



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING NO. 463 – FRIDAY 18 SEPTEMBER 2026

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

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

APOLOGIES: None

LEAVE OF ABSENCE: None

OFFICERS PRESENT: Kaleb Thomas and Samay Chandhiok (Development Assessment Services)

COUNCIL REPRESENTATIVE: Apology

Meeting opened at 9.35 am and closed at 10.35 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 **ROOMING ACCOMMODATION (STUDENT ACCOMMODATION)**
PA2026/0269 **WITH 40 BEDS AND OFFICE IN A 4 STOREY BUILDING**
LOT 359 (22) PROGRESS DRIVE, NIGHTCLIFF, TOWN OF NIGHTCLIFF
APPLICANT **SHERIDAN CONSULTING**

Applicant: Joseph Sheridan (Sheridan Consulting) and Randal Ashford (Ashford Architects) attended.

Submitter who sent their apology: Beth Niemeier

Submitters: Amanda Nobbs-Carcuro, Nino Carcuro, Fiona Douglas, Joanna Hare, Nick Kirlew on behalf of PAn: The Planning Action Network, and Trevor Cox of the Y Northern Territory attended.

Other interested parties: Julie Hillier, Stephanie Cooper, and Megan Taylor.

RESOLVED That, pursuant to section 53(c) of the *Planning Act 1999*, the Development
53/26 Consent Authority refuse to consent to the application to develop Lot 359 (22)
Progress Drive, Nightcliff, Town of Nightcliff for the purpose of Rooming
accommodation (student accommodation) with 40 beds and office in a 3-storey
building for the following reasons:

REASONS FOR DECISION

1. The application proposes rooming accommodation (student accommodation) with 40 beds and office in a three-storey mixed-use building at Lot 359 (22) Progress Drive, Nightcliff, Town of Nightcliff (the site). The site has an area of approximately 1000 m², is currently undeveloped and is zoned C (Commercial) pursuant to the Northern Territory Planning Scheme 2020 (NTPS 2020). The site fronts Progress Drive to the south and abuts land in Zone LR (Low Density Residential) to the north and east, and Zone C to the west.

The meeting was attended by Mr Joseph Sheridan (Sheridan Consulting, the applicant) and Mr Randal Ashford (the proponent).

As a preliminary matter, the Authority advised that, despite the application purporting to be for a three-storey building, the Authority considers that the application embodies a four-storey building for the purposes of the NTPS 2020. The Darwin Mid Suburbs Area Plan of the Strategic Framework stipulates a maximum of three storeys at the site. The Authority considers the application therefore conflicts with the Strategic Framework. Clause 1.6 of the NTPS 2020 provides that the planning scheme includes the Strategic Framework. Under section 52 of the *Planning Act 1999*, the Authority must not consent to a proposed development except in accordance with any planning scheme applicable to the development unless the Minister gives the

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Development Consent Authority approval to consent. No such approval has been applied for or granted. The Authority notes that only a deferral or a refusal can be made at the meeting without such approval.

Schedule 2 of NTPS 2020 provides that 'storey' means *that part of a building between floor levels. If there is no floor above, it is the part between the floor level and the ceiling. It may comprise an attic, basement or be built over an area for car parking.* In this case, the Authority considers that the rooftop structures, including the laundry, storeroom and roofed communal open space, constitute a fourth storey under the NTPS 2020 definition. The laundry and storage rooms amount to functional, frequently occupied utility spaces. There is a lift and stairway access lobby, and the communal open space and BBQ area has a permanent roof structure. These elements add a defined ceiling layer above the top residential floor, amounting to an extra storey. The Chair also noted that the Authority has previously treated a rooftop plant room as an additional storey.

Mr Sheridan acknowledged the interpretation and sought clarification on the process required to obtain Ministerial authority in relation to this matter. The Chair advised the section 52 process would require the matter to be deferred, and a report sent to the Minister seeking approval for the Authority to consider departing from the Strategic Framework. The Chair noted the Minister does not approve the development application but simply decides whether the Authority may consider consenting to it. The Chair advised there is a 14-day response period, beyond which the Authority is inferred to have been given the power to consent.

Mr Sheridan indicated that, notwithstanding the need for Ministerial authority, he wished the meeting to proceed to identify issues that may need to be addressed through any future redesign or amendment. The Chair again noted that although section 52 provides that the Authority must not consent to a proposed development except in accordance with any planning scheme applicable to the development, it does not prevent it from refusing or deferring an application.

The Authority, having considered the written agenda including the additional material provided by the applicant, the applicant's presentation at the hearing, the submissions, both written and oral, and for the reasons provided below, has determined to refuse the application. An application under section 52 is not considered necessary in this case.

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

The Northern Territory Planning Scheme 2020 (NTPS 2020) applies to the land, which is in Zone C (Commercial). The application for rooming accommodation (student accommodation) with 40 beds and office in a three-storey building requires consent under clause 1.8 (When development consent is required). The rooming accommodation is *Impact Assessable*, while

the office (up to one storey above ground level) is *Permitted* in Zone C (Commercial). Accordingly, the purpose and outcomes of Zone C (Commercial) and clauses 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), 5.3.7 (End of Trip Facilities in Zones C), 5.4.3 (Building Setbacks for Residential Buildings and Ancillary Structures), 5.4.7 (Communal Open Space), 5.4.9 (Residential Development in Zone C), 5.4.17 (Building Articulation), 5.4.19 (Residential Plot Ratio), 5.5.1 (Interchangeable Use and Development), 5.5.2 (Commercial Plot Ratio), 5.5.4 (Expansion of Existing Developments in Zones CB, C, SC and TC), 5.5.15 (Design in Commercial and Mixed Use Areas), 5.5.17 (Building Frontage in Commercial and Mixed Use Areas), and 5.9.6 (Nightcliff Village), need to be considered.

The Authority notes the report completed by Development Assessment Services (DAS), which found that the proposal complies with the relevant requirements of the NTPS 2020 except for clauses 5.2.4.4 (Layout of Car Parking Area), 5.2.5 (Loading Bays), 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR), 5.3.7 (End of Trip Facilities in Zones C), 5.4.3 (Building Setbacks for Residential Buildings and Ancillary Structures), 5.5.17 (Building Frontage in Commercial and Mixed Use Areas) and 5.9.6.1 (Building height). In addition, the Authority notes that the application does not meet the relevant requirements of clause 5.4.7 (Communal Open Space). These clauses are discussed in detail further below.

Mr Sheridan summarised the application and confirmed acceptance of the matters raised in the Development Assessment Services report to the Authority, and subsequent addendum. Mr Sheridan advised that the application comprised 28 one-bedroom and six two-bedroom units to be used as rooming accommodation, as well as ground-floor parking, three office tenancies and a reception area. Mr Sheridan acknowledged that there were a series of non-compliances, including several minor matters relating to parking dimensions, loading areas and awning width but the principal issues concerned setbacks and landscaping. Mr Sheridan noted that additional material had been provided, including two letters of support and an Operational Management Plan.

The Chair expressed concern regarding traffic impacts, noting the constrained nature of the site, its proximity to a busy roundabout and the absence of on-street parking opportunities. The Chair indicated that a traffic assessment should be prepared and considered before any determination is made.

The Chair further advised that the loading bay non-compliance was not considered minor, given the anticipated intensity of use from student accommodation and office tenancies and the site constraints. Concerns were also raised regarding vehicle queuing associated with the proposed gated access. Mr Sheridan acknowledged the concerns and indicated a willingness to address traffic matters.

The Chair queried which educational institutions prospective residents would attend. Mr Sheridan advised that the site was relatively centrally located between the Darwin CBD and Casuarina areas, and that future residents could

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attend a range of tertiary and secondary education providers. Mr Sheridan confirmed there was no formal partnership with Charles Darwin University, but noted that an arrangement had been developed with the YMCA Northern Territory (the Y Northern Territory) to assist in demonstrating the student accommodation function of the development.

The Chair questioned who were the likely occupants of the proposed office tenancies and raised concerns regarding customer access and parking availability for office visitors. Mr Sheridan advised that the application complied with the NTPS 2020 parking requirements and that office visitors would be managed in the same manner as other businesses within the locality. Mr Randal Ashford advised that there was a demand for small office spaces in the Nightcliff locality, and that potential tenants could include professional service providers such as tax agents seeking to establish a local presence and/or those already living in the area.

The Chair raised concerns regarding the lack of landscaping, particularly along the eastern boundary, and noted that the application did not satisfy landscaping expectations under the NTPS 2020. Mr Sheridan acknowledged the issue and advised that amended plans could be prepared to increase landscaping along the eastern boundary by modifying the office component layout.

Ms Marion Guppy, a member of the Authority, asked how many staff would be required to operate the facility, and whether staff would reside on-site. Mr Sheridan advised that operation of the facility was expected to require only one on-site staff member, supported by contractors for maintenance, cleaning and landscaping activities. Mr Sheridan further acknowledged that the Operational Management Plan contemplated the possibility of an on-site manager residing within the facility.

Mr Peter Pangquee, a member of the Authority, commented on potential waste management challenges associated with accommodating approximately 40 students, including waste collection vehicle access and traffic implications. Mr Pangquee also expressed concerns regarding bicycle parking accessibility and the provision of storage lockers.

Mr Sheridan acknowledged those concerns and advised that bicycle storage arrangements were being reconsidered, including relocation to a more accessible location. Mr Sheridan also advised that additional locker facilities could also be reflected in amended plans.

The Chair raised concerns regarding potential reverse amenity impacts resulting from the site's proximity to an adjoining service station and motor repair premises. The Chair noted that the application could potentially constrain future expansion opportunities for those uses. Mr Sheridan advised that the proposal complied with the NTPS 2020 separation requirements from existing fuel bowzers and noted that surrounding residential development already existed in the broader locality.

The Chair expressed concern that the application's only communal open space was located on the rooftop level and queried its usability during both the wet season and other periods of high heat. The Chair further observed that residents would have limited private open space, and that no communal lounge or kitchen facilities are proposed. Mr Sheridan advised that the rooftop communal area was substantial in size and remained functional. Mr Sheridan suggested that additional shading structures could improve usability and noted that the rooftop communal spaces are common in higher density residential developments.

The Chair queried how the accommodation would be serviced, including cleaning, maintenance and laundry arrangements, and expressed concerns about the resulting traffic generation, especially taking into consideration the proposed gate over the driveway. Mr Sheridan advised that services would primarily be provided by external contractors and that residents would generally be responsible for maintaining their own rooms. He confirmed that communal laundry facilities would be available.

The Chair also sought clarification regarding intended occupancy terms. Mr Sheridan advised that occupancy periods would depend on individual student circumstances, with eligibility tied to evidence of enrolment and ongoing participation in a course of study.

3. 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 1.10(4) of the NTPS 2020 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:*

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

An assessment of clause 1.10 (4) is provided below.

Part 2 – Strategic Framework

The Authority notes the application is consistent with the purpose and intentions of the Darwin Regional Land Use Plan 2015, however, confirms that it is contrary to the relevant provisions of the Darwin Mid Suburbs Area Plan 2016. Objective 2 of the Nightcliff and Coconut Grove Activity Centre concept area seeks *Development of medium rise mixed use buildings*, and the acceptable response states *Buildings to accord with the Nightcliff and Coconut Grove Concept Plan (Built Form Plan)*. The Built Form Plan then identifies the site as an *Opportunity for a gateway development of up to three storeys marking the entrance to Nightcliff*, and shows the site as having a maximum height limit of three storeys.

The Authority notes that the NTPS 2020 defines a storey as *that part of a building between floor levels. If there is no floor above, it is the part between the floor level and the ceiling. It may comprise an attic, basement or be built over an area for car parking*, and where several built form elements at the rooftop level, such as storeroom, laundry room, stairwell, lift shaft, and ceiling over the outdoor areas demonstrate this level represents a fourth level of the application.

Part 3 – Overlays

The Authority notes that the only overlay that affects the site is clause 3.13 (GL – Gateway Locations).

Clause 3.13 (GL – Gateway Locations)

The purpose of this overlay is to *Ensure that the use or development of land identified as a Gateway Location is designed to respect and enhance the unique characteristics of the locality*.

Sub-clause 4 requires that *Building design must be in accordance with the relevant requirements for gateway locations identified in Clause 5.9 (Location Specific Development Requirements)*, where the relevant requirement for development in the Nightcliff Village is clause 5.9.6.2 (Development in Gateway Locations). Under that clause, only sub-clause 4 is relevant to this application. This is discussed further below.

Part 4 – Zoning

Clause 4.11 (Zone C – Commercial)

The Authority notes that the purpose of this zone is to *Provide a mix of activities and services well connected to a surrounding community at varying scales including:*

- (a) mixed use centres providing a wide range of retail, entertainment, community and business activities that serve the broader community;*
- (b) smaller centres that cater for convenience needs of immediately surrounding communities;*
- (c) small local centres predominantly focused on convenience retailing; and*

(d) residential development commensurate to the scale of the commercial precinct.

The Authority notes that the application is generally consistent with the purpose and outcomes of Zone C by combining three ground-floor office tenancies with rooming accommodation above, maintaining the commercial function of the site while introducing residential accommodation appropriate to the scale of the Nightcliff Activity Centre. However, the Authority notes that zone outcome 4 intends that *All development is to:*

(a) avoid adverse impacts on the local road network;

(b) be managed to minimise unreasonable impacts to the amenity of surrounding residents;

(c) be of a scale, intensity and nature that reflects the mixed use character of the zone; ...

In response to (a), the Authority is not satisfied that the application demonstrated it would avoid adverse impacts on the local road network. The Authority raised particular concerns regarding the constrained nature of the site, its proximity to a busy roundabout, the adequacy of the loading arrangements (including its dimensions and accessibility), and the absence of areas for pick-up/drop-off and visitor parking. The Authority also raises concerns regarding traffic implications associated with 40 student accommodation rooms, three office tenancies, waste collection activities, service vehicles, contractors and visitors. In the absence of a detailed traffic assessment, the Authority is not satisfied that the cumulative traffic and servicing demands generated by the development could be accommodated without adversely affecting the safety and efficiency of the surrounding road network.

In response to (b), The Authority is not satisfied that the development is capable of being managed in a manner that minimises unreasonable impacts on the amenity of surrounding residents and neighbouring land uses. The Authority notes that the site has significant constraints that may not be capable of handling a high degree of traffic generation/parking demand, waste management, servicing arrangements and the overall operational impacts associated with accommodating approximately 40 residents on a single site. Further, the entirety of the communal open space for the 40 residents is located on the fourth level. The Authority is not satisfied that potential amenity impacts of noise and overlooking on the surrounding residential uses can be satisfactorily mitigated. While not a residential aspect, the Authority also expresses potential reverse amenity issues arising from the proximity of the development to the adjoining service station and motor repair premises, noting that the introduction of a substantial residential population could result in future land use conflicts and place constraints on the ongoing operation of those established commercial activities.

In response to (c), the Authority is not satisfied that the application is of a scale, intensity and nature that reflected the mixed use character of the zone. In forming this view, the Authority had regard to the proposed four-storey built-form, the intensity of accommodating approximately 40 residents together with three office tenancies, and the constrained nature of the site. Further concerns were raised regarding the limited setbacks, absence of

meaningful landscaping, reliance on rooftop communal open space and the operational demands associated with the development. Collectively, these matters led the Authority to conclude that the proposal represented an overly intensive form of development that was not appropriately balanced with the character and expectations of the surrounding mixed use locality.

Part 5 – Development requirements

Clause 5.2.4.4 (Layout of Car Parking Areas)

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

Sub-clause 8(d) requires *parking spaces at the end of and perpendicular to a driveway are 3.5m wide or so that the driveway projects 1m beyond the last parking space.* Parking bays 7 and 8 are located at the end of the respective parking aisles and are shown as standard 5.5 m × 2.5 m spaces, with the driveway not extending 1 m beyond the spaces. Further, Sub-clause 9(a) requires *car parking areas are to have driveways with a minimum width of 6m for two-way traffic flow or 3.5m for one-way traffic flow.* A single two-way access is provided from Progress Drive and the plans show a 6m distance between the building line and eastern boundary. However, the inward-opening electric swing gate is located within this area and projects into the driveway when open, meaning a clear 6m width is not maintained at the gate. Accordingly, the proposal does not comply with sub-clause 8(d) and 9(a).

Administratively, sub-clause 4 states that *the consent authority may consent to a car parking area that is not in accordance with sub-clauses 8 if it is satisfied that the design and construction is safe and functional with regard to the location of the development* and sub-clause 5 states that *the consent authority may consent to a car parking area that is not in accordance with sub-clause 9 if it is satisfied that the non-compliance will not result in adverse impacts on the local road network or internal functionality of the car parking area.*

A variation to sub-clause 8(d) could be considered appropriate because the minor extent of the projection shortfall and the location of the spaces at the end of the parking aisles, the arrangement is considered to remain safe and functional, consistent with the purpose of the clause.

In addition, a variation to sub-clause 9(a) could be considered appropriate in this instance because the reduced driveway width is localised to the gate position, with the remainder of the on-site accessways providing the intended two-way circulation area.

Notwithstanding the above, the Authority notes that the location of the gate and its proximity to the front property boundary and crossover to Progress Drive, may result in vehicles queuing over the footpath and/or onto the carriageway, and therefore posed a risk in contravention to the purpose of this clause.

Clause 5.2.5 (Loading Bays)

The Authority notes that the purpose of this clause is to *Provide for the loading and unloading of vehicles associated with the use of land.*

Sub-clause 4 requires a loading bay to:

- (a) provide areas wholly within the site for loading and unloading of vehicles;*
- (b) be at least 7.5m by 3.5m;*
- (c) have a clearance of at least 4m; and*
- (d) have access that is adequate for its purpose.*

The Authority notes the application provides one loading bay to service the 185 m² office component. The loading bay is approximately 3.2 m by 5.5 m, which is below the minimum dimensions of 3.5 m by 7.5 m required by sub-clause 4(b). While the loading bay itself is intended to provide the required height, access to it is via the eastern driveway beneath the Level 1 building projection, where the available vertical clearance reduces to approximately 3.2 m, below the 4 m required by sub-clause 4(c). The reduced clearance also affects the adequacy of access under sub-clause 4(d).

Administratively, sub-clause 1 state that the *consent authority may consent to a use or development that is not in accordance with sub-clauses 3 and 4 only if it is satisfied sufficient, safe and functional loading areas are available to meet the needs of the use with regard to:*

- (a) the scale of the use and development on the site;*
- (b) any potential adverse impacts on the local road network; and*
- (c) any agreements for off-site loading and unloading of vehicles, such shared loading areas or approval to carry out loading activities in a laneway or secondary street.*

The Authority considers that a variation to sub-clause 4 is not appropriate for the following reasons:

- While the loading bay is required only in association with the three office tenancies (185m²), it has the potential to be used by contactors associated with the rooming accommodation. Servicing demand is therefore likely to exceed that expected for a development of three offices. The Authority is not satisfied that the reduced loading bay dimensions are capable of accommodating the number and intensity of service vehicles reasonably anticipated for the scale and nature of the overall use.
- While the loading bay is located wholly within the site, the Authority is not satisfied that the reduced dimensions will allow loading and unloading activities to occur off-street without obstructing Progress Drive or relying on off-site loading arrangements.

Clause 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR)

The Authority notes that the purpose of this clause is to *Protect the visual and acoustic amenity of residential buildings where they are adjacent to non-residential development.*

Sub-clause 3 requires that the setback (5 m for non-residential use) described in sub-clause 2 is to be landscaped to provide a visual screen to the adjacent land Zoned LR for a minimum depth of 3 m.

The site is within Zone C and abuts Zone LR land to the north and east. The ground-floor commercial component achieves the minimum 5 m building setback required by sub-clause 2, with setbacks of approximately 21.5 m to the northern boundary and 6 m to the eastern boundary. However, the required 3 m deep landscaped screen is not provided for the full length of the northern boundary, with bicycle parking and the bin enclosure occupying the north-eastern portion, and no landscaping is provided along the eastern boundary at all.

Administratively, sub-clause 1 states that *the consent authority may consent to a development that is not in accordance with sub-clause 3, if: ...*

(c) the consent authority is satisfied that the development provides adequate setbacks and landscaping consistent with the purpose of this clause.

The Authority considers that a variation to sub-clause 4 is not appropriate in this instance as, although a 1.8 m high solid fence is proposed along the northern and eastern boundaries, the lack of a compliant landscaped buffer will preclude the establishment of suitable landscaping which would then provide acoustic and visual buffers between adjoining residents and this development.

Clause 5.3.7 (End of Trip Facilities in Zones C)

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

Sub-clause 3 requires bicycle parking facilities to be designed in accordance with AS2890.3 and, relevantly, to: *3(a) be located in a convenient and safe location with adequate security;...; 3(e) be protected from the weather; and 3(h) be easily accessible from the road.* Further, Sub clause 4 require that *a locker should accompany every secure bicycle parking space provided, and should be: (a) of suitable volume and dimensions to allow storage of clothing; cycling helmets and other personal items; (b) well ventilated, secure and lockable; and (c) located close to shower and changing facilities.*

The proposal provides 28 bicycle parking spaces, substantially exceeding the minimum requirement of 15 spaces. However, the bicycle racks are currently located in the north-eastern corner, west of the bin closer and behind parking bays 15 and 16, with no separate cyclist access. When these parking spaces are occupied, direct access to the bicycle racks may be obstructed. The racks are also not shown as weather protected. Furthermore, in accordance with subclause 4, minimum 15 lockers would be required. The proposal provides 5 lockers adjacent to the ground-floor accessible shower/change facility, resulting in a numerical shortfall of 10 lockers.

Administratively, sub-clause 1 states that the consent authority may consent to a use or development with fewer bicycle parking spaces, lockers and/or showers and changing facilities than required by sub-clauses 2-6 if satisfied that either:

- (a) there are alternative end of trip facilities (on or off the site), where:
 - i. the same function is provided which can accommodate the same number of bicycles and/or users required by the clause;
 - ii. access to the alternative end of trip facilities is safe and convenient for users;
 - iii. the alternative end of trip facilities are sheltered and secure; and
 - iv. the size and layout of alternative storage areas allows for safe and comfortable storage and access to bicycles and/or personal items;or*
- (b) it would be unreasonable to provide the end of trip facilities as required by this clause with regard to, but not limited to, the location of the development and likely commute distances; or*
- (c) it would be unreasonable to provide shower and changing facilities for a small development, where the development becomes.*

A variation to sub-clause 4 could be considered appropriate because of the minimum 15 bicycle spaces, only one relates to the office component, and for which the five proposed lockers would provide sufficient capacity. The remaining 14 spaces relate to the rooming accommodation, where occupants have secure and sheltered private rooms for storage of personal items, providing an alternative facility serving the same practical storage function as individual lockers.

However, a variation to sub-clause 3 is not considered to be appropriate in this instance as, although this is a new development, the bike racks are not safely or conveniently located for future residents. As such, the Authority is not satisfied that the proposed arrangement is consistent with the purpose of this clause relating to *safe, quality and convenient end-of-trip facilities*.

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

The Authority notes that the purpose of this clause is to *Ensure that residential buildings and ancillary structures are located in a manner that is compatible with the streetscape and surrounding development, minimises adverse effects of building massing and overlooking, and facilitates breeze penetration through and between buildings.*

Sub-clause 6 requires residential buildings and ancillary structures to be setback from lot boundaries in accordance with the relevant table to the clause. For development in Zone C, Table C requires:

- South (primary street frontage): 3 m for residential buildings, 0 m for balconies and nil for the roofline.
- West (side boundary adjoining Zone C): 3 m for walls with openings or balconies and 2.1 m for the roofline.

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- North and east (side/rear boundaries adjoining Zone LR): 5 m for residential buildings and 4.1 m for the roofline.

The Authority notes the application does not comply with these setback requirements for the following reasons:

- South: The residential building is set back 1.5 m.
- West: The balconies are set back 1.8 m with the awning projections extending a further 1 m towards the boundary to a setback of 1 m.
- North: The residential building, (including balconies) is set back 3.8 m, with the awning projections extending a further 0.8 m towards the boundary to a setback of 3 m.
- East: The residential building (including balconies) is setback 4 m, with the awning projections extending a further 1 m towards the boundary to a setback of 3 m.

Administratively, sub-clause 3 states that *the consent authority may consent to a development that is not in accordance with sub-clause 6 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.*

A variation to sub-clause 6 is not considered appropriate in this instance as the reductions will directly and substantially impact on adjacent properties in Zone LR. The Authority is not satisfied that proposed reduced setbacks achieve the purpose of this clause, which is to *Ensure that residential buildings and ancillary structures are located in a manner that is compatible with ... surrounding development, minimises adverse effects of building massing and overlooking*

Clause 5.4.7 (Communal Open Space)

The Authority notes that the purpose of this clause is to *Ensure that suitable areas for communal open space are provided for dwellings-multiple, residential care facilities and rooming accommodation.*

Sub-clause 6 then requires that *Communal open space is to be designed to: ... (b) maintain reasonable privacy of nearby dwellings.*

The Authority notes that the application proposes 387 m² (38.7%) of communal open space as part of an outdoor area, located entirely outdoor and at the fourth storey. The Authority considers that due to the location of the communal open space in proximity to adjacent properties in Zone LR, and lack of any acoustic and/or physical barriers, that it poses a tangible risk to the privacy of nearby dwellings. In addition, the Authority notes that while a roof is provided over the central landing, the BBQ area and seating area, that the extent of shade cover may preclude the genuine functionality of these spaces for future residents during any periods of high heat or wet weather.

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For the reasons above, the Authority is not satisfied that the proposed communal open space will manage its adverse amenity impacts on nearby dwellings or provide fully functional communal facilities.

Clause 5.5.17 (Building Frontage in Commercial and Mixed Use Areas)

The Authority notes that the purpose of this clause is to *Encourage primary frontages of commercial buildings to contribute to a pleasant pedestrian environment and provide visual connectivity with their surroundings.*

Sub-clause 6 requires *buildings are to provide awnings for the length of the primary building frontage to a minimum of 3m wide.*

The application does not comply with sub-clause 6, as the awning along the Progress Drive frontage is 1.8 m wide, instead of the required minimum width of 3 m.

Administratively, sub-clause 3 states *the consent authority may consent to a development that is not in accordance with sub-clause 6 if the development provides appropriate shading for pedestrians adjacent to the primary frontage.*

A variation to sub-clause 6 could be considered appropriate in this instance as the proposed awning would reasonably provide appropriate and functional shading for pedestrians adjacent to the primary frontage. Further, the City of Darwin, as the authority responsible for the adjoining footpath and local road, did not object to the proposed awning arrangement along Progress Drive.

Clause 5.9.6.1 (Building height)

The Authority notes that the purpose of this clause is to *Promote building height that is sympathetic to the Nightcliff Village character.*

Sub-clause 3 requires that *The maximum building height for mixed use development in areas shown on Diagram to Clause 5.9.6 (Nightcliff Village Extent and Features) is to be in accordance with the table to this clause [which requires that development in Area A not exceed 3 storeys], where the application is for a four-storey building.*

Administratively, sub-clause 2 states *The consent authority may consent to a development that exceeds the maximum building height in sub-clause 3 if it is satisfied the development reflects the intended character of the area without unreasonably impacting on surrounding development.*

A variation to sub-clause 6 is not considered appropriate in this instance as the Authority is not satisfied that the proposed four-storey development is compatible with the surrounding character of the site and emphasises that properties to the north and east are predominantly one to two-storey dwellings-single.

The Authority notes that while the application was found to be compliant with all other relevant development requirements, it is considered that

further discussion of clause 5.9.6.2 (Development in Gateway Locations) is warranted.

Clause 5.9.6.2 (Development in Gateway Locations)

The Authority notes that the purpose of this clause is to *Ensure that development on prominent sites serves as a visual anchor point and creates a sense of arrival into the Nightcliff Village precinct.*

Sub-clause 4 requires that *Development is to be oriented towards the significant view corridor identified in the Diagram to Clause 5.9.6 (Nightcliff Village Extent and Features) and address the Dick Ward Drive and Progress Drive intersection through:*

- (a) additional articulation of building form, envelope and material expression; and*
- (b) variations in building height and/or roof sections.*

The Authority notes that the application was supported by an architectural statement, and achieves the relevant requirements through a high degree of active street frontage orientated toward Progress Drive, integration of balconies at all the rooming accommodation rooms facing the street, perceived variations in roof height through the difference between front-facing balcony roofs and the provision of planter boxes along the building line perimeter.

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

The application was placed on public exhibition for two weeks, between 18 and 28 August 2026. Seven public submissions were received under section 49(1) of the *Planning Act 1999*. Of the seven submissions received, two supported the application and five raised concerns.

In addition to the written submissions, the Authority heard from submitters and members of the public present at the meeting.

Miss Amanda Nobbs-Carcuro attended with her husband, Nino Carcuro, and advised that they are immediate neighbours to the site and have a direct interface with the proposed development. Ms Nobbs-Carcuro noted that the Authority have acknowledged a lot their concerns and highlighted a major concern they still have relate to the traffic impacts of the development. Ms Nobbs-Carcuro advised she has lived at her property for 30 years, and that she knows how local traffic operates and the existing issues. She highlighted the lack of nearby on-street car parking which may lead to increased utilisation on their residential street. Further, Ms Nobbs-Carcuro noted that the application proposed to mitigate its impact on their amenity through trees and pot plans, which would require many years to grow and that pot plants on balconies would rely on being watered. Ms Nobbs-Carcuro additionally noted that the rooftop may be more akin to an entertainment

area, and that while this type of development may be appropriate in the Darwin CBD, that this rooftop overlooks residential streets. Ms Nobbs-Carcuro also noted that the application did not include any specific render which detailed how the development will be seen from the northern perspective, and that the renders were limited to views from Progress Drive, which limited their ability to confirm the visual impact of the development.

Miss Fiona Douglas indicated that although she does not live in the immediate vicinity of the site, she has an interest in remaining aware of development in the locality, especially because of the site's proximity to the Progress Drive and Dick Ward Drive roundabout and traffic implications. Ms Douglas noted the discussion in relation to the number of bicycle parking spaces and indicated extra bike spaces are not necessarily more useful, highlighting that the proposed bicycle racks are towards the rear of the site. The location of the bike racks is open to the weather, which is unfair, inappropriate and inconvenient to residents. Ms Douglas noted the importance of having a locker where a resident can store equipment rather than merely relying on a small residential unit with limited space and highlighted that end of trip facilities are not just important for the commercial tenancies. While the plans show five lockers being provided, these will only be accessible through the rooming accommodation reception/office. Ms Douglas queried whether these would be available to staff from the other on-site commercial tenancies and raised a similar concern in relation to ground floor bathrooms.

Ms Douglas also supported the Authority's concerns relating to traffic congestion arising from service and other vehicles accessing the site through the electric gates at the driveway. Ms Douglas noted that the plans do not include any e-bike or electric vehicle charging infrastructure and raised issues in relation to the limitations of public transport in the area, noting that this situation may limit the transport options for any future residents. Ms Douglas supported the concerns raised that daytime heat may limit the potential for residents to use the rooftop communal open space. In summary, Ms Douglas opined that the whole ground floor needs to be completely redesigned to give adequate bike parking in sheltered places and access to end of ride facilities and reiterated concerns relating to service vehicle access, noting the possibility that a rubbish truck may arrive while a separate third party service provider is on-site.

Miss Joanna Hare advised, as a nearby neighbour, they will have direct line of sight to the development. Ms Hare indicated their biggest concern is the lack of landscaping on the eastern boundary, noting none is proposed. The application relies on neighbouring residents to landscape boundaries, which is inappropriate, Ms Hare noting that an applicant has no control over what a neighbour may intend to do in the future. Ms Hare further supported the concerns raised by Ms Nobbs-Carcuro in relation to the lack of assessment of any sight lines for the first and second floor residents looking into neighbouring properties. Ms Hare also confirmed that there is someone residing in the neighbouring property. Ms Hare summarised their concerns relating to overlooking, noting that their family with five young children live and play in their backyard.

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Mr Nick Kirlew of PAn: The Planning Action Network raised concerns regarding the adequacy of public notification, noting that local residents had only approximately two weeks' notice of the proposal. Mr Kirlew commented that community awareness of the application relied heavily on residents monitoring planning notifications and websites and suggested many people could easily have been unaware of the proposal. Mr Kirlew observed that community members had only recently become aware that the proposal constituted a four-storey building, expressing concern that this had not been widely understood earlier in the assessment process.

Mr Kirlew questioned the significance of information provided in the addendum report, noting that references to potential partnerships appeared aspirational rather than binding commitments. Mr Kirlew contrasted this with the demonstrated commitment of local residents who currently live, work and raise families within the area and who were seeking a positive planning outcome.

Mr Kirlew expressed frustration regarding the timing of landscaping changes, stating that landscaping and design concerns are frequently identified late in the assessment process despite being matters that could reasonably have been anticipated earlier. Mr Kirlew indicated concern about the reliance on condition precedents for amended plans to resolve deficiencies.

Mr Kirlew questioned whether the proposed Operational Management Plan (OMP) would effectively ensure the building operated as genuine student accommodation and sought clarification regarding its status and enforceability. The Chair advised that any approved OMP would form part of the development permit and would therefore be legally enforceable.

Mr Kirlew raised concerns regarding planning precedent, arguing that approval of the proposed development could constrain future development opportunities on adjoining sites. Mr Kirlew suggested there are examples where previous approvals had effectively limited the development potential of neighbouring properties and suggested a similar outcome could occur for the nearby service station site.

Mr Kirlew commented on the proposed bicycle parking arrangements, noting that cyclists would generally prefer covered and protected bicycle storage rather than facilities exposed to weather conditions.

Mr Kirlew further questioned why DAS had recommended approval despite the number of identified planning issues, including setbacks and other non-compliances. Mr Kirlew queried whether DAS should provide stronger commentary regarding identified shortcomings. The Chair clarified that DAS and the Authority perform separate functions. The Chair advised that DAS provides assessment reports and recommendations to the Authority, however emphasised that the Authority is not bound by those recommendations and must reach its own conclusions regarding an application. The Chair further noted that the Authority operates as an independent decision-making authority and that transparency and independence are fundamental aspects of the process. The Chair indicated

that concerns had already been identified by the Authority that extended beyond matters discussed in the assessment report.

Mr Kirlew raised concerns regarding approvals that are subject to later assessment by other authorities, particularly where matters such as traffic assessments are deferred until after an approval is granted. Mr Kirlew stated that this can limit the community's ability to review and comment on issues that may significantly affect the outcome.

Mr Kirlew noted the absence of City of Darwin representatives at the hearing and advised that he had commenced discussions with Council representatives regarding their role and awareness of planning responsibilities associated with these applications. The Chair advised that the City of Darwin is formally notified as a service authority during the assessment process. In relation to traffic and road impacts, the Chair explained that the Authority relies on the relevant road authority, being either the City of Darwin or the Department of Logistics and Infrastructure, to independently assess traffic impacts because those agencies control the roads and possess the necessary expertise. The Chair further noted that applicant-prepared traffic assessments are commonly reviewed by the road authority to provide an independent assessment of that material. The Chair noted that, should the application be deferred, the Authority may require an independently reviewed traffic assessment be provided before a determination was made.

Mr Kirlew identified a range of matters that he considered remained unresolved, including building setback non-compliances, awning design and compliance issues, landscaping deficiencies, absence of landscape buffers, loading and servicing arrangements, adequacy of car parking provision, and overall poor compliance with the Planning Scheme requirements. Mr Kirlew questioned the adequacy of the proposed parking provision, suggesting it was unrealistic to expect a development accommodating approximately 40 residents to generate limited vehicle ownership. Mr Kirlew also raised concerns about visitor parking arrangements and potential overspill parking impacts on surrounding streets. Mr Kirlew further questioned the effectiveness of the proposed management arrangements, expressing concern that daytime management alone would not adequately address behaviours or disturbances occurring during evenings and weekends. Mr Kirlew cited experiences with other accommodation/ entertainment facilities generating late-night noise and activity and expressed concern that existing residents would be required to accommodate impacts associated with a significantly different land use.

Mr Kirlew concluded that the application should not be approved in its current form. Mr Kirlew acknowledged, however, that the Authority had already identified a number of concerns and appeared to be actively considering the issues raised by residents and stakeholders.

Mr Trevor Cox, as a representative of the Y Northern Territory, spoke in support of the application, particularly in relation to the demand for student and youth accommodation and the broader accommodation challenges experienced across the Northern Territory. The Chair clarified that the

application before the Authority related specifically to student accommodation and not youth hostel accommodation, noting that the discussion should remain focused on this application for student accommodation. Mr Cox acknowledged the clarification and confirmed that his submission related to student accommodation as proposed within the application. Mr Cox noted that the Y Northern Territory, as a long-standing community organisation, has significant engagement with young people, families and communities across the Northern Territory and receives consistent feedback regarding the difficulty of securing suitable and affordable accommodation. Mr Cox advised that accommodation challenges are both a supply and affordability issue, and that the organisation's experience indicates a strong demand for affordable student accommodation throughout the Territory. Mr Cox raised concerns that a lack of student accommodation can create barriers to education, noting that some students may be unable to pursue further education opportunities if suitable accommodation is unavailable. Mr Cox advised that the Y Northern Territory operates programs supporting disadvantaged young people to engage with education and that access to accommodation is an important factor in enabling students to achieve their educational aspirations. Mr Cox noted that the organisation employs more than 400 staff across the Northern Territory and engages with in excess of 1,000 families on a daily basis, submitting that this broad level of engagement provides the organisation with relevant experience and insight into accommodation pressures and community needs.

The Chair advised that demonstrated need is not, of itself, a planning consideration for the purposes of assessing an application. The Chair noted that an application is not required to establish market demand or other need as a justification and that the application must instead be assessed against the relevant planning framework and considerations. Notwithstanding, the Authority acknowledges that demand and need may be relevant in other, broader strategic planning contexts.

Mr Cox submitted that a shortage of student accommodation can also contribute to workforce shortages, noting that students form an important component of the local workforce. Mr Cox advised that many employees of the Y Northern Territory are undertaking study while working, and that affordable accommodation is an important factor in enabling students to remain in both education and employment. Mr Cox expressed support for the proposed development and advised that the organisation would potentially seek to establish a future partnership with the proponent should the development proceed. Mr Cox noted that referral pathways for student accommodation were referenced within the OMP and advised that the organisation has extensive experience participating in accommodation referral networks across the Northern Territory. Mr Cox explained that referrals may occur through either government-managed processes or community-based referral networks, both of which are currently active within the Territory. Mr Cox advised that the organisation regularly works with young people and families seeking accommodation assistance and considered that there would be a strong referral pipeline of prospective students who may benefit from and utilise the proposed accommodation. Mr Cox reaffirmed support for the proposal, citing the demonstrated demand for

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student accommodation, the role accommodation plays in supporting educational participation and workforce engagement, and the potential for community organisations to assist in referring suitable occupants should the development proceed.

The Authority has carefully considered the views of submitters both for and against the proposal in determining to refuse the application.

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.

Amenity is defined in the Planning Act 1999 as in relation to a locality or building, any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable.

The potential amenity impacts must be considered in the context of the site's Zone C location at the fringe of the Nightcliff Secondary Activity Centre, and location adjacent to properties in Zone LR. The four-storey mixed-use development is inconsistent with the scale and form anticipated for the locality as identified in the Darwin Mid Suburbs Area Plan, and non-compliant with a series of development requirements including setbacks for development adjacent to land in Zone LR. The Authority, taking into account the substantial non-compliances with NTPS 2020 standards and the submissions of local residents, considers the development as proposed has the potential to significantly impact negatively on the existing and future amenity of the locality.

For the reasons identified above, and as detailed through these reasons for the decision, the Authority is not satisfied that the development as proposed will avoid unreasonable amenity impacts on nearby residents.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Refusal

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



Suzanne Philip

2026.09.23

15:28:07

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SUZANNE PHILIP

Chair

23 September 2026