



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING NO. 433 – FRIDAY 22 NOVEMBER 2024

**AGORA ROOM
HUDSON BERRIMAH
4 BERRIMAH ROAD
BERRIMAH**

MEMBERS PRESENT: Suzanne Philip (Chair), Mark Blackburn and Peter Pangquee

APOLOGIES: Marion Guppy and Mick Palmer

LEAVE OF ABSENCE: None

OFFICERS PRESENT: Margaret Macintyre (Secretary), Amit Magotra, Kaleb Thomas, Madison Harvey and Lingyi Kong (Development Assessment Services)

COUNCIL REPRESENTATIVE: Apology

Meeting opened at 10.30 am and closed at 12.35 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 TIME DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.

ITEM 1

PA2024/0232

SUBDIVISION TO CREATE ONE LOT

LOTS 5961, 4995, PART LOT 7474, 6566 (A) (15, 11 & 9) SMITH STREET AND LOT 7419 (16) MITCHELL STREET, DARWIN CITY, TOWN OF DARWIN

APPLICANT

Earl James and Associates

DAS tabled comments from Heritage Division.

Applicant: - Kevin Dodd and Simon Lewis (Earl James & Associates) and Rebecca Adam (Sitzler) attended.

RESOLVED
83/24

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lots 5961, 4995, part Lot 7474 and 6566 (A) (15, 11 and 9) Smith Street and Lot 7419 (16) Mitchell Street, Darwin City, Town of Darwin for the purpose of subdivision to create one lot, to require the applicant to provide the following information that the Authority considers necessary in order to enable the consideration of the application;

- 1) clarification on how the application meets the criteria and requirements of 'Meaning of Subdivision' under Section 5 of the *Planning Act 1999*; or
- 2) provide an amended application that responds to the criteria and requirements of 'Meaning of Subdivision' under Section 5 of the *Planning Act 1999*;
- 3) clarification on how concerns regarding the heritage values related to Reserve 1643, attached to Lot 4995 (Old Town Hall Ruins) are addressed.

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 present application relates to Lots 7474 (9), 5961 (15), 6566 (9), 7417 (16) and 4995 (11), Smith Street, Darwin, Town of Darwin, all of which are located within Zone CB (Central Business) of the NTPS2020. The Authority notes the assessment of the NTPS2020 completed by Development Assessment Services (DAS), which concludes that application complies with the relevant requirements of the NTPS 2020 and is discussed below.

The purpose of the application is to amalgamate a series of parcels of land to create a single lot to aid the ongoing servicing and maintenance of the area as part of the NT Government's Civic and State Square Precinct works, which aim to revitalise the Civic and State Square area of the CBD. The Statement of Effect states *this application is seeking the approval of the Development Consent Authority (DCA) for the creation of a*

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new parcel that comprises the land included in NT Government parcels 4995, 5961, 6566, 7419 and part of Lot 7474, Town of Darwin, in order to create one lot in accordance with attached plan 24/12971/1.

This application does not propose to alter any existing heritage buildings, nor to develop any structures.

Pursuant to sub-clause 1(c)(ii) of clause 1.8 of the NTPS2020, as the proposal is for the subdivision of land other than that included at Clause 1.8(1)(b)(iii), it is *Impact Assessable*.

According to the application, the proposal will result in a single lot, to support the NT Government's Civic and State Square redevelopment, which aim to create a safe and inviting public space and aid the ongoing servicing and maintenance of the area by consolidating the constituent lots into a single lot, which is identified as 'Chan Lawn' (open space) under the current Civic and State Square Redevelopment masterplan.

2. Pursuant to clause 1.10 (Exercise of Discretion by the Consent Authority) of the NTPS 2020, *the consent authority must consider the use or development in its entirety [...].*

Sub-clause 4 states that *In considering an application for a use or development identified as Impact Assessable the consent authority must take into account all of the following:*

- (a) any relevant requirements, including the purpose of the requirements, as set out in Parts 5 or 6;*
- (b) any Overlays and associated requirements in Part 3 that apply to the land;*
- (c) the guidance provided by the relevant zone purpose and outcomes in Part 4, or Schedule 4.1 Specific Use Zones; and*
- (d) any component of the Strategic Framework relevant to the land as set out in Part 2.*

In response to sub-clause (a), the NTPS 2020 does not include any specific subdivision requirements or minimum lot sizes for Zone CB. An Editor's Note to Clause 6.1 (Preliminary) states *Zones not mentioned in this Part do not have minimum subdivision requirements and should respond to the relevant zone purpose and outcomes and the Strategic Framework.*

In response to sub-clause (b), the Authority notes that no overlays are applicable to the proposal.

The Authority also notes that the DAS assessment concludes that the proposed subdivision responds to the zone purpose and outcomes of Zone CB and the strategic framework (sub-clauses (c) and (d)) as below:-

Zone CB (Central Business)

The site is located within Zone CB (Central Business). The purpose of this zone is to *promote an active and attractive mixed-use environment that maximises its function as the commercial, cultural, administrative, tourist and*

civic centre for the surrounding region that is integrated with high density residential development.

Strategic Framework - Central Darwin Area Plan

The site is located within an area identified for civic and community purpose uses. In addition, the social infrastructure, culture and heritage map identifies the 'Town Hall Ruins – Darwin' as being present on the subject lots.

The Authority does not raise any concerns that the application would result in adverse outcomes against the zone purpose or relevant aspects of the strategic framework.

However, the Authority considers that the application may not meet the criteria for a subdivision under the Planning Act 1999 and that it would more accurately be considered a consolidation, as discussed further below.

At the hearing Mr. Kevin Dodd (the applicant) provided an overview of the application. Mr Dodd explained that the proposed subdivision is known as Tranche 1 of the Civic and State Square Masterplan development. The purpose of this application is to establish a designated parcel within the State Square area that can be utilised for services, infrastructure, and other essential development needs. This will ensure that the site is effectively integrated into the broader development framework and can be managed appropriately moving forward.

The Authority notes that it only has the power to consider Development Applications as defined by the Planning Act 1999 (see Section 53). Development is defined in Section 3 as including "*subdivision or consolidation of the land*". The Authority questioned the applicant as to how the application meets the criteria of subdivision defined under Section 5 of the *Planning Act 1999*.

The Authority notes that Section 5 (Meaning of Subdivision) of the *Planning Act 1999* states:

1) Subject to subsections (2), (3) and (4), in this Act, subdivision means the division of land into parts available for separate occupation or use, by means of:

(a) sale, transfer or partition; or

*(b) lease, agreement, dealing or instrument purporting to render different parts of the land available for separate disposition or separate occupation, whereas Section 3 defines consolidation under the *Planning Act 1999* "the amalgamation of 2 or more parcels of land to form a single parcel."*

The Authority further notes that the Act draws a clear distinction between subdivision and consolidation, the Authority considers that the definition establishes the legal framework and powers under which subdivision applications can be assessed and approved by the Authority.

The Authority consider that the current application does not align with the definition of subdivision as the application does not propose a division of

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the land into separate parts available for distinct occupational use, as required by the definition. The Authority further considers that the process described appears more akin to a consolidation of land rather than a subdivision. There is no identified parent parcel from which the proposed parcel is being subdivided, which is a fundamental element of subdivision. The Authority determined that without meeting the criteria outlined in the Act, the application falls outside its statutory powers for subdivision and approving it as such would not comply with the legislative framework.

The Authority considers that its ability to consent to a development application is entirely dependent on compliance with the terms of the Planning Act 1999. On the face of it, no such power exists to consider this proposed amalgamation of “parcels of land” as a subdivision and not a consolidation. In the absence of a clear and independent assessment of the provisions of the Planning Act 1999 that establishes that the proposal meets the definition of “subdivision” the Authority considers that the current application does not satisfy the requirements for a subdivision under the *Planning Act 1999* and is beyond its powers.

In response, the applicant suggested that the Authority (or their delegate) has previously approved similar applications for 'subdivision to create 1 lot' over vacant crown land and that, as such, this application is in a form appropriate for determination. The Authority notes that because something may have been done in the past, it does not mean that is correct within the terms of the current legislation and does not grant power to the Authority to ignore the express terms of the legislation. Subdivision by its very nature involves the division of land. The Authority notes that even the website relating to the Subdivision Guidelines issued by government provides that a “Single Lot Subdivision” “*is where a developed lot is subdivided into two lots and takes the form of a new residential or industrial lot*”.

<https://nt.gov.au/property/land-planning-and-development/planning-applications-and-processes/subdivide-or-consolidate-land/nt-subdivision-development-guidelines>

The Authority considered that while there is ambiguity around what is the most appropriate type of application, that it would be erroneous to make a determination at this point in time, taking into consideration the relevant definitions under the Planning Act 1999. The Authority also note that suggestions of previous approvals do not mean it is appropriate in this situation.

Subsequently, the Authority determined to defer to allow the applicant time to either provide evidence that the application is a genuine subdivision, or alternatively, amend the application and seek a consolidation of the constituent lots.

3. Pursuant to Section 51(r) of the *Planning Act 1999*, 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 2011*.

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The Authority notes correspondence with the Heritage Branch and holds concerns about the proposed administrative management of Reserve 1643, which is attached to Lot 4995 (11) Smith Street, for heritage values associated with the Old Town Hall Ruins. As such, any future determination would likely include a permit condition that would require the works to be completed to the standards of the Heritage Branch of the Department of Lands, Planning and Environment.

In response, the applicant has stated that despite changes to the lot arrangements, the heritage value will continue to be a declared heritage place. The applicant indicated that they would accept a permit condition that would be cleared by the Heritage Branch.

The Authority determined to defer this application to allow the applicant time to address the heritage requirements, either by including conditions on any approval or based on the advice of the Heritage Division.

**RESOLVED
84/24**

That pursuant to section 86(1) of the *Planning Act 1999*, the Development Consent Authority delegate to the Chair or in the Chair's absence or inability to act any one of the other members of the division, the power under section 53 of the *Planning Act 1999*, to determine the application to develop Lots 5961, 4995, part Lot 7474, 6566 (A) (15, 11 and 9) Smith Street and Lot 7419 (16) Mitchell Street, Darwin City, Town of Darwin for the purpose of subdivision subject to the receipt of:

- clarification on how the application meets the criteria and requirements of 'Meaning Subdivision' under Section 5 of the *Planning Act 1999*; or
- an amended application that responds to the criteria and requirements of 'Meaning Subdivision' under Section 5 of the *Planning Act 1999*; and
- clarification on how concerns regarding the heritage values related to Reserve 1643, attached to Lot 4995 (Old Town Hall Ruins) are addressed.

FOR: 3

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Deferral

**ITEM 2
PA2024/0293**

DWELLING-SINGLE WITH A REDUCED DIMENSION OF PRIVATE OPEN SPACE AND REDUCED BUILDING SETBACK TO THE PRIMARY STREET BOUNDARY

APPLICANT

SECTION 8181 (101) ANGUS CIRCUIT, BERRIMAH, HUNDRED OF BAGOT
Patrick Berts

Applicant:- Patrick Berts and Bob Cox (builder) attended.

**RESOLVED
85/24**

That, the Development Consent Authority vary the requirements of Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and Clause 5.4.6 (Private Open Space) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Section 8181 (101) Angus Circuit, Berrimah, Hundred of Bagot for the

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purpose of dwelling-single with a reduced dimension of private open space and with a reduced building setback to the primary street boundary, subject to the following conditions:

GENERAL CONDITIONS

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

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. 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.

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 Section 8181, Hundred of Bagot is in Zone LMR (Low Medium Density Residential) in the NTPS 2020. Dwelling-single and ancillary structures are permitted in Zone LMR, except where development does not comply with the relevant requirements set out in Part 5 of the NTPS 2020. As the application seeks a variation to Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and Clause 5.4.6 (Private Open Space), it does not comply with Part 5 and therefore becomes *Merit Assessable* under Clause 1.8(1)(b)(ii)(2) of the NTPS 2020.

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The Authority noted that the applicant has identified non-compliance with Clause 5.4.6 (Private Open Space) only. However, during the assessment of the application, Development Assessment Services (DAS) also identified non-compliance with Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures). Consequently, the Authority has considered both non-compliances.

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 2 of the NTPS 2020, the consent authority In considering an application for consent for a use or development that has become *Merit Assessable* under Clause 1.8(1)(b)(ii)(2), the consent authority must consider the requirements in Part 5 that are not complied with and whether the proposal meets the purpose of the requirements. Therefore, in this instance, the relevant requirements, including the purpose of the requirements, as set out in Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and Clause 5.4.6 (Private Open Space) have been considered by the Authority as follows:

Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures)

The assessment carried out by the Development Assessment Services has found that the dwelling-single proposes a 2.864m setback for the portico roof along the street boundary, where 3m setback is required for the permitted articulation zone towards the primary street frontage boundary under the Schedule 9 under NTPS 2020.

Administratively, the consent authority may consent to a development that is not in accordance with sub-clause 6-8 only if it is satisfied that the reduced setback is consistent with the purpose of this clause and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.

The purpose of the clause is to:

Ensure that residential buildings and ancillary structures are located in a manner that:

- (a) is compatible with the streetscape and surrounding development including residential buildings on the same site;*
- (b) minimises adverse effects of building massing when viewed from adjoining land and the street;*
- (c) avoids undue overlooking of adjoining properties; and*
- (d) facilitates breeze penetration through and between buildings.*

The Authority determined granting a variation to the front setback proposed is appropriate in this instance because:

- 1) A 2.864m setback is provided for the portico roof along the street boundary, where a 3m setback is required. The slight shortfall of 0.136m affect around 0.31m along the 13.72m long primary street boundary.
- 2) The affected boundary of the non-compliant roof engulfs about 2.26% of the total length of the boundary line, thereby minimising its effect on the streetscape to the adjoining properties and building massing.

- 3) Considering the structure and scale of the proposed roof, it is not expected to impact breeze penetration on site or create any overlooking issues.

At the hearing, Mr. Patrick Berts (the applicant) spoke to the application and provided context for the reduced front setback. Mr Berts told the Authority that the design of the dwelling-single, initially developed by the builder and approved by the applicant, aligns with finance approvals, energy efficiency standards, and structural engineering requirements. The non-compliance of the roof overhang intruding 150mm into the front setback is minor and is unlikely to impact building massing.

The Authority notes that in order to grant a variation to the clause, the Authority needs to be satisfied that the reduced setback is consistent with the zone purpose and outcomes, and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property. The Authority determined that the reduced front setback is consistent with the purpose of Zone LMR and satisfies the relevant zone outcomes under sub-clauses 4 and 6 of Clause 4.2, as it will not result in significant building massing or negatively affect the streetscape and breeze penetration.

The Authority notes that the application includes approval from the Northcrest Design Review Committee (Covenant) for the reduced front setback.

Clause 5.4.6 (Private Open Space)

Sub-clause 2 provides private open space should:

- (a) satisfy the minimum area, dimensions and open to the sky requirements contained in the table to this clause;*
- (b) be directly accessible from the dwelling and enable an extension of the function of the dwelling; and*
- (c) be located to provide views from the dwelling to open space and natural features of the site or locality, and to reduce overlooking from neighbouring open space and dwellings;*
- (d) ensure that at least half of the private open space is permeable to allow stormwater infiltration and lessen stormwater runoff from the site;*
- (e) include at least one area of at least 5m², with no dimension less than 1.5m, for the deep soil planting of trees and vegetation for shade or screening; and*
- (f) allow for landscaping at the property frontage to complement the visual amenity of the streetscape.*

The clause requires that the private open space for a dwelling must be permeable, allow for inground planting of vegetation for shade and amenity, and allow for stormwater infiltration. For an area within a building setback to be counted as open space, the area must be permeable with at least 1.5m wide vertically open to the sky. Additionally, for a 'directly accessible' area to comply with Clause 7.5, a person can step from the dwelling into the private open space. To effectively extend the function of a dwelling, the private open space should be located so it can be accessed from one or more

of the dwelling's living areas, such as a lounge, kitchen, bedroom, or study.

Considering the above, including the minimum area and dimensions requirements under the clause, the Authority notes that the DAS's assessment of the private open space area has found that Area B complies with the clause's requirements. However, a reduction in Area A (open to the sky) of POS is proposed. The plans indicate only 37.28m² of Area A, where 45m² is required under the clause.

Administratively, the consent authority may consent to private open space 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 it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.

The purpose of the clause is to:

Extend the function of a dwelling and enhance the residential environment by ensuring that each dwelling has private open space that is:

- (a) of an adequate size to provide for domestic purposes;*
- (b) appropriately sited to provide outlook for the dwelling;*
- (c) open to the sky and sufficiently permeable to allow stormwater infiltration and lessen runoff from the site; and*
- (d) inclusive of areas for landscaping and tree planting.*

The Authority determined granting a reduction a reduction in Area A (open to the sky) because:

- 1) Area B (verandah) provides a functional area to enhance the visual connection between the indoor and outdoor spaces. The roof of the verandah offers shading and weather protection for the residents.
- 2) The reduced Area A (open to the sky) is 9m², minor in nature, and will not greatly impact stormwater infiltration. The proposed dwelling-single, in addition to 37.28m² Area A, provides 24.5m² open space at the front, which is open to the sky and permeable to allow stormwater infiltration.
- 3) Except for the grassed front yard, which is restricted by the Northcrest covenant Design Guideline, landscaping can be placed on all sides of the property to enhance visual amenity of the area when viewed from the public and adjacent properties.

The Authority notes that the 24.5m² open space in the front yard is not identified as private open space as it is not directly accessible from the dwelling's living areas. However, it is connected to the portico of the dwelling, where it is likely to be used for domestic purposes by future residents. All other factors comply with the requirements for Area A of private open space, including the area being open vertically to the sky and having no dimension less than 1.5m. Therefore, while this area technically is not a private open space, the size of the area is sufficient to enable an extension of the function of the dwelling and provide landscaping to enhance the visual amenity of the area when viewed from the public and adjacent properties.

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At the hearing, Mr Berts explained that the main reason for non-compliance with Area A is the tapering at the front of the lot, which affects the configuration of the private open space. Mr Berts told the Authority that if the lot were rectangular, this issue would not exist, and the design would easily meet the required standards, Mr Berts further stated that compliance with Area A at the rear could be achieved by reducing the width of the eaves by 150mm. However, this change would create a vertical alignment at the back of the roof. While the pitch of the roof would remain unchanged, this adjustment might impact the overall aesthetic consistency with neighbouring properties.

According to Clause 5.4.6, the Authority must be satisfied that any variation to the clause aligns with the purpose and desired outcomes of the zone. Additionally, the variation must be appropriate for the site, taking into account factors such as location, scale, and impact on neighbouring properties. After reviewing the design of the single dwelling, the Authority has determined that it adequately addresses the site constraints and is consistent with adjacent properties. Furthermore, the application includes approval from the Northcrest Design Review Committee (Covenant) regarding non-compliance with private open space requirements.

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.

Dwelling-single is an expected form of development within Zone LMR. The land is not impacted by any overlays. Additionally, the Department of Environment, Parks and Water Security did not identify or raise any issues of concern in relation to land capability.

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

The potential impact on the existing and future amenity of the area is anticipated to be similar and consistent with Zone LMR in which it is located. No overall undue impacts to amenity are expected as a result of the proposal. Where the development does not comply with the relevant clauses of the NTPS2020, the impact on future amenity has been considered and a variation has only been supported in cases where amenity will not unduly be impacted upon.

FOR: 3

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

ITEM 3
PA2023/0406

VEHICLE SALES AND HIRE, DEMOUNTABLE STRUCTURES (UP TO 50) AND
CLEARING OF NATIVE VEGETATION

APPLICANT

SECTION 7666 (8) FLIGHTPATH ROAD, BERRIMAH, HUNDRED OF BAGOT
One Planning Consult

Applicant: - Israel Kgosiemang (One Planning Consult) attended.

RESOLVED
86/24

That, pursuant to section 53(a) of the *Planning Act 1999*, the Development Consent Authority consent to the application to develop Section 7666 (8) Flightpath Road, Berrimah, Hundred of Bagot for the purpose of vehicle sales and hire with ancillary office and motor repair station, storage of containers and / or demountable buildings and clearing of native vegetation, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans submitted with the application but modified to show the below:
 - a) Include a notation specifying that any habitable building in the development will be designed and constructed to comply with AS2021-2015 'Acoustics – Aircraft noise intrusion – Building siting and construction' (AS2021).
 - b) A lighting design plan for the development prepared by a qualified person, showing details of all external lighting. Any external lighting must comply with Section 9.21 'Lighting in Vicinity of Aerodromes' of the CASA Manual of Standards Part 139.
 - c) Storage location of equipment for loading and unloading of containers and demountable buildings.
 - d) Any changes to the proposed development as a result of conditions precedent.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the applicant is to provide advice from the Department of Defence NT that approval is granted for the height of the structure, to the satisfaction of the consent authority.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), it must be demonstrated by a site and soil evaluation report completed by an appropriately qualified site and soil evaluator, that an on-site wastewater management system complying with the requirements of the Code of Practice for Wastewater Management can be installed for the proposed development.
4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the applicant is to provide confirmation from a

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suitability qualified person that the bore design suits the hydrological conditions and the intended purpose.

5. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a schematic plan demonstrating the on-site collection of stormwater and its discharge into the local 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 surface flow direction, downpipe direction and any connection to Council connection points.
6. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the crossover and driveway to the site from the City of Darwin Road reserve, to the satisfaction of the consent authority.
7. Prior to the commencement of works, detailed design drawings must be provided confirming how the future connection of water and sewer services will be achieved to the requirements of the Land Development Unit, to the satisfaction of the consent authority.
8. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve of Flightpath Road to the requirements of City of Darwin.
9. 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.
10. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Guidelines, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.

GENERAL CONDITIONS

11. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
12. The use and development as shown on the endorsed plans must not be altered without the further consent of the consent authority.
13. The permit holder must ensure that the clearing operator has a copy of the permit, including the endorsed drawing, at all times during the clearing operation.

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14. Before the vegetation removal starts, the boundaries of all vegetation stands to be removed and retained must be clearly marked on the ground or marked with tape or temporary fencing to the satisfaction of the consent authority.
15. Appropriate erosion and sediment control measures must be effectively implemented throughout the construction phase of the development (including clearing and early works) and all disturbed soil surfaces must be satisfactorily stabilised against erosion at completion of works, to the satisfaction of the consent authority. Information resources are available on the IECA website www.austieca.com.au and the Department of Lands, Planning and Environment ESCP Standard Requirements 2019 and Land Management Factsheets available at <https://nt.gov.au/environment/soil-land-vegetation>. For further advice, contact the Land Development Coordination Branch: (08) 8999 4446.
16. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
17. The owner of the land must enter into agreements with the relevant authorities for the provision of electricity to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
18. Before the use or occupation of the development, an unconditional guarantee to service the development with water and sewer must be provided to the Power and Water Corporation, Water Services, to the satisfaction of the consent authority.
19. Before the use or occupation of the development, certification is to be provided by an appropriately qualified person that the development is serviced by a single bore.
20. Before the use or occupation of the development, certification is to be provided by an appropriately qualified site and soil evaluator that any new on-site wastewater management system has been installed by a qualified licensed Self-Certifying Plumber and complies with the NT Code of Practice for Wastewater Management.
21. Prior to handover of assets, surveyed as-constructed information confirming the depth and alignment of internal services must be provided that clearly identifies the connection to the future services.
22. 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;

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- e) line marked to indicate each car space and all access lanes; and
- f) clearly marked to show the direction of traffic along access lanes and driveways

to the satisfaction of the consent authority.

Car parking spaces, access lanes and driveways must be kept available for these purposes at all times.

23. 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.
24. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street, in accordance with the requirements of City of Darwin, to the satisfaction of the consent authority.
25. 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.
26. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
27. Upon completion of any works within or impacting upon existing road reserves, the infrastructure within the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin and returned to the condition as documented in the dilapidation report.
28. Before the use/occupation of the development starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
29. 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.
30. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building.
31. The development must be constructed to comply with AS2021-2015 'Acoustics – Aircraft noise intrusion – Building siting and construction' (AS2021), and a statement from a suitably qualified acoustic engineer confirming compliance with AS2021-2015 must be submitted prior to occupation of the development, to the satisfaction of the consent authority.
32. External lights must be designed, baffled and located to the satisfaction of the consent authority to prevent any adverse effect on adjoining land, roads, and on the operation of the RAAF Base Darwin and Darwin International Airport.

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33. Before the use/occupation of the development starts, the applicant is to provide confirmation from suitability qualified person that full lot fire coverage can be achieved from proposed fire hydrants and firefighting arrangements have been made in the development, to the satisfaction of the consent authority.

NOTES

1. Darwin International Airport advises that separate requests for assessment and approval must be submitted to Darwin International Airport and the Department of Defence NT 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.

The site is subject to the 'Defence Areas Control Regulations (DACR)'. All structures, including temporary structures, higher than 15m above ground level, including, but not limited to, additional buildings, light poles, cranes used during construction, vegetation etc., require approval from the Department of Defence NT.

2. The applicant is advised that the provision of lighting at the site is required to be consistent with the CASA Manual of Standards (MOS-139) Aerodromes to minimise the potential for conflict with aircraft operations. The design of lighting is a developer responsibility and if it is later found that lights or glare endangers the safety of aircraft operations, the Department of Defence NT or the Civil Aviation Safety Authority may require the lighting to be extinguished or suitably modified.
3. Darwin International Airport (DIA) advises these must be no site activity which would attract birds and create hazard for aircraft operations.
4. 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.
5. 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 8936 4070 to determine if the proposed works are subject to the Act.
6. 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.

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7. The future landowner will be required to connect to water and sewer services once constructed, within a reasonable timeframe.
8. A permit to burn is required from the Regional Fire Control Officer, NT Fire and Emergency Services, prior to the ignition of any felled vegetation on the property. Fire prevention measures are to be implemented in accordance with the requirements of the *Bushfires Management Act 2016*.
9. For the purposes of best practice land management and environmental protection it is recommended that a Type 1 Erosion and Sediment Control Plan (ESCP) be developed in accordance with the Department of Lands, Planning and Environment ESCP Standard Requirements 2019 available at <https://nt.gov.au/environment/soil-land-vegetation>. The ESCP should be prepared prior to commencement of works and implemented during the construction phase (including clearing and early works); and all disturbed soil surfaces should be satisfactorily stabilised against erosion at completion of works. For further advice, contact the Land Development Coordination Branch: (08) 8999 4446.
10. All 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.
11. 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. The number must be visible against the background on which it is placed, to the satisfaction and at no cost to City of Darwin.
12. Any damaged or removed infrastructure located in, on or over the road reserve (inclusive of preexisting street trees), is to be repaired or replaced at either the developers or landowners' cost, to the satisfaction of City of Darwin.
13. 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.
14. Any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin's Policy 6310.100.E.R - Outdoor Advertising Signs Code.
15. Any new on-site wastewater management system is to be installed in accordance with the Code of Practice for Wastewater Management.
16. The Aboriginal Areas Protection Authority recommends that the permit holder obtain an Authority Certificate to indemnify against prosecution under the Northern Territory Aboriginal Sacred Sites Act 1989. For advice on how to obtain a certificate please contact the Aboriginal Areas Protection Authority.

17. All land in the Northern Territory is subject to the Weeds Management Act 2001 (WM Act). The WM Act describes the legal requirements and responsibilities that apply to owners or occupiers of land regarding declared weeds. General duties described in Division 1 of the WM Act include the requirement for owners or occupiers of land to take all reasonable measures to prevent land being infested with a declared weed, and to prevent a declared weed from spreading. There are additional duties including a prohibition on buying, selling, cultivating, moving, or propagating any declared weed and the requirement to notify the Weed Management Branch of a declared weed not previously present on the land within 14 days of detection.

Gamba is subject to a statutory weed management plan. Management obligations outlined in these plans are legally binding on all owners and occupiers. Management requirements and copies of the statutory weed management plans are available at <https://nt.gov.au/environment/weeds/weed-managementplanning>.

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.

Section 0766 Hundred of Bagot (the site) is located in two zones and the zones are administrated under different NT Planning Schemes. Part of the site is located in Zone RD (Restricted Development) and is to be determined under the NT Planning Scheme 2020 (NTPS 2020). Part of the site, which is located in Zone SD47 (Specific Use Darwin 47), is to be determined under the NT Planning Scheme 2007 (NTPS 2007), because under Schedule 4: Specific Use Zones of the NTPS 2020, it states that the Specific Use Zones listed in the Table to the Schedule (of which SD47 is one) are subject to the relevant requirements contained in the former Planning Scheme.

NTPS 2020:

The NTPS 2020 applies to the portion of the site in Zone RD and the undefined land use of storage of a maximum of 50 containers and demountable buildings requires consent under Clause 1.8 (When development consent is required). It is identified as Impact Assessable under Clause 1.8(c)(i); therefore, the Darwin Regional Land Use Plan 2015 (DRLUP), Berrimah North Planning Principles Area Plan (BNPPAP), the zone purpose and outcomes of Clause 4.25 Zone RD (Restricted Development), Clause 3.2 CNV – Clearing of Native Vegetation, Clause 3.5 LPA – Land in Proximity to Airports and Clauses 5.2.1 General Height Control, Clause 5.2.4 Car Parking, 5.2.5 Loading Bays, 5.2.6 Landscaping, 5.2.7 Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR, need to be considered.

The proposed storage of a maximum of 50 containers and demountable buildings responds to the purpose and requirements of Zone RD as it is considered to be of a suitably low intensity and does not encumber the

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operation of the airport. Specific measures recommended by the Department of Defence to mitigate potential impacts are reflected in the conditions of development approval.

Part 3- Overlays

Overlay 3.2 (CNV – Clearing of Native Vegetation) applies to the site and seeks to *identify areas with limits to the clearing of native vegetation and ensure that clearing in these areas does not: (a) impact on the conservation values of land within Zone CB; or (b) Unreasonably contribute to environmental degradation of the locality.*

The application proposes to clear 21000m² of existing native vegetation. The application demonstrated consideration of the NT Land Clearing Guidelines and addresses the requirements of the Overlay. The proposal includes replacement landscaping, in a more suitable location, as an interface between the road reserve and new development and as a means of meeting other landscaping requirements of the NTPS 2020.

The NTPS 2020 allows the consent authority to *consent to clearing in excess of 1ha where it is satisfied the clearing is consistent with the purpose of the clause and is appropriate in the context of the site and the locality having regard to such matters as: (a) the suitability of the site for the proposed use; (b) the value associated with the environmental characteristics (as applicable) (c) the significance, extent and likelihood of any potential environmental impacts; and (d) the measures the application proposes will be implemented to mitigate any potential impacts.*

The Authority notes that the proposed clearing is necessary and directly related to the storage of containers and demountable buildings on the site. The above matters have been considered and the proposal is considered to be both consistent with the purpose of the clause (being to ensure no unreasonable environmental degradation of the locality) and appropriate in the context of the site, its use and capacity for environmental impacts to be managed.

The Authority further notes that advice from relevant service authorities indicates that the proposal is unlikely to result in environmental impacts, with the specific measures recommended by service authorities to mitigate potential impacts reflected in the conditions of development approval.

Overlay 3.5 (LPA – Land in Proximity to Airports) applies to the site and seeks to *identify areas which may be subject to additional amenity impacts and/or restrictions due to its proximity to an airport, and ensure that the use and development of land in these areas: (a) minimises the detrimental effects of aircraft noise on people who reside or work in the vicinity of an airport; (b) does not result in any new use or intensification of development on land that would prejudice the safety or efficiency of an airport; (c) does not result in any new use or intensification of development that would jeopardise the curfew free operation of the Territory's airports (where applicable); and (d) retains the non-urban character of the land.*

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The application has been circulated to Darwin International Airport and the Department of Defence for comment. No issues were raised by the Darwin International Airport (DIA) and federal regulations and other standards (AS 2021 - 2000) are applicable to the provision of external lighting within a flight path and building design. A condition precedent will require that prior to endorsement of plans, approval from the Department of Defence is granted for any external lighting and height of the structures and cranes (if any) to the satisfaction of the consent authority.

The Authority determined to include a condition precedent that will require an external lighting plan to be submitted.

The Authority notes the Development Assessment Services assessment concludes that the development located with Zone RD complies with all the relevant development requirements of NTPS 2020.

NTPS 2007:

The site is located in Zone SD47, with the purpose to *facilitate the development of the land for light industrial purposes that minimise the impacts of exposure to aircraft noise, and that does not inhibit the operation of the Darwin International Airport*. The proposed vehicle sales and hire with ancillary office and ancillary motor repairs station is permitted with consent in Zone SD47. Specific requirements contained in Zone SD47 are reflected in the conditions of development approval.

Furthermore, Zone SD47 provides that development can occur with consent in accordance with the development requirements of Zone LI, Clauses 6.1 (General Height Control), 6.5.1 (Car Parking) and 9.1.1 (Industrial Setbacks).

The proposed vehicle sales and hire with an ancillary office and motor repairs station are not considered to detrimentally affect adjoining or nearby land, therefore complying with Zone LI. In addition, the proposed complies with Clauses 6.1, 6.5.1 and 9.1.1.

2. Pursuant to section 51(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. 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 land is capable of supporting the proposed development noting the significant constraints of Zone RD and SD47. The application was circulated to the relevant authorities, and comments received from these authorities are addressed by including conditions and/or notations on the development permit as required.

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Whilst the site does not have a connection to reticulated sewer or water, the applicant has proposed interim measures to service the lot until the Land Development Unit (LDU) of the Department of Lands, Planning and Environment (DLPE) provides reticulated water and sewer infrastructure in the future. Power Water (Water) and LDU of DLPE have reviewed the measures and have no concerns about them on an interim basis. Specific conditions precedent and general conditions are included on the approval to ensure that the proposed development is adequately serviced as per the interim solutions proposed for water supply and sewer services.

In addition, general conditions and notes are included for ongoing compliance of lighting and cranes to ensure that the development does not inhibit the operation of the Darwin International Airport.

3. 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

The proposed development would be unlikely to have an adverse impact on the existing and future amenity of the area based on the following reasons:

- The location of the proposed development responds to the purpose of both Zones SD47 and RD.
- The proposed development is not a sensitive land use and reflects the significant constraints of the land, being adjacent to the airport.
- The proposal provides adequate landscaping setbacks to both filter and screen the development when viewed from the streetscape and adjoining properties.

FOR: 3

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

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

SUZANNE PHILIP

Chair

28 November 2024