as well as the external design. In raising this question the submitter referred to numerous requirements of the NSW Apartment Design Guide and identified that the proposed development does not accord with many of the requirements contained therein. Although this guide was included with the submitter’s original submission the Authority noted that the DAS report did not address this particular concern.

In considering this question the Authority found no reason to re-assess the internal layout design. The NT Planning Scheme requirements relating to internal layout/design are appropriately dealt with through the provisions of clause 7.8 (Building Design for Multiple Dwellings, Hostels and Supporting Accommodation), which seeks to promote site-responsive designs which are pleasant for the occupants. Clause 7.8 requires (amongst other things) that building design allows breeze penetration and circulation; concealment of service ducts, pipes, air conditioners, air conditioning plant etc.; location of bedrooms and private open spaces away from noise sources; and internal drainage

of balconies and coving on the edge of balconies. The Authority noted that the Development Assessment Services' Technical Assessment found the proposal to be fully compliant with Clause 7.8. The submitter raised a number of specific layout and design concerns including ceiling heights, thickness of floor plates and the amount of light available to bedrooms. The Authority considered that these elements would be more appropriately and correctly addressed through the Building Code of Australia and the building certification process. While the content of the NSW Apartment Design Guide may be well regarded by many urban design professionals and jurisdictions around Australia, the Authority were minded that it is not a document that has any status within the NT Planning Scheme and therefore cannot justify the implementation of its requirements. If such a document is to be referred to within the NT the Authority considered that it should be incorporated into the NT Planning Scheme as a referenced document which it is not.

The Authority found that when considered as a whole, and within the context of the zone and planning scheme requirements, that the development is of high architectural quality. The Authority considered the intent of the requirement for a *landmark development through high architectural quality and distinctive streetscapes* relates predominantly to the external appearance of the development which has been discussed and determined above.

5. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the Northern Territory Planning Scheme the Authority may consent to a development that does not meet the standard set out in Part 4 and 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

In *White & Ors v Development Consent Authority & Tomazos Property Pty Ltd ATF Tomazos Property Discretionary Trust* [2015] NTCAT 010 President Bruxner states that:

The meaning of subclause 3 of clause 2.5 of the NTPS is well understood. In *Phelps v Development Consent Authority* [2009] NTSC 54 Kelly J relevantly noted:

- that 'special circumstances' are circumstances that are 'unusual, exceptional, out of the ordinary and not to be expected';
- that an holistic approach to the question is necessary, with each case to be considered on its merits, and with the decision maker alert to the fact that circumstances which by themselves might not be 'special' can, in combination with other circumstances, create a situation which overall gives rise to 'special circumstances';
- that there is also the need to determine, in an ordinary common-sense manner, whether there are circumstances which either individually or collectively can be considered to be 'special circumstances' justifying consent.

President Bruxner (*White & Ors v Development Consent Authority & Tomazos Property Pty Ltd ATF Tomazos Property Discretionary Trust* [2015] NTCAT 010) further discusses that:

- the need for an holistic approach to the application of clause 2.5 applies not only to the identification of circumstances said to constitute 'special circumstances' but also to the respects in

which a proposed development does not comply with the NTPS. In other words, it is important to avoid an approach to clause 2.5 that involves piecemeal consideration of non-complying aspects of a development against particular 'special circumstances'. Although there will often be circumstances that are especially relevant to particular instances of non-compliance, the ultimate question must always be whether, in all the circumstances, there are special circumstances justifying the giving of consent to a development proposal that does not meet the requirements of Parts 4 and 5 of the NTPS.

The purpose of Clause 6.5.3 (Parking Layout) *is to ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose.*

The parking layout presents one area of non-compliance in that parking bays 12, 23, 31, and 88 at the basement level; and bays 5 and 25 at ground level are not 3.5m in width or do not have a 1m extension of the driveway beyond the last parking space, which does not comply with the requirement of subclause 3(j).

The applicant argued that only bays 23, 88 and 5 require a variation as the other spaces are not technically at the end of a driveway given that it continues around a corner. The Authority did not discuss this technicality further and therefore the non-compliances remain as detailed above and in the Development Assessment Services' Technical Assessment.

The applicant provided the following information in support of a variation to this clause:

The purpose of requiring a 1-m extension at the end of blind aisles is to ensure that there is sufficient manoeuvring space for a vehicle to enter and exit the bay. Bays 23, 88 and 5 meet this objective as follows:

- The aisle width adjoining Bay 23 is 8.4 m, which provides sufficient space to enable a vehicle to enter and exit the bay conveniently.
- The space between Bay 88 and the ramp is 12.4 m in length, which provides additional manoeuvring space to enable convenient entry and exit from the bay.
- The aisle width adjoining Bay 5 is 8.65 m, which provides sufficient space to enable a vehicle to enter and exit the bay conveniently.

The Authority was requested to vary the parking layout provision, requiring a 1-m aisle extension for these three bays, on the basis of the following special circumstances –

- Because the aisle width adjoining Bays 23 and 5 is a minimum of 2.4 m wider than required by clause 6.5.3, there is sufficient space for a vehicle to enter and exit the bay conveniently.
- The length of the space behind Bay 88 enables convenient entry and exit from the bay.
- The number of car parking bays provided in the development exceeds the number required by 15, so that removal of these

three bays to secure strict compliance with the 1-m aisle extension provision will not result in a parking shortfall for the development. However, removal of these bays simply for the sake of compliance would result in the unnecessary loss of usable parking bays.

The Authority supported a variation to the parking layout requirements for bays 25 at ground level and 31 at basement level as they are located perpendicular to driveways and there is sufficient reversing space available to allow effective manoeuvrability of a car on-site. A variation to bay 5 at ground level was also supported as the driveway extends to a width of 8.65m, providing an additional 2.65m for cars to manoeuvre.

The Authority supported variations for bays 12, 23 and 88 at basement level but agreed with the recommendation that amended plans be provided requiring these bays to be marked as a 'small car bay', as it appears difficult for larger vehicle to reverse and manoeuvre effectively from these bays. This requirement is reflected in a condition of consent as well as a requirement that advice be provided by a suitably qualified professional confirming that the varied parking bays meet the relevant Australian standard.

In the context of special circumstances discussed above, the provision of 15 car parking spaces over and above what the development requires can be considered an unusual circumstance and out of the ordinary for a development of this nature. While the six non-compliant bays could easily be deleted to achieve compliance, the Authority agrees with the applicant's argument that the removal of these bays simply for the sake of compliance would result in the unnecessary loss of usable parking bays. When considering such a variation to car parking requirements, the Authority are usually faced with the challenge that the subject parking bays contribute to the minimum parking requirement and therefore do not have the flexibility to simply delete them. This point again highlights that the current proposal can be considered unusual and out of the ordinary.

The Authority noted that the potential for an increased parking demand was raised as a point of concern by a number of submitters and therefore a surplus of parking bays, although not all technically compliant but still functional, has to be viewed as a better common sense outcome than removal of these bays through strict compliance.

The Authority concluded that the abovementioned reasons are considered to collectively amount to special circumstances and justify the granting of consent to vary the requirements of Clause 6.5.3 (Parking Layout).

*The purpose of Clause 7.5 (Private Open Space) is to ensure that each dwelling has private open space that is of an adequate size to provide for domestic purposes; appropriately sited, permeable and open to the sky; and inclusive of areas of deep soil for shade tree planting.*



All dwellings proposed comply with the requirements of this clause with the exception of the Manager's Unit at ground level. The clause provides that multiple dwellings (for each dwelling with direct ground level access) are required to provide a minimum private open space area of 45m<sup>2</sup> (exclusive of driveways and carparking areas) inclusive of an area with minimum dimensions 5m x 5m. The Manager's Unit is the only dwelling on-site with direct access to ground level and has a private open space area of 46m<sup>2</sup> with minimum dimensions of 5m x 5m.

Due to the location of the dwelling this space is not permeable and open to the sky, although it is located adjacent to an area of communal open space. This area is to be separated by a 1.25m high pool fence with provision of a 0.5m (wide) x 0.5m (high) planter box for privacy.

In considering a variation to this clause the Authority noted that the application states that the manager's unit is intended to be specifically occupied by a staff member to manage the site; that the area exceeds the minimum dimensions required; and is located directly adjacent (and with unrestricted access) to a large area of communal open space that is landscaped and open to the sky.

In the context of special circumstances discussed above, it is considered unusual and out of the ordinary for a multiple dwelling development of this scale to include a dwelling with direct ground level access, which is what triggers this specific requirement of the clause. The dwelling is likely positioned at ground level to optimise its position and surveillance of the site given its specific intended use as a manager's unit. Furthermore, where a ground level dwelling is provided with private open space pursuant to Clause 7.5 (Private Open Space), it does not then need to provide communal open space pursuant to Clause 7.6 (Communal Open Space). In this instance, the ground level dwelling has access to both.

Multiple dwelling developments of this scale that include ground level commercial tenancies usually provide all dwellings above ground level which triggers Clause 7.6 (Communal Open Space) rather than Clause 7.5 (Private Open Space). Clause 7.6 does not contain such a requirement for spaces to be permeable and open to the sky and therefore the current non-compliance is a little unusual. A compliant area of communal open space is provided and affords many recreational opportunities to the occupants of the development, including the occupants of the manager's unit.

Another aspect of the proposal which is not to be expected is that the private open space area of the ground level unit is directly above the basement carpark which limits the opportunity to provide a permeable surface. Basement carparks are encouraged to limit the amount of car parking provided at and above ground level but are rarely provided outside of CBD developments due to the extra cost involved with excavation.

The Authority concluded that the abovementioned reasons are considered to collectively amount to special circumstances and justify the granting of consent to vary the requirements of Clause 7.5 (Private Open Space).

6. Pursuant to Section 51(e) of the *Planning Act*, 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.

The application was advertised in the NT News on 2<sup>nd</sup> March 2018 and placed on public exhibition for a period of two weeks. In total, 45 objecting submissions were received, plus a supporting petition with 219 signatures, under section 49(1) of the *Planning Act*.

17 submitters were present on the day and six spoke further to their original submissions.

The Authority read, heard and considered all submissions in detail and ensured that these submissions form an integral part of the determination. While the Authority made it clear that the basis for submissions should relate to the proposed development and not the past rezoning decision, the Authority accepted that many submitters continue to be upset with past decisions and seek to find some way to limit the resultant development of the land. The Authority, however, has statutory limits on its powers and is not able to reconsider the rezoning of 4 Blake Street. The Authority must consider the proposal in context of its present zoning and compliance with the NT Planning Scheme.

In addition to the technical issues raised with the proposed development which have been discussed in reason 1, the Authority considered that some of the main concerns raised related to the scale of the proposed development being inconsistent with existing built form, the potential impact on existing traffic flow and the impact on amenity. Photographs of the area were tabled by a submitter to show the current parking and traffic situation in the area.

The Authority noted that the height and scale of the proposed development is consistent with what is allowed for within the Zone SD46 provisions. The Authority accept that this is inconsistent with what many nearby residents would like but are not in a position to change the zone requirements. Further, the question of height was considered in the Appeal for 4 Blake Street referred to earlier. While not strictly necessary to consider the question of height, President Bruxner in *Bradley v Development Consent Authority & Kalthmera Pty Ltd* [2017] NTCAT 922 specifically addressed comments in relation to the question of whether Specific Zone SD46 provided for a maximum of 7 or 8 storeys. After careful consideration of the material before him, President Bruxner stated, “...it is clear that the seven storey maximum relates to building height and that the proposed development (of seven storeys plus a basement) complies with that requirement.”

The traffic concerns raised by many submitters are not shared by the City of Darwin who are the controlling agency of the surrounding road network. The City of Darwin have previously assessed a traffic impact



assessment report for the proposed development and have requested this report be updated to reflect current traffic volumes and distribution given the time that has passed since the first one was produced. A condition of consent reflecting this requirement has been applied.

In further response to traffic concerns the Authority noted that the development provides 15 surplus car parking spaces on the site and that visitor parking has been allocated at the ground level.

Amenity impacts were the subject of many submissions and this has therefore been discussed separately in reason 8.

A concern was raised in relation to the current state of the property market and an over-supply of residential units. While the Authority acknowledged that this might well be the case, the current state of the property market is not a relevant factor for the Authority to consider.

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

The Authority required a number of servicing matters to be addressed through conditions of consent. These matters include submission of an amended traffic impact assessment, a stormwater management plan, an environmental and construction management plan, a dilapidation report and a waste management plan. The Authority considered 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.

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

While the Authority noted that the potential impact on the existing and future amenity of the area in which the land is situated was considered in the recent rezoning process, when Lot 7820 was rezoned from Zone CP (Community Purpose) to SD46 (Specific Use Darwin 46), it acknowledged that there will be impact on the existing amenity of nearby residents. The Authority further noted that the proposed development has been determined to be consistent with the requirements of Zone SD46 including the overall scale proposed.

In considering the potential impact on amenity the Authority referred to the definition of amenity within the *Planning Act* which states that “**amenity** 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.”

The Authority considered all of the written submissions provided with the DAS report, as well as a number of verbal submissions on the day. These submissions have been discussed previously in reason 6. There has been considerable public interest in the proposed development, and the Authority is under no illusion that it could be seen to affect the existing amenity of a number of nearby residents. The Authority acknowledged the very strongly worded and deeply held concerns of many of the members of the public who took the time to make detailed written submissions and appear at the hearing. However, in considering amenity, the Authority cannot revisit the impacts on amenity created by the rezoning. Those impacts were considered by and formed part of the decision to rezone 4 Blake Street from Community Purpose to SD46. That rezoning was for a specific use on a specific block of land accommodating a building up to 7 storeys in height with up to 118 multiple dwellings. The Authority is left to consider the proposal in context of its current zoning and compliance with the NT Planning Scheme. To do otherwise would be to usurp the role of the Minister as provided by the *Planning Act*.

Only two variations were sought which have both been supported and are not expected to impact on amenity. In supporting a variation to the parking layout requirements, the development will be able to provide additional car parking spaces over and above what is ordinarily required which will contribute to alleviating any potential overflow car parking which was a point of concern from many submitters.

The proposed development is otherwise fully compliant with the SD46 zone requirements and the Authority concluded that the potential impact on the existing and future amenity of the area is consistent with what could reasonably be expected from any development in accordance with the zone provisions.

The Authority noted that the SD46 provisions require the development to *contribute to improving the amenity of the Blake Street Precinct* through a number of requirements which have been discussed previously in reason 4. SD46 clause 3 provides specific guidance as to the matters to be considered and in light of those requirements, the proposal meets the criteria for improvement of the amenity of the area as required by SD46 through an improved streetscape, pedestrian amenity and additional amenities such as a café.

Increased traffic was a concern of many submitters and a condition of consent requires submission of an updated traffic impact assessment report for review by the City of Darwin. This has been included as a condition as the City of Darwin have indicated that it is unlikely that there will be any new requirements since the last report was submitted and reviewed, but given the time that has passed it needs to contain up to date data. Any recommendations of the traffic impact assessment report will need to be undertaken in accordance with and to the satisfaction of the City of Darwin.

In summary, the Authority sympathised with the submitters whose amenity will be impacted from the proposed development but stressed that the proposal accords with the zone provisions which together with appropriate conditions of consent, will ensure that there are no impacts

over and above what would reasonably be expected from a development of this nature.

9. Pursuant to Section 51(r) of the *Planning Act*, the consent authority must take into consideration any potential impact on natural, social, cultural or heritage values, including for example, the heritage significance of a heritage place or object under the *Heritage Act*.

The Authority heard from a submitter that this section of the Act had not been addressed within the recommendation of the DAS report. The Authority noted that this section was omitted by DAS and has independently considered the potential impact of the proposed development on natural, social, cultural and heritage values.

Natural, social, cultural and heritage values are ordinarily identified by their respective protection/interest groups such as the NT EPA, applicable Land Council, AAPA, Heritage division, or the like. In this instance, other than the Heritage division identifying that there is a declared heritage place on nearby Lot 4942 (28) Garden Hill Crescent, no other issues in relation to the abovementioned values were identified. A standard notation referring to obligations under the *Heritage Act* has been included.

In acknowledging the sites' proximity to the Darwin Amphitheatre the Authority determined to apply a condition of consent requiring the lodgement of a caution notice on the title of the land to notify future residents of potential noise issues. The application included recognition of this possible outcome identifying that "The application site is near the Botanic Gardens, and the proposal has taken into consideration the effect on the Botanic Gardens. Regarding live music and other events, the proponent intends to register cautionary notices on titles, alerting buyers to potential noise issues. This is consistent with the approach adopted in Darwin Inner Suburbs Area Plan (DISAP), which states that a cautionary notice on the title is an acceptable response to the objective of ensuring continued unrestricted use of the Amphitheatre."

In response to the applicant's comments it is noted that the DISAP only requires a caution notice to be lodged on 6, 16 and 25 Blake Street which are parcels immediately adjoining the Darwin Amphitheatre, but that the Authority saw value in requiring a caution notice on the subject land too.

**ACTION:** Notice of Determination

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

**SUZANNE PHILIP**  
**Chair**

27 April 2018