



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 348 – FRIDAY 6 DECEMBER 2019

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

MEMBERS PRESENT: Suzanne Philip (Chair), Mark Blackburn, Marion Guppy, Simon Niblock, Peter Pangquee (Items 1-4 only) and Robin Knox (Item 5 only)

APOLOGIES: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Dawn Parkes, Richard Lloyd, Emmett Blackwell and Amy Anderson (Items 1-3 only) (Development Assessment Services)

COUNCIL REPRESENTATIVE: Conneal Brown and Brian Sellers

Meeting opened at 10.15 am and closed at 3.45 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

**PA2019/0419 SERVICE STATION INCLUDING DRIVE-THROUGH SHOP AND CAR WASH FACILITIES
LOT 2033 (16) STUART HIGHWAY & LOT 2534 (1) DUKE STREET, STUART PARK, TOWN OF DARWIN**

APPLICANT/S Northern Planning Consultants Pty Ltd

Mr Brad Cunnington (Northern Planning Consultants), Mr Andrew Casper and Mr Philip Moir (Peregrine Corporation) attended.

**RESOLVED
201/19**

That, the Development Consent Authority vary the requirements of Clause 8.1.4 (Service Stations) of the NT Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 2033 (16) Stuart Highway & Lot 2534 (1) Duke Street, Town of Darwin for the purpose of a service station including a drive-through shop and car wash facilities, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a landscape plan to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plan will be endorsed and will then form part of the permit. The landscaping plan must be generally in accordance with the landscape concept plan and must include a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, sizes at maturity, and quantities of each plant. All species selected must be to the satisfaction of the consent authority.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the crossover and driveway to the site from the City of Darwin road reserve, to the satisfaction of the consent authority.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a Traffic Impact Report in accordance with the Austroads Guide to Traffic Management Part 12: Traffic Impacts of Development is required for the proposed development. The Report must detail the development's traffic generation, trip distribution, traffic operation impact, the nature and timing of impacts, and recommended measures required to accommodate and/or mitigate the traffic impacts of the development, including construction traffic. The impacts of the development on public transport facilities, pedestrian and cycle facilities shall also be assessed. The report shall also include swept path diagrams for the design vehicle/ maximum sized vehicle intended to access the lot shall be provided with the detail design drawings submitted to demonstrate the suitability of the access design geometry. The Traffic Impact Report is to be to the requirements of the City of Darwin and the Transport and Civil Services

Division, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.

4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, 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 Site Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP should specifically address the impact to Council owned public spaces and include a waste management plan for disposal of waste to Shoal Bay, traffic control for affected City of Darwin roads, haulage routes, storm water drainage & sediment control, use of City of Darwin land, and how this land will be managed during the construction phase.
6. 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.
7. 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.
8. Prior to the commencement of works (including site preparation), a Construction Traffic Management Plan (detailing all appropriate site management measures, including construction access, proposed haulage routes, vehicle types, protection of existing assets, protection of public access and a risk assessment) shall be submitted to the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.

GENERAL CONDITIONS

9. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
10. All works recommended by the Traffic Impact Report are to be completed to the requirements of the City of Darwin and the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
11. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, 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.

12. 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.
13. 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.
14. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the City of Darwin, to the satisfaction of the consent authority.
15. 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.
16. Before the use or occupation of the development starts, the areas set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - (a) constructed;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather-seal coat;
 - (d) drained;
 - (e) line marked to indicate each car space and all access lanes; and
 - (f) clearly marked to show the direction of traffic along access lanes and driveways;to the satisfaction of the consent authority. Car spaces, access lanes and driveways must be kept available for these purposes at all times.
17. The car parking shown on the endorsed plans must be available at all times for the exclusive use of the occupants of the development and their visitors.
18. Any access upgrade works required to accommodate the proposed development within NT Government controlled road reserves shall be carried out by the Developer, at the Developer's cost, to the standards and requirements of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
19. Headlight barriers shall be installed along the Stuart Highway frontage to prevent the headlights being noticeable or causing nuisance to Stuart Highway traffic to the requirements of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
20. All proposed work (including the provision or connection of services) within, or impacting upon the Stuart Highway road reserve shall be in accordance with the standards and specifications of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics.

21. Surface stormwater run-off from the development site onto the Stuart Highway road reserve is not permitted. The developer shall ensure that the stormwater run-off from the development site is collected to prevent uncontrolled discharge to adjoining lands through the provision of kerbing, transverse grated drains and inlet pits, or alternatively the site is to be graded to collect the run-off internally. Accordingly, stormwater shall be wholly contained within the site and discharged into the local underground stormwater system to the standards and approval of the Transport and Civil Services Division (where it impacts on NT Government controlled road reserves) and the City of Darwin, be to the satisfaction of the consent authority. Stormwater design plans submitted for approval shall provide details of site levels and existing downstream drainage infrastructure.
22. The installation of any services or service connections within the Stuart Highway road reserve is subject to Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics approval. All service related works are to be contained within the appropriate Nominal Service Corridor (refer Standard Drawing CS-3001).
23. Upon completion of any works the Stuart Highway road reserve shall be rehabilitated to the standards and requirements of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics.
24. The finish of any Prime Identification sign, if erected, shall be such that, if illuminated, day and night readability is the same and is of constant display (i.e. not flashing or of variable message). The sign shall be positioned:
 - (i) so as not to create sun or headlight reflection to motorists; and
 - (ii) be located entirely (including foundations and aerially) within the subject Lot.Temporary advertising signage, e.g. 'A' frame, vehicle or trailer mounted shall not be erected or located within the Stuart Highway road reserve.
25. 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.
26. 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.
27. 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.
28. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
29. An Occupancy Permit under the *Building Act 1993* must not be issued until Lots 2033 and 2534, Town of Darwin have been consolidated and a new title issued for the consolidated lot.

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. 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>
3. All works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
4. Designs and specifications for landscaping of the road verges adjacent to the property shall be submitted for approval by City of Darwin and all approved works shall be constructed at the applicant's expense, to the requirements of City of Darwin.
5. Notwithstanding the approved plans, any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin Policy Number 42 – Outdoor Advertising Signs Code.
6. In accordance with City of Darwin By-Laws, prior to occupation, the applicant shall ensure that a building number is displayed in a position clearly visible from the street. The number must be visible against the background on which it is placed, to the satisfaction and at no cost to City of Darwin
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. Note that a Development Permit issued under the *Planning Act 1999* is not an approval for access onto a Territory Road. Approval for access to be taken from, or constructed within a NT Government controlled road reserve rests solely with the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics as the approving Road Authority.
9. The Developer, their Contractor or Service Provider is required to obtain a "Permit to Work Within NT Government Road Reserves" prior to the commencement of any works within the Stuart Highway road reserve.

10. No temporary access for construction purposes shall be permitted from the Stuart Highway road reserve. Construction and delivery vehicles shall not be parked on the Stuart Highway road reserve.
11. The loads of all trucks entering and leaving the site of works are to be constrained in such a manner as to prevent the dropping or tracking of materials onto streets. This includes ensuring that all wheels, tracks and body surfaces are free of mud and other contaminants before entering onto the sealed road network. Where tracked material on the road pavement becomes a potential safety issue, the developer will be obliged to sweep and clean material off the road.
12. The construction of awnings over the Stuart Highway road reserve is subject to Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics' approval and will require the execution of a "Deed of Indemnity and Release" in favour of the Northern Territory of Australia prior to construction. An application with detail drawings of the proposed structures and locations in the road reserve, shall be submitted to the Director Corridor Management, Transport and Civil Services Division for consideration. Awnings proposed on Territory roads shall be in accordance with the Department's Policy "Awnings and Columns in the Road Reserve".
13. Any floodlighting or security lighting provided on site is to be shielded in a manner to prevent the lighting being noticeable or causing nuisance to Stuart Highway traffic.
14. Appropriate protection shall be provided to contain potential spills of waste and prevent contaminants from entering adjacent properties, roadways, and the stormwater drainage system. The wash-down bay/ fuel delivery area shall be designed and constructed such that spillage and run-off containing waste is free from cross-contamination and isolated from the stormwater drainage system. Discharge of untreated waters into the stormwater drainage system is not permitted. Any contaminated stormwater shall be isolated, contained and treated prior to discharge off-site.
15. There are statutory obligations under the *Waste Management and Pollution Control Act 1998* (the Act), that require all persons to take all measures that are reasonable and practicable to prevent or minimise pollution or environmental harm and reduce the amount of waste. The proponent is required to comply at all times with the Act, including the General Environmental Duty under section 12 of the Act. There is also a requirement to obtain an authorisation prior to conducting any of the activities listed in Schedule 2 of the Act. Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority (NT EPA) website at <https://ntepa.nt.gov.au/wastepollution/guidelines/guidelines>.

The proponent is advised to take notice of the attached Schedule of Environmental Considerations provided by DENR.

The Act, administered by the NT EPA, is separate to and not reduced or affected in any way by other legislation administered by other departments or authorities. The Environmental Operations Branch of the Environment Division may take enforcement action or issue statutory instruments should there be non-compliance with 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 land is located in Zone SC (Service Commercial) of which the purpose is to provide for commercial activities which, because of the nature of their business or size of the population catchment, require large sites. The proposed development is for a commercial use which is discretionary in Zone SC. The proposal requires the two subject lots to be amalgamated, which will result in the largest lot bound by King and Duke Streets. A condition of approval requires the lots to be consolidated prior to receiving a certificate of occupancy. The proposed development is therefore considered to be aligned with the purpose of the SC zone.

2. Clause 2.7 (Reference to Policy) of the NTPS states that the interpretation of the Planning Scheme and the determinations of a consent authority must have regard to the policies and planning concepts expressed in those documents appearing in Part 8 or Schedule 2 and ensure that a use or development or proposed use or development is consistent with them.

The Darwin Inner Suburbs Area Plan provides a framework to guide progressive growth and development within the Inner Suburbs of Darwin. The *Activity Centres and Tourist Commercial Areas Plan* on page 22 identifies the subject land as part of the Stuart Highway, Stuart Park Activity Centre, with the land use identified as Specialist and Secondary Centre. Clause 3.2 provides the Planning Principles, including objectives and acceptable responses, for Activity Centres and Tourist Commercial Areas. Objective 8 identifies the potential for mixed use development in this area *only* if access is provided via rear laneway or secondary street.

The proposal deviates from the intended Area Plan outcomes in that vehicle access is proposed from both the Stuart Highway and Duke Street (the Area Plan identifies both of these frontages as "*front interface (no vehicle access)*"), rather than the anticipated rear laneway access between the lots fronting the Stuart Highway and those fronting Voyager Street. To avoid the need to utilise the Stuart Highway and Duke Street frontages for vehicle access, a rear laneway, or at the very least secure tenure over a future rear laneway, would be required between King and Duke Streets. No such laneway or tenure therefore currently exists, and it is noted that a number of existing buildings are currently located over the identified laneway area. In addition, the requirement for a future laneway to resolve tenure over no less than 16 separate allotments (comprising the allotments bordered by the Stuart Highway, King Street, Voyager Street and Duke Street) is clearly indicative of the laneway as a long-term outcome.

These circumstances are deemed sufficient to justify a minor deviation from the access requirements outlined in the Area Plan. Noting that the proposed development will not compromise the future intended outcomes of the Area Plan.

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 standard set out in Part 4 and 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

As noted by President Bruxner in *Bradley v Development Consent Authority and Kalhmera Pty Ltd* [2017] NTCAT 922

In the sense in which it is used in clause 2.5(4) of NTPS, the expression 'special circumstances' draws attention to the need to demonstrate something about a proposed development that means that requirements of the NTPS that would otherwise apply can appropriately be relaxed. Consideration of that issue will normally involve attention to aspects of the proposed development which set it apart from developments on *other*, similarly zoned, land.¹ The question is whether there is anything 'unusual, exceptional, out of the ordinary and not to be expected' about the proposed development that justifies a departure from the requirements of the planning scheme.

The application seeks a minor variation to Clause 8.1.4 (Service Stations). The purpose of this clause is to ensure that service stations do not, because of appearance or the emission of fumes or noise, unreasonably affect the use and enjoyment of adjacent land.

Specifically the applicant seeks to vary vehicular access requirements prescribed within subclause 2(c)(ii) where the northern entrance has a maximum width of 9.11 metres (in lieu of the 9m maximum width requirement). Also the southern exit driveway to the Stuart Highway varies between 12 and 16 metres to the footpath crossing point at the Duke Street road intersection, therefore partially within the 15 metre minimum. The applicant provided the following information in support of a variation:

Stuart Highway Crossover width of 9.11m

- The additional 0.11 metre width of the northern Stuart Highway entrance is considered a minor increase, and enables an appropriate driveway angle to facilitate access to the site from the Stuart Highway.
- Fuel tanker access is provided from this driveway to minimise the amount of tanker manoeuvring within the site.
- The proposed variation must be taken in the context of a compliant (9 metre) wide driveway, with the variation seeking to increase the required width by less than 1.3%, as well as the provision of separate entrance and exit driveways (thus simplifying driveway operations for both vehicles and pedestrians utilising the adjacent footpath).

Proximity of Crossover to road intersection closer than 15m (12m – 16m)

- The location of the southern exit driveway is primarily determined by the need to avoid vehicles exiting the site crossing the Stuart Highway and turning into Burt Street on the opposite side. Locating the driveway a far south as possible ensures the site exit does not compromise vehicle safety on the surrounding road network.

- With regard to pedestrian movements along the adjacent footpath, the separation of access and egress driveways along the Stuart Highway frontage simplifies the identification of vehicle movements for pedestrians crossing driveways and when crossing the Duke Street intersection, and the wide footpath along the Stuart Highway (effectively occupying the entire verge width) enables adequate separation space from the southern exit driveway.

The Authority noted that the requirements of subclause 2 of clause 8.1.4 are expressed in very strict terms, providing that a site may only be developed for a service station where the requirements listed (a) to (d) are met. The Authority was satisfied that the variations were so minor as to be negligible and was satisfied that the circumstances listed previously are expected to ensure that the proposed development will not adversely affect the surrounding road network and pedestrian pathways, nor will they unreasonably affect the use and enjoyment of adjacent land. The authority noted that the minor variations sought arose out of the shape and position of the lot relevant to the road network

4. 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 submission was made under section 49, from the landowner of 2/5 Voyager Street, Stuart Park. The Authority acknowledged the matters raised within the submission and the applicant's response to those matters. The Authority concluded that the anticipated impact of the proposal is considered acceptable given the locality being within Zone SC (Service Commercial) along the Stuart Highway, and that conditions of approval would ensure the development would be undertaken in accordance with the relevant service authority requirements.

The Authority also noted the comments received from Mr Troy Nothdurft after the exhibition period had ended. Environmental and traffic impacts have been assessed by the relevant service authorities and appropriate conditions of approval have been applied to the development permit.

5. 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.

There are no concerns about the capability of the land to accommodate the proposed development. The site is situated above the 1% AEP flood event, allow for the anticipated access, stormwater and servicing requirements for the land

6. 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 development and use of land for the purpose of a service station is anticipated in Zone SC. The subject land does not directly adjoin existing residential development, and the limited size of the proposed service station, design and layout of the proposed buildings and the provision of landscaping ensure the service station is unlikely to adversely impact the amenity of existing or future residential development to the north-east and east of the site.

7. At the meeting of 6 December 2019 the applicant requested two minor changes to the proposed conditions. The applicant requested that the Authority amalgamate conditions precedent 1 and 4, as the swept path plans required by condition precedent 4 could be dealt with through the required Traffic Impact Report, and the deletion of condition number 33 which required the Stuart Highway frontage to be fenced to deter unauthorised vehicular and pedestrian movement. The applicant asserted that there was no intention to fence either road frontage, which is normal practice for a service station.

The Authority considered that the amalgamation of conditions precedent 1 and 4 presented no issues of concern and therefore condition precedent 4 has been omitted and the requirement for swept paths has been incorporated into condition precedent 1. Similarly, the Authority acknowledged that no fencing was to be provided to the Stuart Highway frontage given the nature and design of the proposed service station and therefore proposed condition 33 has been omitted from the development permit. It is understood that notwithstanding the wording of the proposed condition, the Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics did not specifically require fencing but rather that a visual/physical barrier is in place to deter unauthorised access. It is noted that landscaping is proposed along all street frontages which meets this requirement.

Minor changes to a number of other conditions and notations has also taken place to ensure consistency and accordance with service authority comments. The applicant has reviewed and accepted these changes and it is noted that the changes do not alter the developer's obligations to comply with any service authority requirements.

ACTION: Notice of Consent and Development Permit

ITEM 2

PA2019/0377

UNIT TITLE SCHEMES SUBDIVISION TO CREATE TWO UNITS AND COMMON PROPERTY

LOT 9576 (247) TROWER ROAD, CASUARINA, TOWN OF NIGHTCLIFF

APPLICANT/S

Northern Planning Consultants Pty Ltd

Mr Brad Cunnington (Northern Planning Consultants) and Ms Nadia Lim (Ward Keller) attended.

**RESOLVED
202/19**

That, pursuant to 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 9576 (247) Trower Road, Town of Nightcliff for the purpose of a unit title schemes subdivision to create two units and common property, to require the applicant to submit the following additional information that the authority considers necessary to enable proper consideration of the application:

- A copy of the proposed Scheme Statement, including the By-Laws, to be registered on title and written confirmation from a suitably qualified professional and the scheme supervisor that the unit titling can be effected in such a way that proposed Lot 1 (UniLodge) retains a legal right to access and use the required number of carparks.

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 land is located in Zone C (Commercial) of which the purpose is to provide for a range of business and community uses. The zone applies to shopping areas ranging from neighbourhood convenience shopping to regional centres. The zone also provides that development should be of a scale and character appropriate to the service function of a particular centre; respect the amenity of adjacent and nearby uses; and promote community safety in building design, having regard to adjacent and nearby uses.

The proposed unit title scheme subdivision does not alter the approved land use, scale or character of existing development approved through previous approvals. The ongoing use of both proposed units for student accommodation and a shopping centre is consistent with the range of business and community uses anticipated in Zone C.

Clause 11.1.5 (Subdivision for the purpose of a Unit Title Scheme)

The purpose of this clause is to ensure that the new ownership arrangements resulting from a subdivision to create a unit title scheme allow each element of the development to continue to be available to the occupants of the development and where appropriate to visitors; older developments are upgraded; and development will not have a detrimental environmental effect on the land or result in a loss of amenity within the locality.

The current application proposes subdivision of the existing development to create two units, with the UniLodge student accommodation contained within one unit title, and remaining shopping centre area contained within the other. The proposed subdivision will facilitate the new ownership arrangements by means of sale, transfer or partition, of the existing development. All driveway access to the proposed units is within the common property ensuring, each element of the development continues to be available to the occupants of the development and where appropriate to visitors. Access to and availability of the car parking aspects of the development are considered separately.

The assessment notes that no major building works, except modification of the eastern Dripstone Road access to UniLodge, are proposed as part of the proposed UTS subdivision. The application proposes a modification to the eastern Dripstone Road access to enable vehicles exiting the student accommodation car park (currently providing access / egress to the Ultratune premises) to turn right onto the driveway, then exit to Dripstone Road. A condition precedent to provide a Traffic Impact Assessment (TIA) to the requirements of the Transport and Civil Services Division (TCSD) of the Department of Infrastructure, Planning and Logistics (DIPL) was recommended by Development Assessment Services (DAS) for inclusion on any permit issued. The Authority noted the applicant's request to amend proposed condition 3 in the DAS report. The applicant explained that the changes to the existing access was limited to a break in the central median and therefore whilst they were happy to address the impact of this specific change they did not consider that a full TIA was necessary. The Authority concluded that the recommended condition reflected the requirements of the TCSD made in its letter dated 21 October 2019 and therefore the applicant is encouraged to liaise directly with the TSCD regarding any changes to the wording of this condition prior to the application being reconsidered by the Authority.

Subclause 2 provides that subject to sub-clauses 3, 4, 5 and 8 a subdivision to create a unit title scheme should meet the requirements of Part 4 of the planning scheme and in particular:

- (a) *all car parking provided as a requirement of a development must be available at all times for the use of the occupants of the development and their visitors or clients and be included:*
 - I. *in common property; or*
 - II. *as part of the area under the title for the individual units;*
- (a) *any loading bays provided for the development must be either in common property or if for sole nit must be within entitlement of that unit.*
- (b) *any areas set aside for the communal storage and collection of garbage and other solid waste must be included in the common property.*
- (c) *any private open space associated with a dwelling must be included in the unit entitlement of that dwelling.*
- (d) *any communal facilities and amenities or open space provided for hostels, multiple dwellings and supporting accommodation must be included in the common property.*

The DAS assessment notes that the UTS subdivision is generally consistent with subclause 2 including:

- All loading bays required to service the shopping centre, and approved under previous approvals, are within the entitlement of the shopping centre. No loading bay is required for UniLodge development;
- Garbage collection areas are located within the respective unit entitlement;
- Private open space areas, consisting of the unit balconies, are within entitlement of UniLodge building. There are no requirements for private open space for the shopping centre; and

- The communal areas of the UniLodge building, located on Level 1 are within the unit entitlements of that unit. As these uses are for the exclusive use of the occupants of the UniLodge development, they are not considered as communal for Units 1 and 2.
2. The proposal presents a non-compliance with subclause 2(a). Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the Northern Territory Planning Scheme the Authority may consent to a development that does not meet the standard set out in Part 4 and 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

In relation to the car parking, the DAS assessment notes that all car parking for the shopping centre approved under previous approvals is located within the proposed unit title boundary (unit 2) of the shopping centre. However, the development approval granted for the UniLodge building (DP14/0054) included the provision of 22 car parking bays within the adjacent shopping centre carpark. As part of the Car Parking Management Plan endorsed under Condition 7 of DP14/0052, these car parking spaces are provided on the Trower Road deck car park area of the shopping centre. The current application proposes to maintain this arrangement which will mean that the car parking associated with proposed unit 1 (UniLodge) will not be within common property or within the unit entitlement of unit 1 as required by the Clause.

In relation to the variation sought the applicant provided the following information within the written application and spoke further to these points at the meeting:

- The ongoing provision of the 22 spaces on the Trower Road deck is identified as part of the Car Parking Management Plan endorsed as part of DP14/0054. Encapsulating these spaces within either common property or proposed unit 1 would disjoint the unit title and/or common property layout, and restrict any future relocation of the car parking spaces if agreed between the unit title holders / licensees;
- The existing licence arrangement for the 22 car parking spaces is unique in that car parking spaces are already provided off-site. The distribution of unit title boundaries seeks to reflect the existing arrangement, with the continued provision of car parking for the student accommodation building within the main shopping centre car park, as part of a formal, legally binding agreement;
- The continued provision and access to the 22 upper deck spaces by UniLodge residents will not be affected by the proposed unit title subdivision. The landowners obligation to provide the proprietary rights to the land under the existing agreement will still be effected after the title of each unit and common property is issued; and
- The GPT (landowner of Lot 9576) plans to alter the use of the Ultratune tenancy from motor repair station to a shop (as a minor expansion of the existing shopping centre) at a point post the expiry of the current lease (2020), with modifications to negate the need for separate

driveway access (through the ground floor of unit 1) or car parking. As a result of this, the 10 car parking spaces within the eastern undercroft car parking (currently reserved for Ultratune tenancy) area will be utilised by the UniLodge building. This will reduce the need for offsite parking from 22 to 12 car spaces.

The DAS assessment notes that the DCA, through the granting of Development Permit DP14/0054, approved a reduction to Clause 6.5.1 (Parking Requirements) pursuant to Clause 6.5.2 (Reduction in Parking Requirements) for the UniLodge development. The approval granted a reduction from 64 parking spaces to 31 parking spaces. Of the 31 parking spaces 9 spaces are provided in the undercroft of the UniLodge building, and 22 spaces are provided within the shopping centre as part of the Car Parking Management Plan endorsed under Condition 7 of DP14/0052. These car parking spaces are provided on the Trower Road deck car park area of the shopping centre. The approved reduction to parking spaces took into account the proximity of the site to public transport and the primary resident destination as well as the car share scheme and restrictions on car ownership to be imposed.

Advice from the applicant's legal advisor is that the proposed unit titling can be effected in such a way that Lot 1 (UniLodge) retains a legal right to access and use of the required number of carparks.

The Authority questioned the feasibility of providing an additional 10 spaces on-site if and when the Ultratune tenancy changes to a shop as it is more than likely the new tenants will also want access to conveniently located spaces. The Authority was clear that if it was of a mind to approve the proposed UTS subdivision, the application would need to provide a mechanism to ensure that the 22 spaces currently provided offsite continue to be available in a convenient and proximate location to the residents of the UniLodge building. While the DAS report recommended the application be approved with a condition precedent requiring further written confirmation from a suitably qualified professional and the scheme supervisor prior to the endorsement of any plans, the Authority require the submission of the scheme statement documentation prior to the reconsideration of the application to enable it to fully understand the legal mechanisms proposed and the impact, if any, on existing and future development approvals.

The Authority also noted that in order to vary compliance with Clause 11.1.5, the Applicant must show special circumstances as identified by President Bruxner in *Bradley v Development Consent Authority and Kalhmera Pty Ltd* [2017] NTCAT 922

In the sense in which it is used in clause 2.5(4) of NTPS, the expression 'special circumstances' draws attention to the need to demonstrate something about a proposed development that means that requirements of the NTPS that would otherwise apply can appropriately be relaxed. Consideration of that issue will normally involve attention to aspects of the proposed development which set it apart from developments on *other*, similarly zoned, land.¹ The question is whether there is anything 'unusual, exceptional, out of the ordinary

and not to be expected' about the proposed development that justifies a departure from the requirements of the planning scheme.

The Application and DAS Report set out the unusual planning history of the site and include the permit for construction and development of UniLodge including the endorsed plans, reduction in car parking requirements and the Car Parking Management Plan. The Authority notes that the Permit contains condition 28 which provides inter alia "No further subdivision of the development area to create either a separate development parcel or unit titling is permitted". In the present case, special circumstances need to be considered in the light of the departure sought from the scheme requirements, that being the need to include car parking either in common property or within the unit entitlement for the Lot. The reasons given to date relate to the desire for flexibility rather than anything 'unusual, exceptional, out of the ordinary and not to be expected' about the proposed development. In order to consider its discretion under Clause 2.5, the Authority considered that it needs to be satisfied that the arrangements as proposed by the Applicant demonstrate that sufficient safeguards are put in place that will guarantee the same security of the 22 car parking spaces that would otherwise be secured by compliance with Clause 11.1.5

ACTION: Notice of Deferral

ITEM 3

PA2019/0411

OFFICE USE INCLUDING ALTERATIONS AND ADDITIONS (INCLUDING FOURTH STOREY) TO AN EXISTING THREE STOREY BUILDING LOT 2377 (8) CAVENAGH STREET, DARWIN CITY, TOWN OF DARWIN

APPLICANT/S

MasterPlan NT

Mr Joseph Sheridan (MasterPlan NT) attended and tabled amended plans.

Mr Boyd Sargeant (Planit Consulting) attended on behalf of submitters Carpaolo Nominees.

**RESOLVED
203/19**

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 6.3.3 (Urban Design Requirements in Central Darwin), Clause 6.5.3 (Parking Layout), Clause 6.6 (Loading Bays) and Clause 8.2 (Commercial and other Development in Zones...CB...), of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 2377 (8) Cavenagh Street, Town of Darwin for the purpose of office use including alterations and additions (including fourth storey) to an existing three storey building, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), approval is required for the provision of awnings to the three street frontages to the requirements of the City of Darwin and Power and Water Corporation, to the satisfaction of the consent authority. The awnings shall not reduce the achievement of active frontages below 75% of the total length of the site boundary to the street.

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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 a dilapidation report covering infrastructure within the road reserve to the requirements of City of Darwin.
4. Prior to the commencement of works (including site preparation), the applicant is to prepare a Site Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP should specifically address the impact to Council owned public spaces and include a waste management plan for disposal of waste to Shoal Bay, traffic control for affected City of Darwin roads, haulage routes, storm water drainage & sediment control, use of City of Darwin land, and how this land will be managed during the construction phase.
5. Prior to the commencement of works (including site preparation), a waste management plan addressing the City of Darwin's Waste Management Policy 054 must be prepared, 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, sewerage, electricity facilities and telecommunication network services to the development shown on the endorsed plan 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. 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. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin, to the satisfaction of the consent authority.
11. Before the use or occupation of the development starts, the area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - i. constructed;
 - ii. properly formed to such levels that they can be used in accordance with the plans;

- iii. surfaced with an all-weather-seal coat;
 - iv. drained;
 - v. line marked to indicate each car space and all access lanes; and
 - vi. clearly marked to show the direction of traffic along access lanes and driveways,
to the satisfaction of the consent authority.
Car spaces, access lanes and driveways must be kept available for these purposes at all times.
12. The car parking shown on the endorsed plans must be available at all times for the exclusive use of the occupants of the development and their visitors.
 13. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
 14. No goods are to be stored or left exposed outside the building so as to be visible from any public street, to the satisfaction of the consent authority.
 15. Before the occupation of the development starts the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
 16. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.
 17. 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.
 18. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view, located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority.
 19. All 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.
 20. 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.

NOTES:

1. 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.

2. 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.
3. Notwithstanding the approved plans, all signage is subject to City of Darwin approval, at no cost to City of Darwin.
4. 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.
5. 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>
6. 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 development proposes office use including alterations and additions (including fourth storey) to an existing three storey building. The proposal is consistent with development anticipated in Zone CB (Central Business) of which the purpose 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.

The proposal has been assessed against the relevant clauses of the NT Planning Scheme that apply to Zone CB, and non-compliances were identified against Clause 6.3.3 (Urban Design Requirements in Central Darwin), Clause 6.5.1 (Parking Requirements), Clause 6.5.3 (Parking Layout), Clause 6.6 (Loading Bays), and Clause 8.2 (Commercial and other Development in Zones... CB...).

In relation to Clause 6.5.1 (Parking Requirements), the assessment identifies that the proposal generates a technical shortfall of 24 parking spaces and no new parking spaces are proposed on the site.

The Authority granted a reduction to the parking required under Clause 6.5.1 (Parking Requirements), pursuant to Clause 6.5.2 (Reduction in Parking Requirements) based upon the following reasons:

- The site is zoned CB (Central Business) under the Planning Scheme and it is unlikely that this zoning will change in the future.
- There are a number of public car parking areas available within a 400 metre radius of the site and it is considered likely that the technical shortfall of 24 car parking spaces would be able to be accommodated within these parking areas. It is also noted that a recent Darwin CBD car parking study (Tonkin 2019), shows that that there is currently an oversupply of off-street car parking spaces in the CBD, making it even more probable that the technical shortfall can be adequately accommodated through these parking areas.
- The site is in close proximity to the public bus network being within 200m of the Darwin interchange.

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 standards set out in Part 4 and 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

In relation to Clause 6.3.3 (Urban Design Requirements in Central Darwin), the assessment identifies that awnings are not proposed along the full extent of the Bennett Street frontage to the site. They are only proposed for 16m of the 60.5m Bennett Street frontage. It is considered that the grade of Bennett Street may provide circumstances where provision of an awning for the full extent of the site's frontage can be varied. However, it was noted that the 16m of awning proposed did not extend to the full width of the pavement. At the meeting of 6 December 2019, the applicant tabled plans which show an increased width of the proposed awning on Bennett Street. These plans will now form part of the drawings endorsed as forming part of the development permit. Also, a condition precedent is included on the development permit so approval is required for the provision of awnings to the street frontages to the requirements of the City of Darwin and PWC, to the satisfaction of the consent authority.

In relation to Clause 6.5.3 (Parking Layout), the assessment identifies that the car parking area will be less than 3m from a road and is not designed so that the driveway projects 1m beyond the last parking space. In the context that the car parking area for the site has been used for many years, its location is essentially fixed, and the small portion of parking area that will be visible from the street will be screened through façade treatment, it is considered that sufficient circumstances exist for this clause to be varied accordingly.

In relation to Clause 6.6 (Loading Bays), one loading bay is required for the site and none exist/are proposed. In the context that the site was not approved with a loading bay, and it operated as an office for many years without the apparent need for an allocated loading bay through using the on-street parking/loading bays, it is considered that circumstances exist where an allocated loading bay is not necessary and this clause may be varied.

In relation to Clause 8.2 (Commercial and other Development in Zones... CB...), while a waste room is shown on the ground floor plan the specific provision for waste collection is not given in the application. However, the applicant advises that the proponent is committed to working with City of Darwin under its Waste Management Policy to ensure the proposal's waste management requirements are addressed. At the meeting of 6 December 2019, the Authority determined that in addition to the inclusion of the consent condition where the storage for waste disposal bins is to be provided to the requirements of the City of Darwin (to the satisfaction of the consent authority), a precedent condition is also to be included so a waste management plan addressing the City of Darwin's Waste Management Policy 054 is prepared, to the requirements of the City of Darwin (to the satisfaction of the consent authority), to particularly address how waste will be removed from the office building.

Additionally, the number of bicycle parking spaces to be provided for the development was unclear on the original plans but at the meeting of 6 December 2019, amended plans were tabled by the applicant which show provision of 16 bicycle parking spaces on the site (number of spaces calculated in accordance with the proposed PSA). These plans will now form part of the drawings endorsed as forming part of the development permit and a separate condition requiring them is no longer needed. It was also noted that a parenting/breastfeeding room is included in the amended plans which had been requested by DAS to address subclause 2(n).

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

One submission was made under section 49 in relation to the application during the exhibition period from Planit Consulting (engaged by Carpaolo Nominees Pty Ltd), which principally concern: shortfall of onsite car parking, non-compliant car parking layout, servicing and access issues and lack of awnings. At the meeting of 6 December 2019, Mr Boyd Sargeant of Planit Consulting reiterated the concerns raised in the Planit submission.

The concerns raised are addressed as follows:

- In the context of the building having operated as an office for many years previously, payment to City of Darwin for 108 parking spaces, the findings of the recent Darwin CBD parking study and proposed PSA for reduced parking requirements, it is considered there are reasonable circumstances for the parking requirements to be varied in this instance.

- In the context that the car parking area for the site has been used for many years and its location is essentially fixed, it is considered that sufficient circumstances exist for the parking layout requirements to be varied in this instance.
 - In the context that the site was not approved with a loading bay, and it operated as an office for many years without the apparent need for an allocated loading bay through using the on-street parking/loading bays, it is considered that circumstances exist where an allocated loading bay is not necessary and the requirement may be varied. It is also noted that the City of Darwin has not raised any issues regarding provision of loading bays for the site.
 - Additionally, the applicant advises that the proponent is committed to work with City of Darwin under its Waste Management Policy to ensure the proposal's waste management requirements are addressed. A consent condition is included that the storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority. A precedent condition has also been included on the development permit to require the preparation of a waste management plan addressing the City of Darwin's Waste Management Policy 054, to the requirements of the City of Darwin (to the satisfaction of the consent authority), to particularly address how waste will be removed from the office building.
 - It is considered that the grade of Bennett Street may provide circumstances where provision of an awning for the full extent of the site's frontage can be varied. However, it was noted that the 16m of awning proposed did not extend to the full width of the pavement. At the meeting of 6 December 2019, the applicant tabled plans which show an increased width of the proposed awning on Bennett Street. These plans will now form part of the drawings endorsed as forming part of the development permit. Also, a condition precedent is recommended so approval is required for the provision of awnings to the street frontages to the requirements of the City of Darwin, to the satisfaction of the consent authority.
4. Pursuant to Section 51(m) of the *Planning Act 1999*, the consent authority must consider the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

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

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 proposed office is a discretionary use in Zone CB and consistent with the purpose of the zone through providing a business activity. In the context of the building's previous use as an office particularly, and the addition of a fourth storey, the impact on the existing and future amenity of the area is not expected to be significant. Additionally, the reactivation of a vacant building is considered a positive contribution to the amenity of the area.

ACTION: Notice of Consent and Development Permit

ITEM 4

PA2019/0418 10 X 2 BEDROOM AND 1 X 5 BEDROOM MULTIPLE DWELLINGS IN AN 8 STOREY BUILDING

LOT 2458 (150) SMITH STREET, LARRAKEYAH, TOWN OF DARWIN

APPLICANT/S SR Developments Pty Ltd

Mr Samir Raut (SR Developments Pty Ltd) attended.

**RESOLVED
204/19**

That, the Development Consent Authority vary the requirements of Clause 7.3 (Building Setbacks of Residential Buildings), Clause 7.3.1 (Additional Setback Requirements for Residential Buildings longer than 18m and for Residential Buildings Over 4 Storeys in Height) and Clause 7.6 (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 2548 (150) Smith Street, Town of Darwin for the purpose of 10 x 2 bedroom and 1 x 5 bedroom multiple dwellings in an 8 storey building, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), an amended plan to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be generally in accordance with that submitted with the application and must include:
 - (a) a safety barrier around the proposed herb garden in the north-east corner of the car parking area or it be a landscaped area only; and
 - (b) the wall between the driveway to the parking area and the water assembly adjacent to Smith Street to be of a height, or transparent material, so it does not obstruct sightlines for vehicles exiting the site.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, 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 a Site Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP should specifically address the impact to Council owned public spaces and include a waste management plan for disposal of

waste to Shoal Bay, traffic control for affected City of Darwin roads, haulage routes, storm water drainage & sediment control, use of City of Darwin land, and how this land will be managed during the construction phase.

4. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin.
5. Prior to the commencement of works (including site preparation), the kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the City of Darwin, to the satisfaction of the consent authority
6. Prior to the commencement of works (including site preparation), a waste management plan addressing the City of Darwin's Waste Management Policy 054 must be prepared, to the requirements of the City of Darwin, to the satisfaction of the consent authority.

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, electricity facilities and telecommunication networks to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
9. 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.
10. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement of site is to be created.
11. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin, to the satisfaction of the consent authority.
12. 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.
13. Before the occupation of the development starts, the areas set aside for the parking of vehicles and access lanes shown on the endorsed plans must be:
 - (a) constructed;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather seal coat;

- (d) drained;
 - (e) line marked to indicate each car space and all access lanes; and
 - (f) clearly marked to show the direction of traffic along access lanes and driveways; to the satisfaction of the consent authority.
- Car spaces, access lanes and driveways must be kept available for these purposes at all times.
14. 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.
 15. The car parking shown on the endorsed plans must be available at all times for the exclusive use of the occupants of the development and their visitors.
 16. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view, located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority.
 17. 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.
 18. All pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the consent authority.
 19. 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.
 20. 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.
 21. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
 22. Prior to the use/occupation of the development and connection of services (i.e. power and water), the owner of the land must apply for 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.
 23. Confirmation shall be provided to Development Assessment Services (in the form of an email addressed to the Power and Water Corporation) from a suitable qualified professional (being the Licensed Surveyor in most instances) confirming that all new UTS number labels have been correctly installed at the Customer's Metering Panel(s) and water meters (where applicable). Please provide a copy of an email addressed to both

landdevelopmentnorth@powerwater.com.au
powerconnections@powerwater.com.au.

and

24. A Compliance Certificate under the *Swimming Pool Safety Act 2004*, issued by the Swimming Pool Safety Authority is required for the swimming pool/s prior to the commencement of the use/development to the satisfaction of the consent authority.

NOTES:

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) 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. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
3. This development permit does not grant building approval. You are advised to contact a registered private Building Certifier to ensure that you have attained all necessary approvals before commencing construction works.
4. In accordance with City of Darwin By-Laws, prior to occupation, the applicant shall ensure that a building number is displayed in a position clearly visible from the street. The number must be visible against the background on which it is placed, to the satisfaction and at no cost to City of Darwin.
5. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
6. 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>.
7. 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).

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 land is located in Zone HR (High Density Residential) of which the primary purpose is to provide for high density housing options close to major roads, schools and other community facilities. The zone provides that the availability of services should be sufficient to accommodate high density residential development, and that development is generally not expected to exceed 8 storeys above ground level. The proposal aligns with the primary purpose as it comprises higher density housing along Smith Street in Larrakeyah.

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 standards set out in Part 4 and 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

The development has reduced setbacks to the pump room and water storage area at ground level (Level 1) with a landscaped area directly above them (Level 2) and pedestrian shelter to the front and side setbacks under Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures) of the NT Planning Scheme. The structures are essentially limited to the ground level, and do not present as contributing to the overall massing of the building, with no adverse amenity impacts expected. It is noted that where the reduced setback for the pump room and water storage area is located, the adjoining lot area consists of landscaping, service areas, car parking and a blank windowless wall with air-conditioning compressors. The pedestrian canopy to Smith Street expected to provide for improved wayfinding to the building entrance and is similar to other developments along Smith Street.

Clause 7.6 (Communal Open Space) ensures that suitable areas for communal open space are provided for multiple dwellings. The clause requires that a minimum of 15% of the site, being not less than 6m wide at any point, is to be communal open space. The area that fully complies with this criteria essentially comprises the pool area and part of the BBQ area which have a combined area of 96.3m² approx., or 9.7% of the site area. With including the gym (min. 4m wide), whole BBQ area (min. 4.2m wide) and herb gardens (total 66m² approx., min 1m wide) as communal open space, the required 15% of the site as communal open space is well exceeded. It is also noted that there is public open space within relatively close proximity of the site and the proposal meets the residential density limitations under the NT Planning Scheme.

3. Clause 7.3.1 (Additional Setback Requirements for Residential Buildings longer than 18m and for Residential Buildings over 4 Storeys in Height) ensures that residential buildings respond to the potential adverse effects of building massing and visual bulk when viewed from adjoining land and the street. In terms of height, the clause requires

that for each additional storey over 4 storeys, an additional building setback to that storey of 1.5m from all boundaries is required. The clause also provides that the consent authority may consent to a development that is not in accordance with the requirements if it is satisfied that the design of the development adequately mitigates the adverse effects of building massing and visual bulk that may arise from the non-conformity.

The building does not meet the additional setbacks required to the four elevations and it is essentially the Level 5 – 8 additional setbacks which are not met. The variations mostly apply from Levels 6 to 8, with those on Levels 7 and 8 being the greatest, but it is considered that the articulations of the large balconies with glass balustrades on each level of the building along with the building's winged pitched angled roofs, particularly facing the Smith Street frontage, adequately mitigates the adverse effects of building massing and visual bulk on all four elevations.

4. At the meeting of 6 December 2019, the Authority determined that if the proposed herb garden in the north-east corner of the car parking area is to be used as such it should have a safety barrier around it, otherwise it should just be used as a landscaped area (and if it was only a landscaped area, the communal open space area for the site would still exceed 15%). Additionally, the Authority considered that the wall between the driveway to the parking area and the water assembly adjacent to Smith Street to be of a height so it does not obstruct sightlines for vehicles exiting the site. Alternatively it may be possible to use a transparent material if sightlines can be assured.

The applicant agreed that these aspects of the proposal could be reconsidered and was amenable to providing amended plans. A condition precedent has therefore been included on the development permit to reflect these requirements.

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 received under section 50, in relation to the development application.

Two submissions were made under section 49 in relation to the application during the exhibition period.

The key planning issues raised in the submissions relate to: design/amenity, car parking area and landscaping.

In relation to design/amenity, the main concerns relate to how the proposed development relates to other buildings in the area and its impact on amenity, particularly neighbouring premises. The proposed development is in Zone HR and its primary purpose is to provide for high density housing options close to major roads, schools and other community facilities. The proposal aligns with this primary purpose. Zone HR also provides that development is generally not expected to exceed eight storeys above ground level. The proposed development does not exceed this height. The proposal mostly meets the required setbacks under Clause 7.3 of the NT Planning Scheme, which are

particularly provided to avoid undue overlooking of adjoining properties and minimise adverse effects of building massing when viewed from adjoining properties and the street. The required additional setbacks at the higher levels under Clause 7.3.1 of the Scheme are more specifically aimed at ensuring residential buildings respond to the potential adverse effects of building massing and visual bulk when viewed from adjoining land and the street. In this case the proposed reduced additional setbacks are mitigated by the articulations of the large balconies with glass balustrades on each level of the building along with the building's winged pitched angled roofs, particularly facing the Smith Street frontage, which reduce the adverse effects of building massing and visual bulk on all four elevations. It is also noted that the proposal complies with Clause 7.8 (Building Design for Multiple Dwellings) of the Scheme.

In relation to the car parking area, the main concern is that car parking areas exposed to the street diminish the amenity of the area. It is considered that parking area complies with Clause 6.5.3 (Parking Layout) of the NT Planning Scheme, which includes it being not less than 3m from a road and landscaped as required, and accordingly amenity is not unduly diminished.

The concern raised regarding landscaping relates to that proposed on Level 2 with there being no guarantee that the plants will survive into the future. This issue is addressed through the inclusion of a consent condition which requires that 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.

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.

The land is identified as being capable of accommodating the proposed development. All requests from service authorities have been addressed through the inclusion of relevant conditions and/or notes on the development permit.

7. Section 51(n) of the *Planning Act 1999* requires the consent authority to take into consideration the potential impact on the existing and future amenity of the area in which the land is situated.

The development is considered consistent with the intent of Zone HR (High Density Residential), providing for high density residential development along Smith Street in Larrakeyah. The overall scale of the

development is similar to that which may be anticipated and the impact on amenity should be considered as such.

ACTION: Notice of Consent and Development Permit

ITEM 5

PA2019/0342

THREE-STOREY SINGLE DWELLING

LOT 8884 (18) CLAYMORE CIRCUIT, BRINKIN, TOWN OF NIGHTCLIFF

APPLICANT/S

Raphaelina Keri Keri, Steve Keri Keri, Bernie Keri Keri

That, pursuant to section 97 of the *Planning Act 1999*, Mr Peter Pangquee, a member of the Darwin Division of the Development Consent Authority declared an interest and was an apology and did not attend the hearing of Item 5.

Ms Raphaelina Keri, Mr Steve Keri, Mr Bernie Keri and their mother Mrs Keri Keri attended.

Submitters who sent their apologies:- Mr Alexander Smirk, Dr Sie Huo Chieng, Mr Peter & Mrs Meg Visentin and Mr Ross Trevena, and Mr John Milikins.

Submitters in attendance: - Mr Andrew Bell, Mr Anthony Kerr, Ms Betty Lowell, Mrs Bruna Ninotti, Mr Silvio Ninotti, Ms Carolyn Marriott, Mr Dave Crick, Mr Dominic Fracaro, Mrs Eimra Cripps, Mr Garry Lambert, Mrs Susan Boyd, Mr Ian Smith, Ms June D'Rozario, Ms Mairi Walsh, Ms Max Bowden, Mr Nick Barnard, Ms Nicky D'Antoine and Mr Kevin Fong, Mr Phil and Mrs Julie Colbert, Mr Peter & Mrs Muriel Kanaris, PLan: The Planning Action Network represented by Ms Margaret Clinch, Mr Timothy Buckley and four other persons who attended once the session commenced.

Ms D'Rozario tabled a copy of the decision for Nightcliff Residents Group v Development Consent Authority and Peter Markey v Development Consent Authority.

Interested parties in attendance:- Ms Vanessa Kaye, Mr Ronald Smith, Ms Jan Rogers and Ms Sunethra Samarawckrama.

**RESOLVED
205/19**

That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse to consent to the application to develop Lot 8884 (18) Claymore Circuit, Town of Nightcliff for the purpose of three-storey single dwelling with reduced front, side and rear setbacks, subject to following reasons:

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 SD (Single Dwelling Residential). As per Clause 5.1 (Zone SD – Single Dwelling Residential) of the NTPS, the primary purpose of Zone SD is *to provide single dwellings on individual lots*. The Authority, having noted the clear statements of the Applicants that the intended use of the building was as a self-contained residence,

was satisfied that the proposal was for a single dwelling and that the proposal therefore met the purpose of Zone SD.

The Authority noted that a single dwelling is a permitted use in Zone SD and such a dwelling requires no approvals unless it fails to meet other requirements of the Planning Scheme, such as compliance with setbacks. Thus a two storey building which complied with the appropriate setback and other provisions of the Planning Scheme would require no consent from the Authority. The present proposal was assessed against the NT Planning Scheme requirements for a single dwelling and was determined to be non-compliant with the number of storeys. Further, the third storey triggered different setback requirements to those applicable to a single or two storey building and as a result created a further non-compliance. However, it was confirmed to comply with car parking requirements and private open space requirements.

2. The application was initially deferred under delegation by Development Assessment Services (DAS) to allow the applicant to provide amended plans and/or a clear statement of the special circumstances justifying a variation to the setback requirements of Clause 7.3 (Building setbacks of Residential Buildings and Residential Structures). In this regard, the setback requirements of Clause 7.3 'Table B' are triggered for any residential development within Zone SD that is over two stories in height.

The applicant provided a response to the deferral but did not make any substantial changes to the proposed plans or provide any additional information in relation to the special circumstances that may justify a variation to the requirements of Clause 7.3. On receipt of the response to the deferral DAS resumed assessment of the application and the application was heard by the Authority at its meeting of 6 December 2019.

3. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the NT Planning Scheme, the Authority may consent to the development of land that does not meet the standards set out in Parts 4 or 5 if it satisfied that special circumstances justify the giving of consent.

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). The Authority has previously determined that the consideration of special circumstances involves attention to aspects of a proposed development which sets it apart from developments on other similarly zoned land. The key question to consider is whether there is anything unusual, exceptional, out of the ordinary and not to be expected about a proposed development that justifies a departure from the requirements of the NT Planning Scheme.

4. The purpose of Clause 7.1.2 (Residential Height Limitations) is to ensure that residential development is of a height that is compatible with adjoining or nearby existing development, and does not unduly overlook adjoining properties. In Zone SD, the maximum number of

storeys and the maximum dwelling height above ground level for residential buildings is two storeys to a maximum height of 8.5m.

The proposed development is for a three storey single dwelling to a maximum height of 8.45m. The application stated that the proposed third storey is intended to house and protect the buildings' plant equipment in order to provide visual screening to neighbours and the street, reduce corrosion from the sea breeze and to passively cool the development. Additionally the applicant argued that the third storey was non-habitable and contained within the maximum 8.5m height limit.

The DAS report found that the following circumstances were expected to ensure that there are no undue or adverse effects of building massing when viewed from the street or adjoining land, noting that the impacts may be considered less under this design compared to a two-storey dwelling with plant and equipment located and unenclosed on the roof:

- The design of the home has a two-storey appearance when viewed from the street as the third floor has been set back 14 meters from the front boundary and 3.5 meters from the side and rear boundaries.
- The third storey is not a habitable space.
- Locating the plant equipment within a third storey, screened by brick walls with vents and a concrete slab roof, will reduce the visual impact of the plant equipment which would otherwise be located on the side walls and roof of the two-storey version of the same building design, becoming visually exposed to the street and neighbouring properties.
- The proposed height of the building (8.45m) including the third-storey is within the applicable 8.5m height limit.
- The increased setbacks of the third floor compared to the lower two floors means that the levels of the building are broken up, reducing the impact of the third storey building bulk.

While the Authority noted the comments made by the applicant and the recommendation contained within the DAS report, the Authority did not consider that the reasons provided constituted special circumstances pursuant to Clause 2.5 which were sufficient to justify varying the requirements of Clause 7.1.2.

5. The purpose of Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures) is to ensure residential buildings and ancillary structures are located so:
- *they are compatible with the streetscape and surrounding development including residential buildings on the same site;*
 - *as to minimise any adverse effects of building massing when viewed from adjoining land and the street;*
 - *as to avoid undue overlooking of adjoining properties; and*
 - *as to encourage breeze penetration through and between buildings.*

Table B of Clause 7.3 prescribes the setback requirements for residential development in excess of two stories high. It requires a

primary street boundary setback of 7.5m and side and rear boundary setbacks of 3m for habitable rooms with window's and/or doors facing the subject boundary. The proposals first two floors are setback from the primary street boundary by 4.5m in lieu of the 7.5m requirement and four out of five of the side and rear boundary setbacks are proposed to be reduced to between 1.6m-1.87m in lieu of the 3m requirement, as they contain habitable rooms. It is noted that the third storey setbacks comply as the third storey is non-habitable and therefore a setback of 1.5m is required rather than 3m.

The applicant presented the following reasons as being special circumstances to be considered by the Authority, in order to vary the boundary setback requirements of Clause 7.3 Table B:

- All windows around the ground floor and first floor have been modified to have 1.7m high window sills in order to prevent overlooking into neighbouring properties and provide privacy to the proposed development.
- The third-storey is non-habitable, exceeds the minimum setbacks and is lower than the applicable 8.5m height limit for zone SD (Single Dwelling).
- It is the third-storey, comprising plant equipment screened by brick walls with vents and a concrete slab roof which has triggered additional setback requirements for all levels of the building, and given a two-storey version of the design on the same site, with the same setbacks to the ground floor and first floor can be developed, the impact of the buildings bulk, massing and effect on breeze penetration is no greater than what would otherwise be permitted.

The DAS report found that these circumstances were expected to ensure that there are no undue or adverse effects of building massing when viewed from the street or adjoining land, that no overlooking issues are created, and that any impact on the streetscape is negligible. The DAS report asserted that the impacts may be considered less under this design compared to a two-storey dwelling with plant equipment unenclosed and visible on the roof.

The Authority again noted the comments made by the applicant and the recommendation contained within the DAS report, but the Authority did not consider that the reasons provided constituted special circumstances pursuant to Clause 2.5 which were sufficient to justify varying the requirements of Clause 7.3.

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

A total of 73 public submissions and an objection from the City of Darwin were received during the exhibition period under Section 49 of the *Planning Act 1999* with respect to the proposal.

The Authority read and considered these submissions in detail and noted all concerns raised.

At the meeting of 6 December 2019 the Authority explained the role of the DCA, its relationship with DAS and the matters that it could and could not consider under section 51 of the *Planning Act 1999*. The Authority also acknowledged that a compliance check for a two-storey version of the proposed development had been issued by DAS and that, in accordance with the NT Planning Scheme, a fully compliant single dwelling is permitted without consent and the DCA does not have any jurisdiction over that decision.

A number of submitters were present at the meeting and spoke further to their written submissions in objection to the proposed development. In particular, Ms D'Rozario spoke about a number of previous legal cases which explored in depth what constitutes special circumstances which are sufficient to vary development requirements of the NT Planning Scheme under the provisions of Clause 2.5. In support of her submission Ms D'Rozario tabled a copy of the decision for Nightcliff Residents Group v Development Consent Authority and Peter Markey v Development Consent Authority. In summary, Ms D'Rozario contended that the proposed development and supporting application did not provide any special circumstances to justify the giving of consent as per the requirements of Clause 2.5.

In response to the public submissions the applicant reiterated the reason for the application and the design of the proposed development. The applicant was sympathetic to the submitter's concerns and amenable to revisiting the design to try and achieve greater compliance in consultation with the immediate community that had shown an interest in the application.

ACTION: Notice of Refusal

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

SUZANNE PHILIP

Chair

12 December 2019