



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 375 – FRIDAY 4 JUNE 2021

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

MEMBERS PRESENT: Suzanne Philp (Chair), Mark Blackburn, Marion Guppy, Simon Niblock and Peter Pangquee

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Ann-Marie Reynolds, Richard Lloyd and Lachlan Linkson (Development Assessment Services)

COUNCIL REPRESENTATIVE: Conneil Brown and Brian Sellers,
Cindy Robson (Item 3 only)

Meeting opened at 10.15 am and closed at 12.15 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

PA2021/0069 SHOPS AND FOOD PREMISES - CAFE/TAKEAWAY IN AN EXISTING TWO STOREY BUILDING

APPLICANT LOT 7721 (7) BRADSHAW TERRACE, CASUARINA, TOWN OF NIGHTCLIFF

One Planning Consult

Mr Israel Kgosiemang (One Planning Consult) and Mr Savvas Savvas (Savvas Architect) attended.

**RESOLVED
52/21**

That, the Development Consent Authority reduce the car parking requirements pursuant to Clause 5.2.4.2 (Reduction in Parking Requirements outside of Zone CB) and vary the requirements of Clause 5.2.5 (Loading Bays) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 7721 (7) Bradshaw Terrace for the purpose of Shops and food premises - cafe/takeaway in an existing two storey building subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must generally be in accordance with the plans submitted with the application but modified to show:
 - (a) The inclusion of one loading bay/ vehicle bay (3.5m x 5.5m) within the development.

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. The owner of the 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.
4. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
5. Before the use or occupation of the development starts, the area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - (a) constructed;

- (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather-seal coat;
 - (d) drained;
 - (e) line marked to indicate each car space and all access lanes; and
 - (f) clearly marked to show the direction of traffic along access lanes and driveways
- to the satisfaction of the consent authority.
6. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view, located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority.
 7. 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.
 8. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.

NOTES:

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (powerdevelopment@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure
2. Any proposed works on/over City of Darwin property shall be subject to a separate application to the City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
3. Notwithstanding the approved plans, any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin Policy Number 42 – Outdoor Advertising Signs Code.
4. Waste bin storage and pick-up shall be provided in accordance with City of Darwin Policy Number 54 - Waste Management.

REASONS FOR THE DECISION

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

The NT Planning Scheme 2020 (NTPS 2020) applies to the land and shops and food premises - cafe/takeaway in an existing two storey building requires consent under Clause 1.8 (When development consent is required). It is identified as *Merit Assessable* under Clause

4.11 – Zone C (Commercial), and therefore the strategic framework (Part 2 of the Scheme – Darwin Regional Land Use Plan 2015), zone purpose and outcomes of Clause 4.11 (Zone C), and Clauses 5.2.4.1 (Parking Requirements), 5.2.4.4 (Parking Layout), 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 5.5.2 (Plot Ratios in Commercial Zones), 5.5.3 (Commercial and Other Development in Zones... C...) and 5.5.11 (Food Premises), need to be considered, need to be considered.

These clauses have been considered and it is found that the proposal complies with the relevant requirements of the NTPS 2020 except for Clauses 5.2.4.1 (Parking Requirements), 5.2.4.4 (Parking Layout).

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NT Planning Scheme 2020, the consent authority may consent to a proposed development which is not in accordance with a requirement set out in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:
 - (a) The purpose and administration clauses of the requirement; and
 - (b) The considerations listed under Clause 1.10(3) or 1.10(4).

Clause 5.2.4.1 (Parking Requirement)

In relation to Clause 5.2.4.1 (Parking Requirement), the assessment identified that the proposal generates a technical shortfall of 14 spaces, as there are 22 spaces required for the site, and 8 spaces are proposed. The Authority is considers a reduction to the parking required under Clause 5.2.4.1 (Parking Requirements) pursuant to Clause 5.2.4.2 (Reduction in Parking Requirements outside Zone CB in Darwin) of the Scheme is supported based upon the following reasons:

- The proposed development is located within the Primary Activity Centre Hierarchy provided under the Darwin Regional Land Use Plan. Therefore, multipurpose trips to the site are anticipated.
- There is sufficient existing car parking available in the vicinity of the development to support the proposed use.
- The Casuarina Bus Interchange, which provides access to a number of bus routes connecting to the northern suburbs, Darwin City and Palmerston, is located a short walk from the site (200m).

Having considered the matters under Clause 5.4.4.2 along with comments provided by the applicant in support of the reduction sought, the Authority considers a total of eight car parking spaces are appropriate for the proposed development.

Clause 5.4.5 (Loading Bays)

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

The proposed development requires 1 loading bay for every 2,000m² of the total net floor area. The clause also requires that:

A loading bay is to:

- a. be at least 7.5m by 3.5m;
- b. have a clearance of at least 4m; and
- c. have access that is adequate for its purpose.

The proposal provides an interchangeable loading bay over car parking space no.7. While the height clearance of 4m is achieved, it presents non-compliance with the minimum size requirement (3.5m x 7.5m required and 2.5m x 5.5m provided).

The relevant Administration of this clause is – “*The consent authority may consent to a use or development that is not in accordance with sub-clauses 2 and 3 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and that the non-compliance will not result in adverse impacts on the local road network nor the number or availability of car parking spaces.*”

The assessment notes that the proposed development provides minor uses that are unlikely to require loading facilities as contemplated under the NTPS 2020 designed for loading / offloading large bulky goods. The deliveries expected to be of a scale more appropriate to a mini truck (similar to a light rigid vehicle) which could be accommodated within a 3.5m x 5.5m bay size. The Authority considers the provision of amended plans showing one vehicle bay (3.5m x 5.5m) for the proposed development to serve as a loading bay for the proposed development.

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

The assessment found that the development is consistent with that anticipated in Zone C with respect to the land's capability and the effect on surrounding properties. Service authority comments are addressed by including appropriate conditions and/or notations on the development permit. No land capability issues have been identified.

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

The application was circulated to the relevant authorities and comments received from these authorities are addressed by the inclusion of conditions and/or notations on the development permit as required. The Authority determined there is no parking shortfall therefore a monetary payment to the City of Darwin is not required.

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

The development will result in a change in the amenity of the area as the building is currently vacant. The re-establishment of use of a vacant building will allow for continued passive surveillance of surrounding streets. The proposed use is consistent with the purpose of Zone C (Commercial) and generally complies with the development clauses of the NTPS 2020. Therefore, no undue amenity impacts are expected as a result of the development.

Where the development does not comply with the relevant clauses of the NTPS 2020, the impact on existing and future amenity has been considered and a variation has only been supported in cases where this amenity will not unduly be impacted upon.

FOR: 5 **AGAINST: 0** **ABSTAIN: 0**
ACTION: Notice of Consent and Development Permit

ITEM 2
PA2021/0056

**CARPORT AND SHED ADDITION TO AN EXISTING DWELLING-SINGLE WITH A REDUCED SIDE SETBACK
LOT 4487 (18) SEDGE STREET, KARAMA, TOWN OF SANDERSON**

APPLICANT

Jass Hucks

The applicant did not attend.

Submitter Mr Peter Ralph attended.

RESOLVED
53/21

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 4487 (18) Sedge Street, Town of Sanderson for the purpose of a carport and shed addition to an existing dwelling-single with a reduced side 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:

- Provision of amended plans which achieve greater compliance with the NT Planning Scheme 2020, specifically with the purpose of Zone LR (Low density residential) and Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures).

REASONS FOR THE DECISION

The application seeks a significant variation to the 1.5m setback requirement of Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and an 18 metre length comprises over 55% of the total 32.35m northern boundary.

Mr Peter Ralph, the landowner of adjacent Lot 4488, attended the meeting and spoke to his submission. Mr Ralph reiterated his submission noting that he is not opposed to a shed being developed on the adjacent lot however was concerned that the proximity to the affected boundary would restrict access and the overall size of the shed would be out of character on a residential lot.

The Authority considers the proposed development, in its current form, would be visually imposing when viewed from the adjoining lot to the north. The proposed development does not achieve the purpose of Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures). Specifically, the proposed development does not minimise the adverse effects of building massing when viewed from adjoining land. It deems an increased setback that achieves greater compliance with the provisions of the clause is likely to lessen the impact on adjoining land.

Outcome 4 of Clause 4.2 Zone LR (Low Density Residential) states that '*dwellings and outbuildings are set back in a manner sympathetic to neighbours, the streetscape and scale and character of surrounding development*'. Outcome 6 of Clause 4.2 requires '*building design, site layout and landscaping provide a sympathetic interface to the adjoining public spaces and between neighbours, provides privacy and attractive outdoor spaces*'.

The Authority notes that the proposed development does not meet the requirements of outcome 4 and 6 of Zone LR (Low Density Residential) as the development is not sympathetic to neighbouring properties, given the overall length of the shed and its proximity to the northern boundary. It considers that reducing the overall length of the structure to achieve greater compliance with the above provisions of Zone LR would likely reduce adverse effects of building massing when viewed from the adjoining property and achieve a more sympathetic interface between the development site and the adjacent lot.

FOR: 5 **AGAINST: 0** **ABSTAIN: 0**
ACTION: Notice of Deferral

ITEM 3
PA2021/0132

HOTEL IN A SINGLE STOREY BUILDING PLUS 18 SERVICED APARTMENTS, SHOP, OFFICE, AND RESTAURANT IN A TWO STOREY BUILDING, WITH GROUND LEVEL CAR PARKING IN TWO STAGES
LOT 11847 (15) FUHRMANN STREET, MUIRHEAD, TOWN OF NIGHTCLIFF

APPLICANT

Northern Planning Consultants

Mr Brad Cunnington (Northern Planning Consultants), Mr Gary Coleman and Mr Steve Dugan (Landowners), Mr Andrew Bolt (Zest – Project Managers and Builders) and Mr Brad Langton attended.

Mr Cunnington tabled a site plan of the commercial ground floor.

RESOLVED
54/21

That, the Development Consent Authority vary the requirements of Clause 6.5.3 (Parking Layout), Clause 6.19 (End of Trip Facilities) and Clause 7.7 (Communal Open Space) of the Northern Territory Planning Scheme 2007, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 11847 (15) Fuhrmann Street, Town of Nightcliff for the purpose of hotel in a single storey building plus 18 serviced apartments, shop, office, and restaurant in a two

storey building, with ground level car parking in two stages, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the applicant is to provide turning movement diagrams demonstrating the proposed access points on Lee Point Road and Fuhrmann Street can cater for the turning movements of service and delivery vehicles entering and exiting the site to the requirements of the City of Darwin, to the satisfaction of the consent authority.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, Council's stormwater drain connection point/s, whether easements are required for the purposes of stormwater drainage over the lots and underground connection details.
3. Prior to the commencement of works (including site preparation), the applicant is to prepare a Site Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP should specifically address the impact to Council owned public spaces and include a waste management plan for disposal of waste to Shoal Bay, traffic control for affected City of Darwin roads, haulage routes, storm water drainage & sediment control, use of City of Darwin land, and how this land will be managed during the construction phase.
4. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Policy 054, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.
5. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.

GENERAL CONDITIONS

6. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
7. The development must proceed in the order of stages as shown on the endorsed plan unless otherwise agreed in writing by the consent authority.
8. 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.

9. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage and electricity facilities and telecommunication networks to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
10. 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.
11. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street to the requirements of the City of Darwin, to the satisfaction of the consent authority.
 12. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin to the satisfaction of the consent authority.
 13. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin to the satisfaction of the consent authority.
 14. Before the use or occupation of the development starts, the area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - a. constructed;
 - b. properly formed to such levels that they can be used in accordance with the plans;
 - c. surfaced with an all-weather-seal coat;
 - d. drained;
 - e. line marked to indicate each car space and all access lanes; and
 - f. clearly marked to show the direction of traffic along access lanes and driveways to the satisfaction of the consent authority.Car spaces, access lanes and driveways must be kept available for these purposes at all times.
 15. 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.
 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. 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.
18. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view, located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority.
19. All substation, fire booster and water meter arrangements are to be appropriately screened to soften the visual impact of such infrastructure on the streetscape, to ensure that the infrastructure is sympathetic to and blends in with the design of the building. Details will need to be resolved to the satisfaction of the consent authority in consultation with the Power and Water Corporation, and NT Fire and Emergency Services.
20. 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.
21. No goods are to be stored or left exposed outside the buildings so as to be visible from any public street.

NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (powerdevelopment@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
3. Designs and specifications for landscaping of the road verges adjacent to the property shall be submitted for approval by City of Darwin and all approved works shall be constructed at the applicant's expense, to the requirements of City of Darwin.
4. City of Darwin advises that an Arboriculture Impact Assessment (AIA), compliant with AS 4970-2009 is required. The AIA is to be completed by a suitably qualified arborist, with an AQF Level 5 or higher qualification in Arboriculture. The AIA shall identify the Tree Protection Zone and include all trees on City of Darwin land that may be effected by the development, and provide recommendations for the trees protection, with any identified conditions defined within the AIA being adhered to at all times. Copies of AS 4970-2009 Protection of Trees on Development Sites can be obtained from the Australian Standards web site.

5. Notwithstanding the approved plans, any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin Policy Number 42 – Outdoor Advertising Signs Code.
6. City of Darwin advises that in accordance with City of Darwin By-Laws, prior to occupation, the applicant shall ensure that a building number is displayed in a position clearly visible from the street.
7. Any floodlighting or security lighting provided on site should be shielded in a manner to prevent the lighting being noticeable or causing nuisance to Lee Point Road, Thorne Street, or Fuhmann Street traffic
8. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
9. If you choose nbn to service your development, you will need to enter into a development agreement with nbn. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered nbn will be in contact to discuss the specific requirements for the development. Nbn requires you to apply at least 3 months before any civil works commence. All telecommunications infrastructure should be built to nbn guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/builders-designers.html>
10. This development permit is not an approval to undertake building work. You are advised to contact a Northern Territory registered building certifier to seek a building permit as required by the Northern Territory *Building Act 1993* before commencing any demolition or construction works. Due to provisions in the National Construction Code (NCC), the subject lots may need to be consolidated before a building permit can be issued.
11. This permit will expire if one of the following circumstances applies:
 - (a) the development *and use is/are* not started within *two* years of the date of this permit; or
 - (b) the development is not completed within *four* years of the date of this permit. The consent authority may extend the periods referred to if a request is made in writing before the permit expires.
12. For the parking requirements to be compliant with NTPS2007 on the lots approved by DP21/0111 (specifically Lots A and B), DP21/0111 must be amended to reflect the lot boundaries as shown on the endorsed plans to this permit.

REASONS FOR THE DECISION

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

The NT Planning Scheme 2007 (NTPS2007) applies to the land as the subject site is identified within Zone SD23 (Specific Use Darwin No. 23) of NTPS2007.

This application is to be determined under NTPS2007, because under Schedule 4: Specific Use Zones of the NT Planning Scheme 2020, it states that the Specific Use Zones listed in the Table to the Schedule (of which SD23 is one), are subject to the relevant requirements contained in NTPS2007.

The site is located within Stage 5 of the Muirhead subdivision and is identified as a Commercial / Community Purpose site in the Masterplan endorsed under Zone SD23. Under sub-clause 9 of Zone SD23, it states that with consent a lot may be developed for purposes consistent with Zone C (Commercial), where the lot has been identified for commercial purposes on the land use drawing endorsed under paragraph 3 (the approved subdivision plan), and subject to all the relevant clauses of the Planning Scheme (NTPS2007) that would apply were the land within Zone C.

The proposal is consistent with the primary purpose of Zone C which is to provide for a range of business and community uses. It is also consistent with the requirements of Zone C under NTPS2007 except for Clause 6.5.3 (Parking Layout), Clause 6.19 (End of Trip Facilities) and Clause 7.7 (Communal Open Space).

2. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of NTPS2007, the Authority may consent to a development that does not meet the standards set out in Part 4 and 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

Under Clause 6.5.3 (Parking Layout), a landscaped area of not less than 3m is required between a car parking area and boundary with a road to lessen the visual impact of the car parking area. A small part of this landscaped area has a maximum width of 1.5m. It is considered that for the 3m width to be met it would result in the loss of one parking space, which would result in the parking requirements not being met for the site and hotel development in particular (it requires 63 parking spaces and 63 are provided). The reduced width is however relatively minor particularly in the context of the development where a 3 width is provided between all the other parking areas on the whole site and road boundary. As such, it is considered reasonable to not lose a parking space and in such a context it is considered that there are sufficient special circumstances for the reduced landscaping width and consequently a variation granted to Clause 6.5.3.

Clause 6.19 (End of Trip Facilities), requires (among other things) that all new non-residential buildings, motels and serviced apartments in Zones HR, CB, C, SC, and TC should provide sufficient and accessible shower and changing facilities for staff. In this regard, the shop, office, café, and serviced apartments component of the development technically require one shower each but only one is provided. The

clause also allows the consent authority to approve a development with fewer facilities if it is satisfied that there are alternative end of trip facilities on or off the site. In this regard, it is considered that one shower for the four uses would be adequate as the floor areas and number of employees for each use will not be large and a variation to the clause is reasonable. It is noted that at the DCA meeting the applicant tabled a more detailed plan for the commercial ground floor showing two shower facilities.

Clause 7.6 (Communal Open Space), specifically applies to the serviced apartment (multiple dwelling) component of the proposal. Part of the clause requires a minimum of 15% of the site, being not less than 6m wide at any point, to be communal open space, and 320m² of communal open space is proposed. However, given the site area (Lot 11847) is 9760m², 1,464m² (15% of site area) of communal open space is technically required. And if the area of the approved subdivided lot (Lot B under DP21/0111), which will contain the serviced apartments is considered in isolation, it has an area of 3624m², which would mean 543.6m² of communal open space is required, still making the 320m² communal open space proposed non-compliant with Clause 7.6. The Authority considers it reasonable to consider the variation to the 15% of site area communal open space requirement in the circumstances of the approved subdivision under DP21/0111, as it is considered likely to occur. In this context, the amount of communal open space proposed (320m²), is still under the 15% requirement (543.6m²), by around 220m² or 40%. The Authority however notes that the proposal is for studio serviced apartments which would likely be used for short term stays and not generate a great demand for the use of communal open space, particularly noting also that each apartment has its own private open space (a balcony), which is compliant with NTPS2007, and that there is nearby public open space (a park). It is also noted that the required dwelling density is met for the approved Lot B. Additionally, it is considered that the studio serviced apartments as proposed could be considered analogous with the definition of motel in NTPS2007, noting that motels do not have a requirement for communal open space. In this context the Authority considers that there are reasonable special circumstances for the reduced communal open space and consequently a variation granted to Clause 7.6.

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

Two submissions were made under section 49 of the Act in relation to the application during the exhibition period. One submission supported the proposal. The other submission opposed it principally on the basis that the text of Special Use Zone SD23, in clause 8, specifically provides for the CP Zone in the form of the community centre. Although the subject site is identified as C/CP, the current application does not make provision for such a centre, but provides only for commercial zoning.

It is noted that an approval for a previous proposal on the site was appealed to NTCAT in 2017 (by the submitter), with a similar concern. The NTCAT decision however made it clear that there is no requirement for non-commercial use, and no requirement for a community centre on the site. The approval for the previous proposal was subsequently upheld. On this basis, it is considered that NTCAT's finding addresses the submission. See *Plan: The Planning Action Network Inc v Development Consent Authority & Muirhead Central Pty Ltd [2017] NTCAT 598*.

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

The application was circulated to the relevant authorities and comments received from these authorities are addressed by the inclusion of conditions and/or notations on the development permit as required. The Authority notes that the City of Darwin considers that extra shade trees should be planted in the internal uncovered car parking areas, to further contribute to the character, cooling and amenity of the site. The Authority considers that to do this would require the applicant to reduce the car parking spaces on the site - making the proposal non-compliant with NTPS2020 - which the Authority does not have the power to do under NTPS2020. The Authority would, however, encourage the applicant to consider further shading in the car parking area but recognises that to provide it would require a variation to the development permit for the resultant reduction in car parking spaces.

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

It is considered unlikely that the proposal will have a significant impact on the amenity as it is the type of development anticipated on the site through Zone SD23 (Specific Use Darwin No.23), it does not directly adjoin a residential area, and generally complies with the requirements of Zone C (Commercial). The recommended conditions and notes for any permit that may be issued for the proposal will also assist in preventing any adverse impacts on amenity. The impact on amenity of the area from the hotel component of the proposal will also be protected through conditions imposed on any liquor licence granted for the establishment by the NT Liquor Commission (particularly relating to potential noise and hours of operation).

6. Pursuant to section 51(t) of the *Planning Act 1999*, the consent authority may take into consideration other matters it thinks fit.

One late public submission was received which essentially contends that the serviced apartment component of the application cannot be approved as it does not comply with the requirements of sub-clause 7

of SD23 and, further, as detailed in the NTCAT decision of *Bradley v Development Consent Authority & Kalhmera Pty Ltd [2017] NTCAT 922*, the Authority has no discretion to vary such requirements.

Sub-clause 7 of SD23 specifically provides that –

7. *With consent a lot may be developed for the purpose of multiple dwellings subject to all the relevant clauses of the Planning Scheme that would apply were the land within Zone MD.*

The consent authority may consent to the development of a lot for the purpose of multiple dwellings only where it has been identified for multiple dwellings on the land use drawing endorsed under paragraph 3.

Serviced apartments are defined as ‘multiple dwellings’ in NTPS2007. The subject site is identified as Zone C (Commercial) on the approved subdivision Masterplan. The Authority notes that multiple dwellings (serviced apartments) are permitted with consent in Zone C (Commercial), and that the requirement in subclause 7 is that a lot be identified for multiple dwellings, and not that it be identified as Zone MD (Multiple Dwellings), although that term is used in the preceding paragraph. The Authority further notes that multiple dwellings are discretionary uses in both Zones MD and C.

Sub-clause 9 reads: ‘*With consent a lot may be developed for purposes consistent with Zone C, where the lot has been identified for commercial purposes on the land use drawing endorsed under paragraph 3, and subject to all the relevant clauses of the Planning Scheme that would apply were the land within Zone C.*’

As such, in accordance with sub-clause 7 of SD23, the Authority considers that the Lot is identified for multiple dwellings, and the serviced apartments, as proposed, may be consented to by the Authority.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Determination

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

SUZANNE PHILIP
Chair

07 June 2021