



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 332 – FRIDAY 22 MARCH 2019

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

MEMBERS PRESENT: Suzanne Philip (Chair), Doug Phillips and John Gleeson, Mick Palmer and Simon Niblock (Items 1-5 only)

APOLOGIES: Sherry Cullen

OFFICERS PRESENT: Margaret Macintyre (Secretary) and Dawn Parkes, Richard Lloyd (Items 1-3 only), Adelle Godfrey (Items 4 & 5 only) and Amit Magotra (Items 6 & 7 only) (Development Assessment Services)

COUNCIL REPRESENTATIVE: Nil

Meeting opened at 9.30 am and closed at 3.30 pm

THE MINUTES RECORD OF THE EVIDENTIARY STAGE AND THE DELIBERATIVE STAGE ARE RECORDED SEPARATELY. THESE MINUTES RECORD THE DELIBERATIVE STAGE. THE TWO STAGES ARE GENERALLY HELD AT DIFFERENT TIMES DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.

ITEM 1 **11 X 2 BEDROOM MULTIPLE DWELLINGS IN A 4 STOREY BUILDING**
PA2018/0505 **INCLUDING GROUND LEVEL CAR PARKING (AS PREVIOUSLY APPROVED**
 BY DEVELOPMENT PERMIT DP12/0759)
APPLICANT **LOT 1399 (28) SERGISON CIRCUIT, TOWN OF NIGHTCLIFF**
 ONE PLANNING CONSULT

Mr Israel Kgosiemang (One Planning Consult) and Mr Henry Yap (Yap- Property Investments – Landowners) attended.

RESOLVED That, the Development Consent Authority vary the requirements of Clause 7.6
49/19 (Communal Open Space) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 1399 (28) Sergison Circuit, Town of Nightcliff for the purpose of 11 x 2 bedroom multiple dwellings in a four storey building including ground level car parking, 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:
 - (a) fencing details including entry/exit points to the communal open space areas; and
 - (b) details of tree species to be planted within the communal open space areas, particularly including the provision of mature pot sizes.
2. Prior to the endorsement of plans and prior to commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.
3. Prior to the commencement of works (including site preparation), the applicant is to prepare an Environmental and Construction Management Plan (ECMP) to the requirements of the City of Darwin. The ECMP is to address how construction will be managed on the site, and is to include details of waste management, traffic control and haulage routes, stormwater drainage and the use of City of Darwin land during construction.
4. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Policy 054, shall be

submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.

5. Prior to commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.

GENERAL CONDITIONS

6. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
7. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, electricity, and telecommunication network services to the development shown on the endorsed plans in accordance with the authorities' requirements and relevant legislation at the time.
8. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
9. Prior to the occupation of the development and connection of services (i.e. power and water), the owner of the land must apply for unit/street addressing from the Surveyor-General of the Northern Territory. This will form the legal address and will be required to be placed on the doors and meters within the development in accordance with the allocation. An Occupancy Permit will not be able to be granted until such time as addressing is obtained.
10. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of City of Darwin, to the satisfaction of the consent authority.
11. The owner shall:
 - (a) remove disused vehicle and/ or pedestrian crossovers;
 - (b) provide footpaths / cycleways;
 - (c) collect stormwater and discharge it to the drainage network; and
 - (d) undertake reinstatement works;all to the technical requirements of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
12. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
13. Appropriate soil erosion, sediment and dust control measures must be effectively implemented throughout the construction stage of the development and all disturbed soil surfaces must be suitably stabilised against erosion at completion of works, to the satisfaction of the Consent Authority.
14. Before the occupation of the development starts the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority. The shade trees planted within the

communal open space areas must be mature to provide immediate, adequate amounts of shade.

15. 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.
16. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street to the requirements of the City of Darwin, to the satisfaction of the consent authority.
17. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view and from view of neighbouring or nearby developments (or developments reasonably anticipated), located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority. The use of angled louvered slats for screening purposes is acceptable, however the slat screening must be designed with a panel to gap ratio, such that the condenser units are not readily visible from any angle, to the satisfaction of the consent authority.
18. All roof top plant equipment (such as vents and ducting associated with requirements for stairwell pressurisation or other such ventilation purposes or similar) that will be placed on the rooftop of the development shall be appropriately screened, or designed to soften the visual impact of such equipment from view from neighbouring or nearby developments (or developments reasonably anticipated), to the satisfaction of the consent authority.
19. All pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the consent authority.
20. All balconies are to be internally drained and discharge is to be disposed of at ground level and in a manner consistent with stormwater disposal arrangements for the site to the satisfaction of the consent authority.

NOTES:

1. Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and the Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of one month prior to construction works commencing to determine servicing requirements and the need for upgrading of infrastructure.
2. The Department of Environment and Natural Resources advises that construction work should be conducted in accordance with the Northern Territory Environment Protection Authority's Noise Guidelines for Development Sites. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.

3. This development permit does not grant building approval. You are advised to contact a NT registered private Building Certifier to ensure that you have attained all necessary approvals before commencing demolition or construction works.
4. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5362 (surveylandrecords@nt.gov.au).
5. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
6. City of Darwin advises that designs and specifications for landscaping of the road verges adjacent to the property shall be submitted for approval by the General Manager Infrastructure, City of Darwin and all approved works shall be constructed at the applicant's expense, to the requirements of City of Darwin.
7. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
8. If you choose nbn to service your development, you will need to enter into a development agreement with nbn. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered nbn will be in contact to discuss the specific requirements for the development. Nbn requires you to apply at least 3 months before any civil works commence. All telecommunications infrastructure should be built to nbn guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/builders-designers.html>

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 purpose of Zone MR (Medium Density Residential) is to provide for a range of housing options to a maximum height of four storeys above ground level. Land may be developed for multiple dwellings with consent. The proposal is consistent with the purpose of Zone MR.

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

A variation to clause 7.6 (Communal Open Space) to allow a minimum communal open space area of less than the required 15% of the total site area is supported in that the variation is minor (0.46%), and is compensated with the site's proximity to the nearby Nightcliff foreshore public open space and coastal reserve. Additionally, a recommended precedent condition requires the applicant to provide fencing details including entry/exit points to the communal open space areas as well as mature tree details, to ensure the communal space areas are safe, shaded and suitable to use.

3. 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. Also, pursuant to section 51(m) of the *Planning Act 1999*, the consent authority must take into account the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

No land capability concerns were identified as part of the assessment. The proposal complies with the anticipated density in this location. Conditions on the development permit require submission of a construction management plan and a dilapidation report as requested by the City of Darwin.

4. 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 land is zoned to accommodate the proposed development, in that the land is identified for the development of multiple dwellings, and the proposal is consistent with the required dwelling density, height and building setbacks from the adjoining streets and properties. No undue amenity impacts are anticipated. The recommended precedent condition requiring the applicant to provide fencing details including entry/exit points to the communal open space areas as well as mature tree details will also ensure that an adequate level of amenity for those areas in particular, is achieved.

ACTION: Notice of Consent and Development Permit

**ITEM 2
PA2019/0028**

**CHANGE OF USE FROM SHOWROOM SALES AND WAREHOUSE TO
MOTOR REPAIR STATION**

APPLICANT

**LOT 1980 (38) STUART HIGHWAY, TOWN OF DARWIN
MASTERPLAN NT**

Mr Joseph Sheridan and Ms Cat Tatum (Masterplan NT) attended.

**RESOLVED
50/19**

That, the Development Consent Authority reduce the car parking requirements pursuant to clause 6.5.2 (Reduction in Parking Requirements), and vary the requirements of clause 6.5.3 (Parking Layout) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 1980 (38) Stuart Highway, Town of Darwin for the change of use from showroom sales and warehouse to motor repair station (windscreen repair and replacement), subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), written confirmation from a qualified traffic engineer that the car parking spaces associated with the development comply with the relevant Australian Standards for car parking must be provided in instances where the car parking does not comply with the minimum requirements of Clause 6.5.3 (Parking Layout) of the Northern Territory Planning Scheme, to the satisfaction of the consent authority.
2. 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:
 - (a) Details of the landscaping existing and/or proposed within the 3m wide landscape buffer. In the event a 3m wide buffer cannot be achieved, details of the width that can be achieved are to be shown with clear reasons why the 3m width is not possible. All species selected must be to the satisfaction of the consent authority.

GENERAL CONDITIONS

3. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
4. The owner of land must enter into agreements with the relevant authorities for the provision of water supply, sewerage, and electricity services to the development shown on the endorsed plans in accordance with the authorities' requirements and relevant legislation at the time.
5. Before the use 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; and
 - (e) line marked to indicate each car space and all access lanes; to the satisfaction of the consent authority.
Car spaces, access lanes and driveways must be kept available for these purposes at all times.
6. All car parking relating to the use of the motor repair station is to be kept on-site and within the parking layout as shown on the endorsed plan, at all times.
 7. The landscaping buffer shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority within three months from the date that the plans are endorsed.
 8. The landscaping buffer 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.
 9. 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.
 10. The use of the site for the purpose of a motor repair station (windscreen repair and replacement), as shown on the endorsed plans, must not change without the consent of the consent authority.

NOTES:

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. The Transport and Civil Services division of the Department of Infrastructure, Planning and Logistics advises that no additional access shall be permitted to the Stuart Highway.
3. The Northern Territory Environment Protection Authority has advised that the proponent must comply with their General Environment Duty provided by section 12 of the *Waste Management and Pollution Control Act 1998*. More information can be found on the Environment Protection Authority website at: <https://ntepa.nt.gov.au/waste-pollution>, by calling (08) 8924 4218 or emailing ntepa@nt.gov.au.

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 proposal is for a change of use from showroom sales and warehouse to motor repair station, which is to formalise the existing

use of the site as a motor repair station. The proposal is a form of development generally anticipated in Zone SC (Service Commercial).

2. A reduction of 14 car parking spaces proposed by the development is supported given that the proposal generally satisfies the purpose of clause 6.5.2 (Reduction in Parking Requirements), based upon the following reasons:
 - the site is zoned SC (Service Commercial) under the Planning Scheme and is identified as a Specialist and Secondary Centre in the Darwin Inner Suburbs Area Plan (DISAP), which is characterised by a mix of residential, commercial, retail, community and other compatible uses. The proposed use is considered generally consistent with the SC zone and DISAP, providing the use does not intensify. A condition stating that the use of the site for the purpose of a motor repair station (windscreen repair and replacement), must not change without the consent of the consent authority, aims to ensure that the site does not intensify from its current use as a windscreen repair and replacement business;
 - any risk of on-street parking becoming a potential issue in the future (and to assist preventing intensification of the site's use), is reduced through a consent condition which requires all car parking related to the motor repair station to be kept on-site at all times; and
 - though the nature of the business requires customers to arrive by car, the site is on a number of public bus routes into / out of the city.

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

A variation to clause 6.5.3 (Parking Layout) is supported as the impacts of the identified non-compliance with the clause (sub-clause (h) parking space dimensions), are justified upon the following reasons:

- the identified non-compliant parking space dimensions still allow for the useability of the car parking area given the site's use and a precedent condition requiring written confirmation from a qualified traffic engineer that the car parking spaces associated with the development comply with the relevant Australian Standards for car parking will ensure the useability of the parking area.

Additionally, a precedent condition ensures that a landscaping buffer between the parking area and road is detailed and a general condition ensures that the buffer will be carried out and completed within three months of the endorsement of the drawings, to the satisfaction of the consent authority.

While the applicant requested that a standard condition in relation to landscaping be applied to the development permit rather than a strict timeframe for completion of the landscaping works to be carried out, the Authority considered that given that the use is already operating

and that landscaping works are normally required to be carried out prior to the use/occupation of the development beginning, a three month timeframe from the date of the endorsement of plans is a reasonable request.

4. 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.

No concerns have been identified in relation to the capability of the land in accommodating the development.

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

The impact of the site's existing use as a motor repair station through the automobile glass repair business is low as the current business has been operating for many years without known complaint or detriment to the area. However, there could be potential impact on future amenity should the motor repair station happen to intensify from the business that is there today. By requiring conditions that all car parking relating to the use of the motor repair station must be maintained on-site at all times, and the use of the site for the purpose of a motor repair station (windscreen repair and replacement), must not change without the consent of the consent authority, it should prevent the use from intensifying to any great extent in the future and impacting the amenity of the area.

ACTION: Notice of Consent and Development Permit

**ITEM 3
PA2019/0035
APPLICANT**

**ALTERATIONS AND ADDITIONS TO AN EXISTING SHOP
LOT 2362 (44) CAVENAGH STREET, TOWN OF DARWIN
MASTERPLAN NT**

Mr Joseph Sheridan and Ms Cat Tatum (Masterplan NT) attended.

Interested Parties in attendance:- a representative from the landowners Nazeast Pty Ltd.

**RESOLVED
51/19**

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 2362 (44) Cavenagh Street, Town of Darwin, for the purpose of alterations and additions to an existing shop to require the applicant to provide the following additional information that the authority considers necessary in order to enable the proper consideration of the application:

- Clear illustrations of the proposed screening for the condenser and air conditioning units.

- Amended plans to show further options for the location of the condenser and air conditioning units on the roof of Shop 1, including placement on the south-eastern side of the roof along with raising the firewall that runs along the south-eastern boundary of Lot 2362, in order to reduce the adverse impacts of the development.
- Amended plans to show the location of waste bin storage and where the bins will be collected.
- Details of a Loading Bay Management Plan to include:
 - How and when deliveries will be made, particularly including the moving of stock from the street loading bays on pallets to the proposed store;
 - The size of delivery vehicles; and
 - The actions to be undertaken in the event the loading bays are otherwise occupied and/or the streets are congested, particularly including if the congestion is caused by the unloading of stock for the proposed store.

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 application was assessed against the relevant clauses of the NT Planning Scheme and a non-compliance was identified with clause 8.2 (Commercial and other Development in Zones... CB...) in the technical assessment undertaken by Development Assessment Services (DAS). The Authority agreed with the findings of the technical assessment in that the current location and design of the condenser and air conditioning units are not sympathetic to the character of buildings in the immediate vicinity (clause 8.2 subclause 2(b)) nor are they concealed as required by subclause 2(g). While the Authority noted the comments made by the applicant at the meeting in relation to the need for the condenser and air conditioning units to have natural ventilation and that it is commercially unviable to re-design/re-structure the existing roof space, the Authority considered that not all options had been fully explored to reduce the visual impact of the condenser and air conditioning units and to promote site responsive design as per the purpose of clause 8.2.

Amended plans are therefore required to demonstrate compliance with clause 8.2 of the NT Planning Scheme and section 2A(2)(e) of the *Planning Act 1999* (Objects).

2. The Authority has concerns with how the use will operate and the potential impact on the surrounding street network given that it is fully reliant on on-street loading bays which are located to the rear of the site with no direct access. Details of a Loading Bay Management Plan are therefore required to help the Authority understand how the loading associated with the use will operate and to provide greater justification for the requested variation to clause 6.6 (Loading Bays) of the NT Planning Scheme.

3. The Authority acknowledged that Council, in their comments dated 22 February 2019, have requested a Waste Management Plan as the applicant's plans failed to demonstrate adequate waste management. While Council requested this detail as a condition precedent on any development permit issued the Authority has requested amended plans to show the location of waste bin storage and how bins will be collected given that this detail is closely linked to the information request in relation to loading bays.
4. 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.

Further to the assessment of clause 8.2 of the NT Planning Scheme in reason 1 above, the Authority agreed with the assessment contained within the DAS report which considered that the proposed condenser and air conditioning units on the roof of Shop 1 will have a negative impact on the existing amenity of the area. The Authority agreed that they do not enhance the existing amenity and it is not considered that the adverse impacts are minimised enough to make the building harmonious, pleasant or enjoyable. It is considered that this also makes the development contrary to achieving the Objects of the *Planning Act 1999* under section 2A(2)(e) by not 'minimising adverse impacts of development on existing amenity and, wherever possible, ensuring that amenity is enhanced as a result of development'.

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

While no submitters were present at the meeting the Authority noted the two public submissions that were made in relation to the application. The Authority considered the matters raised within those submissions and determined that some of the matters raised in relation to the specific use of the shop for the sale of alcohol are more appropriately addressed though the Liquor Commission.

The Authority noted the concerns in relation to car parking, loading and location of the condenser and air conditioning units and these matters will be further discussed on receipt of an amended application that addresses the points of deferral.

ACTION: Notice of Deferral

**ITEM 4
PA2019/0041**

**CHANGES TO DP15/0241 TO ENABLE THE USE OF THE FIRST FLOOR FOR THE PURPOSE OF OFFICE, RESTAURANT AND HOTEL AND TO REMOVE THE TEMPORARY TIME PERIOD OF THE PERMIT
LOT 2322 (56) SMITH STREET, TOWN OF DARWIN
APPLICANT
NORTHERN PLANNING CONSULTANTS PTY LTD**

Mr Brad Cunnington (Northern Planning Consultants), Mr Evan Lynne, Mr Bernie O'Connell and Mr Vince Albertoni (Gwelo Investments Pty Ltd - landowner) attended.

**RESOLVED
52/19**

That, the Development Consent Authority reduce the car parking requirements pursuant to Clause 6.5.2 (Reduction in Parking Requirements) and vary the requirements of Clause 6.6 (Loading Bays) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 2322 (56) Smith Street, Town of Darwin for the purpose of changes to DP15/0241 to enable the use of part of the first floor for the purpose of office, restaurant and hotel and to remove the temporary time period of the permit, 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:
 - (a) The provision of window openings to the upper level foyer area and the office tenancy on elevation plans.
 - (b) Clarification of the intended treatment to reduce any potential conflicts at the pedestrian entrance from Austin Lane and loading vehicles.
 - (c) The removal of tenancies 2 (restaurant) and 3 (hotel/restaurant) from the plans.
 - (d) Clarification of the intended upgrades to the façade treatment at the upper level facing Austin Lane.

2. 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 generally in accordance with the plans submitted with the application but modified to show the locations of all new air-conditioning condenser units and provide details of the screening to be utilised to ensure the condenser units are appropriately screened from public view and from view of neighbouring or nearby developments (or developments reasonably anticipated). The locations of all new condenser units must allow convenient access for ongoing repair and maintenance. The use of angled louvered slats for screening purposes is acceptable, however the slat screening must be designed with an acceptable panel to gap ratio, such that the condenser units are not readily visible from any angle.

3. Prior to the endorsement of plans and prior to commencement of works (including site preparation), the applicant is to clarify with Power Networks, Power and Water Corporation whether any additional power supply is required for the development. If an additional power supply is required, then amended plans shall be submitted to and approved by Power Networks, to the satisfaction of the consent authority, with the location of any additional infrastructure suitably located with regard to Clause 6.3.3 (Urban Design Requirements in Central Darwin).
4. Prior to the endorsement of plans and prior to commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.
5. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of City of Darwin.
6. Prior to the commencement of works (including site preparation), the applicant is to prepare an Environmental and Construction Management Plan (ECMP) to the requirements of the City of Darwin. The ECMP is to address how construction will be managed on the site, and is to include details of waste management, traffic control and haulage routes, stormwater drainage and the use of City of Darwin land during construction.

GENERAL CONDITIONS

7. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
8. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage and electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
9. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or site is to be created.
10. All new substation, fire booster and water meter arrangements are to be appropriately screened to soften the visual impact of such infrastructure on the streetscape, to ensure that the infrastructure is sympathetic to and blends in with the design of the building. Details will need to be resolved to the satisfaction of the consent authority in consultation with the Power and Water Corporation, and NT Fire and Emergency Services.
11. All new air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view and from view of neighbouring or nearby developments (or developments reasonably anticipated), located so as to minimise thermal

and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority. The use of angled louvered slats for screening purposes is acceptable, however the slat screening must be designed with a panel to gap ratio, such that the condenser units are not readily visible from any angle.

12. All new pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the consent authority.
13. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building(s), to the satisfaction of the consent authority.
14. Appropriate soil erosion, sediment and dust control measures must be effectively implemented throughout the construction stage of the development and all disturbed soil surfaces must be suitably stabilised against erosion at completion of works, to the satisfaction of the Consent Authority.
15. Storage for waste disposal bins is to be provided to the requirements of City of Darwin to the satisfaction of the consent authority.

NOTES:

1. Any future applications for a mixed use development must provide the required number of car parking spaces on site in accordance with the applicable Planning Scheme at the time. Any request to waive or reduce the required number of car parking spaces (including requests for a payment made in-lieu of those spaces to the City of Darwin) will be considered in accordance with the *Planning Act 1999* and the applicable Planning Scheme at the time by the relevant consent authority. A future application will be a separate determination, and no reduction granted through this permit is automatically applicable to any determinations in the future.
2. The development as approved by the consent authority achieves a level of active interface deemed by the authority to provide 86% of the Smith Street, 87% of the Knuckey Street, and 8% of the length of the Austin Lane site boundary at ground level as active street frontages. Retaining these levels of active frontage is considered to be essential to this development achieving the purpose of Clause 6.3.3 (Urban Design Requirements in Central Darwin). Any reduction in the percentage of active street frontage is unlikely to be supported, and will require full consideration at a meeting of the consent authority. Refer to "Design guidance to achieve active frontages and provide for services" for advice to active street frontages in relation to service authority requirements.
3. The Department of Environment and Natural Resources advises that construction work should be conducted in accordance with the Environment Protection Authority's Noise Guidelines for Development Sites. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.

4. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
5. Professional advice regarding implementation of soil erosion control and dust control measures to be employed throughout the construction phase of the development are available from the Department of Environment and Natural Resources. Information can be obtained from the IECA Best Practice Erosion and Sediment Control Guidelines 2008 available at www.austieca.com.au and the NTG website <https://nt.gov.au/environment/soil-land-vegetation>.
6. Notwithstanding the approved plans, all signage is subject to City of Darwin approval, at no cost to Council.
7. The permit holder is advised that the proposal may have assessment implications under the *Waste Management and Pollution Control Act 1998*. The Northern Territory Environment Protection Authority has advised that the proponent must comply with their General Environment Duty provided by section 12 of the *Waste Management and Pollution Control Act 1998*. More information can be found on the Environment Protection Authority website at: <https://ntepa.nt.gov.au/waste-pollution>, by calling (08) 8924 4218 or emailing ntepa@nt.gov.au.
8. The applicant is advised to engage a building certifier, within the meaning of the *Building Act 1993*, as to whether the building/s comply with the *Building Act 1993* and associated Regulations.
9. The development and use hereby permitted should be designed, constructed, registered and operate in accordance with the National Construction Code of Australia, the *Public and Environmental Health Act 2011* and Regulations, the *Food Act 2004* and National Food Safety Standards.
10. If you choose nbn to service your development, you will need to enter into a development agreement with nbn. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered nbn will be in contact to discuss the specific requirements for the development. Nbn requires you to apply at least 3 months before any civil works commence. All telecommunications infrastructure should be built to nbn guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/builders-designers.html>
11. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.

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 application sought changes to the development approved by DP15/0241, including to remove the conditions relating to the temporary 7 year time limit for the restaurants and shops on the ground floor of the building, and to allow the use of the vacant, disused upper level of the building. The application also proposed tenancies on the upper level including an office of net floor area of 295m² intended to be used as a centre management office, a hotel/restaurant (nightclub) of gross floor area of 827m² (tenancy 2), plus a restaurant (tenancy 3) with a gross floor area of 325m². The hotel/restaurant tenancy was described as focusing on after-hours trade as a nightclub/nightspot, however with no gaming, and a focus on restaurant dining during typical dining hours. The building alterations to accommodate the development include building entrances and foyers at the upper level only.

The primary purpose of Zone CB (Central Business) of the Northern Territory Planning Scheme is to provide for a diversity of activities, including administrative, judicial, professional, office, entertainment, cultural, residential and retail and other business activities with a commitment to the separation of incompatible activities. In Zone CB, building form and design is expected to be sensitive to the needs to pedestrian movement and facilitate the creation of safe and active street frontages and public places and a vibrant commercial precinct.

The Authority determined to consent to removing the conditions on DP15/0241 that restrict the 7 year time period for the development, and to allow the use of the upper level of the building.

The uses proposed on the upper level fall within the range anticipated in Zone CB and the ongoing and increased use of parts of the building will continue to facilitate a vibrant commercial precinct. The site is located within the central areas of the Darwin CBD in which late night venues would be anticipated. No residential uses or other sensitive uses have been identified as currently existing in the immediate area, although they may be developed in the zone in the future.

Whilst the office, hotel/restaurant, and restaurant uses on the upper level are considered appropriate within Zone CB in this location, the application included limited details with respect to the physical changes required to the upper level of the building to accommodate these uses. The office component was nominated for centre management for the building and the Authority have determined to require conditions on the development permit for details of façade treatments to the office plus adjacent foyer including windows to accommodate this use. Whilst the Authority generally accept the restaurant/hotel and restaurant uses proposed for tenancies 2 & 3, separate development applications are required to be made when further details are available of the physical changes required to accommodate these uses. As these uses were not

accepted in the current form, they are required by condition to be removed from the plans.

2. The purpose of Clause 6.5.1 (Parking Requirements) is to ensure that sufficient off-street car parking, constructed to a standard and conveniently located, is provided to service the proposed use of a site. The existing ground floor is calculated as requiring 93 spaces and the use of the office component on the upper level requires 9 spaces, with no spaces provided on site. The application seeks a parking reduction first to remove the 7 year time limit applied by condition to allow the existing shortfall to continue, in addition to allowing the use of the upper level which increases the parking requirement for the development.

A reduction to the parking required under Clause 6.5.1, pursuant to Clause 6.5.2 (Reduction in Parking Requirements) is considered having regard to the following matters:

- (a) the zoning of the land, the use or development or proposed use or development of the land and the possible future use or development of the land;
- (b) the provision of car parking spaces in the vicinity of the land; and
- (c) the availability of public transport in the vicinity of the land; or
- (d) the use or development relates to a heritage place and the Minister responsible for the administration of the *Heritage Act 2011* supports the reduced provision of car parking spaces in the interest of preserving the significance of the heritage place.

The parking reduction is considered appropriate in recognition of the historic use of the land which relied entirely on public car parking, and that the proposed use comprises an interim development only. With the existing building covering almost the entire site, there is no opportunity for the accommodation of any additional on-site car parking. Despite the removal of the time period, the continued occupation of the building including the upper level would still occur as an interim use only, with the future development potential being identified through the characteristics of the site including given the large size, the positioning on a prominent corner within the centre of the Darwin CBD and directly opposite the entrance to the Smith Street mall. The interim use is considered unique, and is distinct from the future development of a more permanent nature at the site. The requirement for a payment in lieu of spaces would not be reflective of the future potential of the site as this payment would extend beyond the life of the interim development.

The proximity of alternative transport including a taxi rank directly adjacent the site is also noted, and that there are 3 public car parks within 400m walking distance of the site plus kerbside car parking. That the parking generation is expected to be satisfactorily accommodated within existing car parking facilities is also noted.

A future mixed use development must provide a compliant number of spaces on site in accordance with the requirements of the Planning Scheme at that time, as any reduction granted through this permit is not automatically continued or transferred to that future development.

The City of Darwin have also advised in comments as part of the application that they may adjust the local rate level pursuant to the Local Government (Darwin Parking Local Rates) Regulations as a result of the development.

Whilst the Authority determined to remove the hotel/restaurant and restaurant uses from the proposal, the car parking requirement of 80 spaces for these uses was considered as part of the determinations. The Authority provided general acceptance for this shortfall to be noted as part of future development applications. In considering these uses, the Authority considered the varied peak demand times expected, particularly as the hotel/restaurant tenancy will be almost entirely out of business hours, and at lower demand times for both on-street and off-street car parking in the area. Whilst part of the upper level would be open during the day, the restaurant is likely to be complimentary to the surrounding weekday land uses. Also the nature of the restaurant and hotel/restaurant tenancies as licenced premises allow a preference to discourage, rather than facilitate private motor vehicle use.

3. The purpose of Clause 6.6 (Loading Bays) is to provide for the loading and unloading of vehicles associated with the use of the land. The development overall requires 3 loading bays with only 1 provided.

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

The reduced clearance height of the loading bay at 3.6m only when 4m is required was previously approved through DP15/0241 and the development was considered at the time to adequately accommodate the nature of vehicles anticipated at the site for commercial deliveries.

The special circumstances in reducing the number of loading bays required include:

- The site has the ability to use the Austin Lane loading zone in addition to the on-site loading area, in a manner consistent with the existing nature and use of Austin Lane.
- The existing shared access arrangement is functional and all tenancies are provided equitable access.
- The retention of the site under a single ownership ensures a separate entity to manage the use of and access to the loading area.
- The ground level of the site is completely developed and there is no opportunity to provide additional loading areas without undertaken significant building alterations.

The Authority notes that a separate application PA2019/0033 also requires an additional 1 additional loading bay bringing the total required to 3 loading bays, however the reasons described above are considered to be satisfactory to address both applications. The ground floor plan provided with the application identifies a different treatment

to reduce any potential conflicts at the pedestrian entrance from Austin Lane and loading vehicles and the intended approach is required to be confirmed through condition.

4. The purpose of Clause 6.3.3 (Urban Design Requirements in Central Darwin) is to promote exemplary urban design in Central Darwin. Clause 6.3.3 was previously varied through determination DP15/0241 whereby a reduced active street frontage of around 8% was approved along Austin Lane when 75% is normally required, plus no additional pedestrian awning provided to Austin Lane through the original reuse of the building although awnings are typically required to streets for the full extent of the site frontage. Whilst the level of compliance is not affected from that previously approved, the office includes access from Austin Lane, and consequently increases the level of pedestrian access along this frontage. The entrance to Austin Lane is noted as being nondescript, however is directly accessible from the public footpath. Whilst the awning to Austin Lane is not required to be extended as part of this determination, this may be further considered as part of the future applications for the hotel/restaurant on the upper level as this uses would further intensify pedestrian access along Austin Lane.

Noting the reduced active frontage at Austin Lane, the development has the potential to increase its overall response to Clause 6.3.3 including by increasing passive surveillance towards the surrounding streets, providing for variety and interest at the upper levels of the building, and increasing the level of activity in the area. Amended plans are requested which include windows to the street at the upper level for the common foyer area and office as it is intended to be used by centre management.

5. Clause 8.2 (Commercial and other Development in Zones... CB...) requires that the design of buildings conceal service ducts, pipes, air conditioners and air conditioning plants. A condition is included for the location of new air conditioning condensers to be shown and for those condensers to be appropriately screened.
6. Pursuant to section 51(e) of the *Planning Act 1999*, the consent authority must take into consideration any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application.

One public submission was received during the exhibition period under Section 49 of the *Planning Act 1999* with respect to the proposal. The submission raised concerns with the changes to the uses and the removal of the 7 year time period compromising the conditions of the original permit DP15/0241, and also concern of enlarging the combined businesses and involving more licences in central Darwin.

The application is to remove the conditions on the original permit and the implications of this have been considered, including the impact of car parking. The uses proposed on the upper level of the building have also been considered and the restaurant and hotel uses would require separate liquor licensing applications.

7. Pursuant to section 51(p) of the *Planning Act 1999*, the consent authority must take into consideration the public interest.

The previous determination of the consent authority DP15/0241 noted public support for the interim reuse of the building with respect to activating a central site that had previously been vacant for some time, and this is also relevant with regard to the continued use of the site.

8. 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. Also, pursuant to section 51(m) of the *Planning Act 1999*, the consent authority must take into account the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

No land capability issues have been identified as part of the application. Comments were received from service authorities during exhibition of the application and conditions are appropriately included to address servicing requirements. In particular, Power Networks, Power and Water Corporation identified there is a potential requirement for additional service infrastructure in the form of a second transformer and a condition requires that if required, this infrastructure be suitably located and screened.

9. 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 impact on amenity is considered in context of the site and its surrounds, with the uses being consistent with the broader intent of Zone CB (Central Business). The use of the upper level of the building and also the continuation of the existing uses on the ground level is expected to provide an ongoing positive impact on the amenity of the area through activation. The use of the upper level also has the potential to increase passive surveillance towards the surrounding streets and provide for variety and interest, subject to the submission of plans demonstrating the provision of windows to the street at the upper level. With regard to the nature of the use, Zone CB allows for a diversity of uses, noting the separation of incompatible activities. No sensitive land uses have been identified in the immediate proximity of the site. Any additional parking generated by the proposal is expected to be adequately accommodated within existing available public car parking without undue impact on the existing uses in the locality.

ACTION: Notice of Consent and Development Permit

**ITEM 5
PA2019/0033
APPLICANT**

**HOTEL
LOT 2322 (56) SMITH STREET, TOWN OF DARWIN
NORTHERN PLANNING CONSULTANTS PTY LTD**

Mr Brad Cunnington (Northern Planning Consultants), Ms Rebecca Bullen (proprietor proposed cocktail bar and gin distillery), Mr Phil Gardiner (Consulting Engineer) and Mr Randal Ashford (Ashford Group - Architect) attended.

**RESOLVED
53/19**

That, the Development Consent Authority reduce the car parking requirements pursuant to Clause 6.5.2 (Reduction in Parking Requirements) and vary the requirements of Clause 6.6 (Loading Bays), of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 2322 (56) Smith Street, Town of Darwin for the purpose of a hotel (cocktail bar and gin distillery), 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:
 - (a) Clarification of the intended treatment to reduce any potential conflicts at the pedestrian entrance from Austin Lane and loading vehicles.
 - (b) Clarification of the intended treatments to enhance the pedestrian entrance from Austin Lane.

2. 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 generally in accordance with the plans submitted with the application but modified to show the locations of all new air-conditioning condenser units and provide details of the screening to be utilised to ensure the condenser units are appropriately screened from public view and from view of neighbouring or nearby developments (or developments reasonably anticipated). The locations of all new condenser units must allow convenient access for ongoing repair and maintenance. The use of angled louvered slats for screening purposes is acceptable, however the slat screening must be designed with an acceptable panel to gap ratio, such that the condenser units are not readily visible from any angle.

3. Prior to the endorsement of plans and prior to commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.

4. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of City of Darwin.
5. Prior to the commencement of works (including site preparation), the applicant is to prepare an Environmental and Construction Management Plan (ECMP) to the requirements of the City of Darwin. The ECMP is to address how construction will be managed on the site, and is to include details of waste management, traffic control and haulage routes, stormwater drainage and the use of City of Darwin land during construction.

GENERAL CONDITIONS

6. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
7. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage and electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
8. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or site is to be created.
9. All new air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view and from view of neighbouring or nearby developments (or developments reasonably anticipated), located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority. The use of angled louvered slats for screening purposes is acceptable, however the slat screening must be designed with a panel to gap ratio, such that the condenser units are not readily visible from any angle.
10. All new pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the consent authority.
11. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building(s), to the satisfaction of the consent authority.
12. Appropriate soil erosion, sediment and dust control measures must be effectively implemented throughout the construction stage of the development and all disturbed soil surfaces must be suitably stabilised against erosion at completion of works, to the satisfaction of the Consent Authority.
13. All balconies are to be internally drained and discharge is to be disposed of at ground level and in a manner consistent with stormwater disposal arrangements for the site to the satisfaction of the consent authority.

14. Storage for waste disposal bins is to be provided to the requirements of City of Darwin to the satisfaction of the consent authority.

NOTES:

1. Any future applications for a mixed use development must provide the required number of car parking spaces on site in accordance with the applicable Planning Scheme at the time. Any request to waive or reduce the required number of car parking spaces (including requests for a payment made in-lieu of those spaces to the City of Darwin) will be considered in accordance with the *Planning Act 1999* and the applicable Planning Scheme at the time by the relevant consent authority. A future application will be a separate determination, and no reduction granted through this permit is automatically applicable to any determinations in the future.
2. The development as approved by the consent authority achieves a level of active interface deemed by the authority to provide 86% of the Smith Street, 87% of the Knuckey Street, and 8% of the length of the Austin Lane site boundary at ground level as active street frontages. Retaining these levels of active frontage is considered to be essential to this development achieving the purpose of Clause 6.3.3 (Urban Design Requirements in Central Darwin). Any reduction in the percentage of active street frontage is unlikely to be supported, and will require full consideration at a meeting of the consent authority. Refer to "Design guidance to achieve active frontages and provide for services" for advice to active street frontages in relation to service authority requirements.
3. The Department of Environment and Natural Resources advises that construction work should be conducted in accordance with the Environment Protection Authority's Noise Guidelines for Development Sites. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.
4. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
5. Professional advice regarding implementation of soil erosion control and dust control measures to be employed throughout the construction phase of the development are available from the Department of Environment and Natural Resources. Information can be obtained from the IECA Best Practice Erosion and Sediment Control Guidelines 2008 available at www.austieca.com.au and the NTG website <https://nt.gov.au/environment/soil-land-vegetation>.
6. Notwithstanding the approved plans, all signage is subject to City of Darwin approval, at no cost to Council.

7. The permit holder is advised that the proposal may have assessment implications under the *Waste Management and Pollution Control Act 1998*. The Northern Territory Environment Protection Authority has advised that the proponent must comply with their General Environment Duty provided by section 12 of the *Waste Management and Pollution Control Act 1998*. More information can be found on the Environment Protection Authority website at: <https://ntepa.nt.gov.au/waste-pollution>, by calling (08) 8924 4218 or emailing ntepa@nt.gov.au.
8. The applicant is advised to engage a building certifier, within the meaning of the *Building Act 1993*, as to whether the building/s comply with the *Building Act 1993* and associated Regulations.
9. The development and use hereby permitted should be designed, constructed, registered and operate in accordance with the National Construction Code of Australia, the *Public and Environmental Health Act 2011* and Regulations, the *Food Act 2004* and National Food Safety Standards.
10. If you choose nbn to service your development, you will need to enter into a development agreement with nbn. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered nbn will be in contact to discuss the specific requirements for the development. Nbn requires you to apply at least 3 months before any civil works commence. All telecommunications infrastructure should be built to nbn guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/builders-designers.html>
11. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.

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 application is to use part of the upper level of the building at 56 Smith Street as a hotel, specifically for a cocktail bar and gin distillery. The hotel includes a main internal bar plus converted container providing an outdoor bar, kitchen, amenities, internal and outdoor seating areas, a function space, smoking area, plus a feature gin display area. The outdoor area is created by the removal of roof panelling, and the opening of the side of the building to Knuckey Street. To the Knuckey Street elevation, 4 full-height louvre windows are also included. The application details landscaping, including inbuilt furniture and planter boxes within the outdoor area. The hotel will be accessed by Austin Lane using an existing door, plus refurbished internal stairs and lift.

The primary purpose of Zone CB (Central Business) of the Northern Territory Planning Scheme is to provide for a diversity of activities, including administrative, judicial, professional, office, entertainment, cultural, residential and retail and other business activities with a commitment to the separation of incompatible activities. In Zone CB, building form and design is expected to be sensitive to the needs to pedestrian movement and facilitate the creation of safe and active street frontages and public places and a vibrant commercial precinct.

The hotel use falls within the range anticipated in Zone CB, and the use of the upper level will facilitate passive surveillance over Knuckey Street in meeting the zone principles. The proposal will also help to increase activity and vibrancy in Austin Lane. The site is located within the central areas of the Darwin CBD in which late night venues would be anticipated. No residential uses or other sensitive uses have been identified as currently existing in the immediate area, although they may be developed in the zone in the future.

The inclusion of the gin distillery is described as enabling the premises to distil and sell their own gin on site at the bar. The applicant has described that the base spirit will be brought onto the site, with gin distilled and infused, and also bottled for use at the bar with no take-away or wholesale proposed. The distilling and bottling process is expected to be carried out by staff already on site. The gin distillery is considered an ancillary or complementary component of the hotel and no adverse amenity impacts are expected through the emission of smells, vapour, noise or otherwise as a result of the gin distilling and bottling. Future changes to the intended gin production such that it no longer is ancillary to the hotel use may require further consideration by the consent authority.

2. The purpose of Clause 6.5.1 (Parking Requirements) is to ensure that sufficient off-street car parking, constructed to a standard and conveniently located, is provided to service the proposed use of a site. The hotel requires 96 car parking spaces, with no spaces provided on site and the application seeks a parking reduction.

A reduction to the parking required under Clause 6.5.1, pursuant to Clause 6.5.2 (Reduction in Parking Requirements) is considered having regard to the following matters:

- (a) the zoning of the land, the use or development or proposed use or development of the land and the possible future use or development of the land;
- (b) the provision of car parking spaces in the vicinity of the land; and
- (c) the availability of public transport in the vicinity of the land; or
- (d) the use or development relates to a heritage place and the Minister responsible for the administration of the *Heritage Act 2011* supports the reduced provision of car parking spaces in the interest of preserving the significance of the heritage place.

The Authority has considered the recommendations of the *Aurecon Central Darwin Car Parking Generation and Utilisation Study (2010)* which was prepared for the NT Government and sought to “provide sound research and analysis of onsite car parking generation and

utilisation in the CBD and to make recommendations for possible changes to the car parking generation rates specified in the NT Planning Scheme. One of the key objectives for the study was to allow its key findings to be used by the Department to canvas arguments for allowing any reduction in car parking requirements. The study recommended that a generation rate of 3.4 spaces per 100m² net floor area is more appropriate for hotel uses that provide a focus on dining or operate more as bars than nightclubs, which is relevant to the proposal. Based on this, the parking generation of the hotel is reduced from 96 spaces to 21 spaces (20.07 rounded).

The parking reduction is considered appropriate in recognition of the historic use of the land which relied entirely on public car parking, and that the proposed use comprises an interim development only. With the existing building covering almost the entire site, there is no opportunity for the accommodation of any additional on-site car parking. The hotel use is considered an interim use only, with the future development potential being identified through the characteristics of the site including given the large size, the positioning on a prominent corner within the centre of the Darwin CBD and directly opposite the entrance to the Smith Street mall. The interim use is considered unique, and is distinct from the future development of a more permanent nature at the site. The requirement for a payment in lieu of spaces would not be reflective of the future potential of the site as this payment would extend beyond the life of the interim development.

Varied peak demand times are expected, particularly as the expected peak business times are out of business hours and on weekends, at lower demand times for both on-street and off-street car parking in the area. Whilst the proposal would be open during the day, weekday visits are expected to be complimentary to the surrounding weekday land uses, and visits within the venue as a destination are likely to be lower.

The proximity of alternative transport including a taxi rank directly adjacent the site is also noted, and that there are 3 public car parks within 400m walking distance of the site plus kerbside car parking. That the parking generation is expected to be satisfactorily accommodated within existing car parking facilities is also noted. Also the nature of the hotel as a licenced premise and having a preference to discourage, rather than facilitate private motor vehicle use.

3. The purpose of Clause 6.6 (Loading Bays) is to provide for the loading and unloading of vehicles associated with the use of the land. The development overall requires 2 loading bays with only 1 provided.

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

The reduced clearance height of the loading bay at 3.6m only when 4m is required was previously approved through DP15/0241 and the development was considered at the time to adequately accommodate the nature of vehicles anticipated at the site for commercial deliveries.

The special circumstances in reducing the number of loading bays required include:

- The site has the ability to use the Austin Lane loading zone in addition to the on-site loading area, in a manner consistent with the existing nature and use of Austin Lane.
- The existing shared access arrangement is functional and all tenancies are provided equitable access.
- The retention of the site under a single ownership ensures a separate entity to manage the use of and access to the loading area.
- The ground level of the site is completely developed and there is no opportunity to provide additional loading areas without undertaking significant building alterations.

The Authority notes that a separate application PA2019/0041 also requires an additional 1 loading bay bringing the total required to 3, however the reasons described above are considered to be satisfactory to address both applications. The ground floor plan provided with the application identifies a different treatment to reduce any potential conflicts at the pedestrian entrance from Austin Lane and loading vehicles and the intended approach is required to be confirmed through condition.

4. The purpose of Clause 6.3.3 (Urban Design Requirements in Central Darwin) is to promote exemplary urban design in Central Darwin. Clause 6.3.3 was previously varied through determination DP15/0241 whereby a reduced active street frontage of around 8% was approved along Austin Lane when 75% is normally required, plus no additional pedestrian awning provided to Austin Lane through the original reuse of the building although awnings are typically required to streets for the full extent of the site frontage. Whilst the level of compliance is not affected from that previously approved, the hotel includes access from Austin Lane, and consequently will increase the level of pedestrian access along this frontage. The entrance to Austin Lane is noted as being nondescript, however is directly accessible from the public footpath. The applicant commented that further clarification of the intended treatments to enhance the pedestrian entrance to Austin Lane can be provided, and the provision of this detail is included through condition.
5. Pursuant to section 51(p) of the *Planning Act 1999*, the consent authority must take into consideration the public interest.

The previous determination of the consent authority DP15/0241 noted public support for the interim reuse of the building with respect to activating a central site that had previously been vacant for some time, and this is also relevant with regard to the use of the upper level of the site.

6. 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. Also, pursuant to section 51(m) of the *Planning Act 1999*, the consent authority must take into account the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

No land capability issues have been identified as part of the application. Comments were received from service authorities during exhibition of the application and conditions are appropriately included to address servicing requirements.

7. 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 impact on amenity is considered in context of the site and its surrounds, with the use being consistent with the broader intent of Zone CB (Central Business). The use is expected to provide a positive improvement on the amenity of Austin Lane through increased pedestrian access and activation. With regard to the nature of the use, Zone CB allows for a diversity of uses, noting the separation of incompatible activities. No sensitive land uses have been identified in the immediate proximity of the site. The inclusion of the gin distillery is considered an ancillary or complementary component of the hotel use and no adverse amenity impacts are expected through the emission of smells, vapour, noise or otherwise as a result of the gin distilling and bottling. Any additional parking generated by the proposal is expected to be adequately accommodated within existing available public car parking without undue impact on the existing uses in the locality.

ACTION: Notice of Consent and Development Permit

ITEM 6
PA2019/0021
APPLICANT

**ADDITION OF 4 X 32M HIGH LIGHT POLES TO AN EXISTING SPORT AND RECREATION FACILITY (NIGHTCLIFF OVAL)
LOT 9242 (20) OLEANDER STREET, TOWN OF NIGHTCLIFF
ELTON CONSULTING**

That pursuant to section 97 of the *Planning Act 1999*, Mr Mick Palmer and Mr Simon Niblock, members of the Darwin Division of the Development Consent Authority declared an interest and were not present during and did not take part in any deliberation or decision of Item 6.

Mrs Hanna Steevens (Elton Consulting),
Mr Brian Sellars, Mr Tony Yianniakos, Mr Matt Vitucci and Mr Trevor Clark (City of Darwin) attended.

Mrs Steevens tabled an amended plan showing the location of one of the light poles (LP3) being changed.

Submitters in attendance:- Ms Margaret Clinch (representing Plan: the Planning Action Network) and Ms Susan Marchant.

**RESOLVED
54/19**

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 9242 (20) Oleander Street, Town of Nightcliff for the purpose of the addition of 4 x 32m high light poles to an existing sport and recreation facility (Nightcliff Oval) to require the applicant to provide the following additional information that the Authority considers necessary in order to enable proper consideration of the application:

1. Amended plans that show:
 - the relocation of light pole 3 (LP3);
 - any proposed shielding to the light poles (particularly LP2 and LP3);
 - an updated 'sports lighting – HID layout plan' (drawing number 18069-E202) that takes into account the relocation of LP3; and
 - the location of Lot 258 (5) Pandanus Street in relation to the oval and light spill.
2. An accompanying statement that explains:
 - the reasons for the relocation of LP3;
 - how compliance with Australian Standard - AS 4282-1997 "Control of the obtrusive effects of outdoor lighting" is achieved; and
 - the effect of light spill on nearby residences, particularly Lot 258 (5) Pandanus Street, as well as the adjacent Nightcliff Sports Club and any measures proposed to minimise these effects (if any).

REASONS FOR THE DECISION

1. The Authority considered that the current plans do not adequately address the light spill analysis of luminaries on surrounding sites. The Authority noted that the location of light pole 2 (LP2) is close to residences on Pandanus Street, and in the absence of any vegetation/glare shields, the luminaries of LP2 could potentially impact on the existing amenity of these residences as a result of any light spill/glare. The Authority also noted that Lot 258 (5) Pandanus Street has the potential to be most affected by any light spill as it adjoins the subject site. While the Authority noted the applicants' comments that stated that 5 Pandanus Street was located outside of the light spill area (10 Lux isoline) and further that this diagram was based on a worst case scenario, the adjacent residence was not clearly depicted on the plans and therefore the authority were not able to easily confirm this.
2. The Authority noted that the DAS report highlights that a large area of the Nightcliff Sports Club will experience light spill at greater than 25 Lux which exceeds the requirement of 'AS4282 – Control of Obstructive Effects of Outdoor Lighting' for commercial properties. The applicant tabled an amended plan at the meeting showing the relocation of LP3 further towards the north-east part of the site. The applicant also suggested that shielding (Proprietary Rear Visors) would be added to this light pole which will reduce the light spill and assist with meeting the relevant Australian Standard in relation to its proximity to the adjacent Nightcliff Sports Club.
3. Given the relocation of LP3, updated plans are required to assess the light spill to ensure that it does not impact on the nearby residences on Pandanus Street. The Authority also questioned the applicant as to whether or not similar shielding as proposed for LP3 could be applied

to LP2 to assist with minimising any potential impacts on the surrounding residences. While the applicant did not consider this was necessary as the relevant reports and studies had found this pole to comply, and that shielding may reduce the level of light required for the playing surface, the applicant agreed that shielding to LP2 could be given some further consideration.

**RESOLVED
55/19**

That, pursuant to section 86 of the *Planning Act 1999*, the Authority delegates to the Chair the power under section 53 of the Act, to determine the application to develop Lot 9242 (20) Oleander Street, Town of Nightcliff for the purpose of the addition of 4 x 32m high light poles to an existing sport and recreation facility (Nightcliff Oval) subject to:

1. Amended plans that show:
 - the relocation of light pole 3 (LP3);
 - any proposed shielding to the light poles (particularly LP2 and LP3);
 - an updated 'sports lighting – HID layout plan' (drawing number 18069-E202) that takes into account the relocation of LP3; and
 - the location of Lot 258 (5) Pandanus Street in relation to the oval and light spill.

2. An accompanying statement that explains:
 - the reasons for the relocation of LP3;
 - how compliance with Australian Standard - AS 4282-1997 "Control of the obtrusive effects of outdoor lighting" is achieved; and
 - the effect of light spill on nearby residences, particularly Lot 258 (5) Pandanus Street, as well as the adjacent Nightcliff Sports Club and any measures proposed to minimise these effects (if any).

ACTION: Notice of Deferral

**ITEM 7
PA2019/0019
APPLICANT**

ADDITION OF 6 X 32M HIGH LIGHT POLES TO AN EXISTING ORGANISED RECREATION FACILITY (BAGOT OVAL) PORTION 1676 (55) MCMILLANS ROAD, HUNDRED OF BAGOT ELTON CONSULTING

That pursuant to section 97 of the *Planning Act 1999*, Mr Mick Palmer and Mr Simon Niblock, members of the Darwin Division of the Development Consent Authority declared an interest and were not present during and did not take part in any deliberation or decision of Item 7.

Mrs Hanna Steevens (Elton Consulting),
Mr Brian Sellars, Mr Tony Yianniakos, Mr Matt Vitucci and Mr Trevor Clark (City of Darwin) attended.

Submitters in attendance:- Ms Carmel Wise, Ms Cynthia Last, Ms Pamela Hefner, and representing PAn: the Planning Action Network – Ms Margaret Clinch.

Interested party in attendance: - Ms Wendy Morey

The submitter who sent their apology:- Mr Denis Ehling

Submitter Ms Cynthia Last tabled two concept site plans showing the potential redevelopment of Bagot Oval carpark.

**RESOLVED
56/19**

That, the Development Consent Authority vary the requirements of Clause 6.1 (General Height Control), of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Portion 1676 (55) Mcmillans Road, Hundred of Bagot for the addition of 6 x 32m high light poles to an existing organised recreation facility (Bagot Oval), subject to the following conditions:

GENERAL CONDITIONS

1. The works carried out under this permit shall be in accordance with drawing numbers 2019/0019/01 to 2019/0019/04 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 electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
3. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
4. Appropriate soil erosion, sediment and dust control measures must be effectively implemented throughout the construction stage of the development, and all disturbed soil surfaces must be suitably stabilised against erosion at the completion of works, to the satisfaction of the consent authority.
5. The use and development as shown on the endorsed plan must not be altered without the further consent of the consent authority.

NOTES:

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. The Northern Territory Environment Protection Authority advises that construction work should be conducted by the Agency's Noise Guidelines for Development Sites. The guidelines specify that on-site construction activities are restricted to between 7 am and 7 pm Monday to Saturday and 9 am to 6 pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.
3. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT

Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.

4. Professional advice regarding implementation of soil erosion control and dust control measures to be employed throughout the construction phase of the development are available from the Department of Environment and Natural Resources. Information can be obtained from the IECA Best Practice Erosion and Sediment Control Guidelines 2008 available at www.austieca.com.au and the NTG website <https://nt.gov.au/environment/soil-land-vegetation>.
5. The Department of Environment and Natural Resources has advised that the proponent must be made aware of the obligation to comply with the general environmental duty under section 12 of the *Waste Management and Pollution Control Act 1998*. The proponent should carefully consider how ongoing compliance will be achieved with section 12 in relation to the proposed development and its likely environmental impacts. More information can be found on the Environment Protection Authority website at: <http://ntepa.nt.gov.au/waste-pollution>, by calling (08) 8924 4218 or emailing ntepa@nt.gov.au.
6. The Department of Environment and Natural Resources has advised that the construction activity has the potential to generate fill and any fill material being relocated offsite must undergo waste classification assessment by NSW EPA's Waste Classification Guidelines, Part 1: Classifying Waste. Any contaminated fill must be disposed at a licensed waste facility.
7. 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.
8. 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 or the Civil Aviation Safety Authority may require the lighting to be extinguished or suitably modified.
9. Transport and Civil Services division of the Department of Infrastructure Planning and Logistics has advised that the light spill onto Bagot Road and McMillan's Road is to meet the relevant increment thresholds for motorists for this location as well as other design requirements included in AS 4282-1997. Any glare is to be managed and directed away from the driver's eye line particularly at the intersection of Bagot Road/McMillan's Road.
10. Transport and Civil Services division of the Department of Infrastructure Planning and Logistics has advised that no temporary access for construction purposes shall be permitted from the Mcmillans Road reserve. Construction and delivery vehicles shall not be parked on the Mcmillans Road reserve.

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 Northern Territory Planning Scheme (NTPS) applies to the land, and the site is within Zone OR (Organised Recreation) of the NTPS. The primary purpose of Zone OR is to provide areas for organised recreational activities. Further, the development is to be limited to that which is consistent with the recreational opportunities of the land.

The subject site is currently developed with sporting ovals, a velodrome, a playground and open space. The application proposes the addition of six light poles to the existing sporting oval which is located on the western side of the subject site. The oval comprises two full-size playfields and six training fields. The application asserts that the addition of the light poles will enable evening matches and training sessions to take place. The Authority considered that this is seen to be furthering the recreational opportunities of the land as expressed in the zone purpose.

The current use meets the definition of 'sport and recreation' as provided for within Clause 3 (Definitions) of the NTPS:

"sport and recreation" means the use of land for recreation purposes, but does not include such use which involves commercial transactions, motor sports or activities which, by virtue of the generation of noise or disturbance, will adversely affect the amenity of adjoining land nor does it include leisure and recreation.

As per Clause 1.3 (Exceptions) of the NTPS, the Scheme does not prevent the use or development of land for 'sport and recreation'. The proposed light poles require consent as they do not meet the general height requirement contained within Clause 6.1 (General Height Control) of the NTPS. The Authority noted that if the light poles were 8.5m or less in height they would not require consent pursuant to Clause 1.3 as outlined above.

2. The purpose of Clause 6.1 is to ensure that the height of buildings in a zone is consistent with the development provided by that zone. The clause requires *the height of any part of a building is not to exceed 8.5m above the ground level unless it is a flag pole, aerial, antenna; or for the housing of equipment relating to the operation of a lift.* The development proposes six light poles which do not comply with this clause as the highest point of the proposed light poles is 32m, which exceeds the height limit by 23.5m.

In accordance with Clause 2.5 of the NTPS, the consent authority may grant a variation to this clause provided it is satisfied that special circumstances can be identified to justify the variation sought. The consent authority will need to be satisfied that despite the variation proposed, the height of the light poles is consistent with development provided in Zone OR.

The meaning of special circumstances for the purposes of Clause 2.5 are circumstances that are 'unusual, exceptional, out of the ordinary and not to be expected' (as per *Phelps v Development Consent Authority [2009] NTSC 54 Kelly J*). In considering whether there are special circumstances the Authority must take a holistic approach, with each case to be considered on its merits. Circumstances which by themselves might not be 'special' can, in combination with other circumstances, create a situation which overall gives rise to 'special circumstances'. Equally a holistic approach to the application of clause 2.5 also applies to the respects in which a proposed development does not comply with the NTPS.

Applying those principles, in an ordinary common-sense manner, to the present application the Authority considered that there are circumstances which collectively can be considered to be 'special circumstances' justifying consent. Those circumstances include:

- Zone OR is the only standard zone within the NTPS designed explicitly for land use and development to accommodate organised recreation activities, including facilities for sporting competition.
- It is evident that stadium and sports lighting is a reasonable expectation for sporting facilities in Zone OR.
- The height of the light poles is lower than other light poles installed at similar sporting facilities in Darwin, including 45m light poles installed at the TIO stadium (cricket and football), 35m light poles installed at the Rugby stadium and 40m light poles proposed at the new Rugby stadium in Marrara Sports complex.
- Other ovals like Malak Oval and Alawa Oval, located within residential suburbs, have similar size light poles.
- The extent of built form impact from six light poles, despite the additional height, is not comparable to a building of a similar height designed to accommodate people (for example a grandstand).

The assessment also notes that the height restriction in Clause 6.1(4) of the NTPS is a broad restriction that applies to some zones, but some uses are exempted from the height restriction if it is consistent with the development provided for by that zone. For example the height of buildings in Zone CP (Community Purpose) should not exceed 8.5m under the clause; however, education establishments and hospitals are exempted from the height restriction. This is because these uses contain structures which require a height exceeding 8.5m; like certain sporting facilities within the education establishment.

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

The application was circulated to the relevant authorities and comments received from these authorities are addressed by the inclusion of standard conditions and/or notations on the development permit.

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

The subject site is in Zone OR (Organised Recreation), and the immediate locality comprises various zones developed with a range of uses defined in the respective zone. The locality comprises the residential area of Millner to the north (across Old Mcmillans Road); houses, multi-sports venue and industrial area of Coconut Grove to the west (across Bagot Road); a velodrome and parkland to the east (also on the subject site) and an undeveloped portion of Commonwealth land to the south.

Amenity under Section 3 of the Act and Clause 3 of the NTPS is defined as:

“amenity” in relation to a locality or building, means any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable.

The potential impact on amenity (including privacy) of the surrounding residential areas from the proposed development was considered in two components. Firstly, the visual impact from the proposed structures (the light poles and luminaires), and secondly any impact (such as glare or light spill) from the operation of the luminaires.

With regard to visual impact it is noted that the residential properties (across Old Mcmillans road) are located 24 metres from the boundary of Bagot Oval, with light pole 1 (LP1) and light pole 3 (LP3) located approximately 80 metres to the nearest residential area across Old Mcmillans Road. Given a vegetated buffer with tall established trees exists between the proposed light poles and the residential area, this would largely screen the light poles from view. The assessment notes the light poles will be a visible inclusion in the landscape; however they are interspaced on site, and given the bulk and mass of the light poles is minimal as compared to a building, this will be a small addition to the existing landscape of the broader locality. The Authority noted that the location and direction of the light poles are well away from the residential uses and considered that the visual effect of the light poles would be negligible. The Authority noted that existing similar facilities in Marrara Sports complex, Alawa and Malak are located 50m – 60m from the nearest residential area and do not appear to have impacted on the amenity of those areas.

With regard to the visual impact from surrounding roads, the assessment notes that the subject site is located at the intersection of Bagot Road and Mcmillans Road and the proposed light poles will be a notable addition to the road users. The Authority considered that the proposed additions will have negligible impact on road users given the existing presence of street lights, traffic lights and electricity poles etc.

The Authority noted that similar light poles currently exist in Marrara Sports complex without any apparent issues to road users, which are closer to the road and a major intersection.

With regard to light spill on the surrounding residential areas, the application includes a design report which concludes that the luminaries are designed in accordance with 'AS4282 – Control of Obstructive Effects of Outdoor Lighting' which specifically requires that the vertical illuminance at the nearest residential property shall not exceed 10 Lux. The Authority noted that the design report also undertakes an assessment of the light spill for 200 Lux intensity luminaries and demonstrates that lux levels are below 10 Lux at the boundaries of the subject site and that any light spill is limited to areas within the subject site itself i.e. the oval and car parking area located along Old Mcmillans Road.

The Authority noted that the addition of light poles to the existing sport and recreation facility will improve the amenity of the existing facility for the users.

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

Two (2) individual submissions and one (1) joint submission on behalf of the Friends of Bagot Park were received under section 49(1) of the Act. The submissions raise concern regarding community consultation, glare impacts of the proposed light poles on surrounding properties, traffic and parking issues due to the increasing use of the facility and other upgrade works proposed for the subject site.

The Authority explained to the submitters that Development Assessment Services had received a written submission from Cynthia Last and Dennis Ehling, Pamela Hefner, and Lisa Nolan and Leon Waud on behalf of the Friends of Bagot Park; however, the Authority noted that there were a number of other interested parties present whose names had not appeared on the written submission and that they were welcome to make verbal submissions.

Ms Carmel Wise advised the Authority that her property (2/129 Old Mcmillans Road) is located directly across from the oval and that any light spill/ glare from the light poles will directly impact her property. Ms Wise further advised that the existing vegetation would be unlikely to screen the light poles as the vegetation did not extend to the same height as what the light poles would be.

Ms Cynthia Last, on behalf of the Friends of Bagot Park, acknowledged that the current application was for the installation of light poles and that the issue was not so much with the height of the light poles but with associated issues regarding traffic and parking. Ms Last explained that the current parking and traffic arrangement along Old Mcmillans Road has always been an issue during sporting events held at the oval and that the amenity of the suburb has continuously been impacted by the sporting events. Furthermore Ms Last believes that as the

installation of the light poles will allow evening use of the oval, the amenity of the surrounding residential areas would be further impacted by the headlights of cars exiting the parking area. Ms Last tabled two concept plans that have been prepared in consultation with the City of Darwin and Football Federation NT showing potential improvements to the car parking area and hopes that the plan will be adopted. Ms Last acknowledged that the consultation report provided with the application also noted that the traffic and parking are the main concerns of the residents surrounding Bagot Oval.

Referring to the recently announced consultation for upgrades to the velodrome, Ms Last stressed that the subject site (consisting of the oval, velodrome and parkland) should be considered as one development (not separate projects), and a Masterplan should be prepared for the whole site which can provide more clarity about the future of the site and give reassurances to the nearby residents about what they can expect to see developed.

Ms Last spoke about the pre-application consultation that was carried out by the City of Darwin and commented that most of the respondents were users of the facility that reside elsewhere. Ms Last was disappointed with Council's execution of the consultation and thinks that it could have been done better.

In addition to the issues raised above, Ms Morey raised concern in relation to the glare from car headlights which utilise her driveway to make u-turns. Ms Morey emphasised the existing traffic issues which exist in the locality and which have the potential to be made worse by encouraging evening use of the oval without undertaking any parking and/or traffic upgrades.

Ms Margaret Clinch from PPlan: the Planning Action Network shared many of the same concerns as other submitters about the potential impact of the development on surrounding areas as a result of an increase in traffic and parking due to increased use of the site. Ms Clinch expressed that the land is 'public land' with the City of Darwin as a custodian of the land. Therefore, it is important the use of the land remains in public use. Ms Clinch is of the view that in addition to the height variation, the application must also be considered in context of the objects of the Planning Act and that the matters contained within section 51 of the Act should also be considered. Ms Clinch highlighted that the addition of the light poles would increase the use of the oval and due to the increase in traffic at a certain period, this would have a huge impact on the amenity of the area. Ms Clinch commented that the Council had amended its policy to upgrade all ovals irrespective of their hierarchy without much community consultation. Mr Clinch echoed earlier comments from submitters that the subject site should be looked at as a whole, particularly with the proposed upgrades to the velodrome.

The Authority carefully considered the concerns of the submitters and took these comments into consideration in making its decision. In relation to the potential impact on amenity as a result of any light spill/glare, the Authority has addressed this matter in reason 4 above which concludes that the proposed light poles are designed to comply

with Australian Standard 'AS4282– Control of Obstructive Effects of Outdoor Lighting' which specifically requires that the vertical illuminance at the nearest residential property shall not exceed 10 Lux. The Authority noted that the design report submitted with the application demonstrates that the lux levels of luminaries are below 10 Lux at the boundaries of the subject site and that therefore any light spill is limited to areas within the subject site itself i.e. the oval and parking area located along Old Mcmillans Road.

While the Authority acknowledged the comments made in relation to the current parking area and traffic concerns that may exist, these are matters that sit within the jurisdiction of the City of Darwin and the Authority hopes that the comments made during Council's consultation process will be taken on board by Council in any future planning for the site. The Authority do note however that the addition of light poles is not expected to significantly increase participation over and above existing rates, rather it will allow for extended hours of operation and/or will allow for rescheduling of existing uses to operate at a cooler time of the day. Other matters that were raised that fall within the jurisdiction of the *Planning Act 1999* are discussed in reasons 1 and 2 above and are limited to the height of the light poles and the associated impacts that the additional height may have.

6. 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 lands, the physical characteristics of which may be affected by the development;

The application states that the installation of the light poles will require pruning a portion of one tree canopy located on the west of the site. No tree removal is proposed for the installation of the light poles. This site is located near the Darwin International Airport (DIA) and is partially affected by the 20 ANEF 2042 contour from Darwin International Airport. While the existing use of the site is not identified in the '*Building Site Acceptability Based on ANEF Zones taken from AS 2021 – 2000*', the use has been in this location for many years, and no known conflict with the airport operations concerning noise has been identified. The proposed addition of light poles does not intensify the existing use of the site, and as such, the proposal is considered consistent with the clause.

The assessment report 'Potential impact on fauna from the proposed Bagot Oval Lights' prepared by EcOz Environmental Consultants concludes that there are no significant sensitive ecological receptors (threatened species or colonial species) that could be impacted upon by the lights. The introduction of additional artificial lighting will impact upon the general ecology of the local wildlife; however, that ecology is already being influenced by the urban setting of existing streetlights, lights from cars and houses, and tennis court lights (from the multi-user sports facility adjacent to Bagot Oval). Given the low levels of the predicted light spill, it seems likely that the impacts of the lights on local wildlife will be insignificant. Further, the Flora and Fauna division of Department of Environment and Natural Resources has confirmed that

the site is heavily modified and would be unlikely to contain significant habitat for threatened species.

7. Pursuant to section 51(p), the consent authority must take into consideration the public interest, including (if relevant) how the following matters are provided for in the application:
 - (i) community safety through crime prevention principles in design;
 - (ii) water safety; and
 - (iii) access for persons with disabilities.

The proposed development does not impact on water safety or access for persons with disabilities. The Authority noted that the addition of light poles to the existing sporting facility would enable evening training sessions and matches to take place which will provide additional activation to the area; opportunities for passive surveillance; and improve community safety. It was also considered to be in the public interest to provide additional sporting facilities that can operate in the evening when it is cooler and therefore safer to participate in sport.

ACTION: Notice of Consent and Development Permit

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

SUZANNE PHILIP
Chair

28 March 2019