

**DEVELOPMENT CONSENT AUTHORITY**

**DARWIN DIVISION**

**PART 2 - MINUTES (ITEM 7 ONLY)**

**MEETING NO. 436 – FRIDAY 7 FEBRUARY 2025**

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

**MEMBERS PRESENT:** Suzanne Philip (Chair), Mark Blackburn and Monica Baumgartner

**APOLOGIES:** Marion Guppy

**LEAVE OF ABSENCE:** None

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), Kaleb Thomas and Madison Harvey  
(Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Apology

Meeting opened at 2.45 pm and closed at 5.25 pm  
Meeting resumed Thursday 13 February at 10.00 am and closed at 11.05 am

## Darwin DCA Meeting No 436 – Friday 7 February 2025

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

**ITEM 7**                    **MIXED USE DEVELOPMENT COMPRISING OFFICES, A COMMUNITY  
PA2024/0392**            **CENTRE, A PLACE OF ASSEMBLY, A FOOD PREMISES AND A CAR PARK IN  
A 21 STOREY BUILDING INCLUDING 4.5 LEVELS OF ABOVE GROUND  
LEVEL CAR PARKING  
LOT 3981 (17) HARRY CHAN AVENUE, DARWIN CITY, TOWN OF DARWIN**

**APPLICANT**            Cunnington Rosse Town Planning and Consulting

Pursuant to Section 97 of the *Planning Act 1999*, Peter Pangquee Community Member and Jimmy Bouhoris Community Member of the Darwin Division of the Development Consent Authority disclosed an interest and were not present during, contributed to or took part in the deliberation or decision of the Division in relation to this item.

Applicant: Brad Cunnington (Cunnington Rosse Town Planning and Consulting) and Lachlan Michell (DCOH) attended.

Submitters who attended via Teams Link: Alicia Gregg, Miriam Wallace - NT Chapter President of the Australian Institute of Architects, Geoff Nourse and Dr Cameron Ford.

Submitters who attended in person: Margaret Clinch, Laurie Palfy, Alan Garraway, Heather Ferguson, Tim Crammond (representing Paspaley Group & Paspaley Pearls Properties), Joanna Rees and Rebecca Adams (representing NT Chapter Australian Institute of Architects) and Olivia-Grace Hill (Solicitor - De Silva Hebron Barristers and Solicitors acting for Geoff and Kerry Nourse).

Submitters who sent their apologies: Carolyn Whyte.

Interested Parties in attendance: Kris Boyce (Department of Lands, Planning and Environment), Andrew Liveris, Peter Forrest, Michael Anthony, Verity Clough and Oliver Chaseling (ABC News Darwin).

**RESOLVED**  
**14/25**

That, the Development Consent Authority (the Authority) pursuant to section 46(4)(b) of the *Planning Act 1999*, defer the application to develop Lot 3981 Town of Darwin, 17 Harry Chan Avenue Darwin City for the purpose of a mixed use development comprising offices, a community centre, a place of assembly, a food premises and a car park in a 21 storey building including 4.5 levels of above ground level car parking, to require the applicant to provide the following additional information that the Authority considers necessary in order to enable proper consideration of the application (please note also the reasons for decision further below):

- Amended drawings re-designing the ground floor of building along Harry Chan Avenue to achieve better compliance with Clause 5.5.16 Active Street Frontage.
- Expanded architectural design statement to address how the proposed development achieves compliance with specific requirements of Clause

## Darwin DCA Meeting No 436 – Friday 7 February 2025

5.5.3 General Building and Site Design and 5.5.15 Design in Commercial and Mixed Use Areas. Sub-clause requirements of relevance include:

- Clause 5.5.3 sub-clause 2 '*preserve vistas along streets to buildings and places of architectural, landscape or cultural significance*'.
- Clause 5.5.3 sub-clause 3 '*be sympathetic to the character of buildings in the immediate vicinity*'.
- Clause 5.5.3 sub-clause 4 '*minimise expanses of blank walls*'.
- Clause 5.5.3 sub-clause 9 '*minimise use of reflective surfaces*'.
- Clause 5.5.15 sub-clause 12 '*building design is to be sympathetic to the character of buildings in the immediate locality*'.
- Clause 5.5.15 sub-clause 14 '*building design is to minimise the expanse of blank walls facing the street and public open spaces and limit external finishes that could cause nuisance to residents or the general public, such as materials that would result in excessive reflected glare*'.

### REASONS FOR THE DECISION

1. The application seeks approval for a mixed-use development comprising offices, a community centre, a place of assembly, a food premises and a car park in a 21-storey building including 4.5 levels of above ground level car parking. The application was submitted by Mr Brad Cunnington of Cunnington Rosse Town Planning and Consulting on behalf of Shane Dignan Director of DCOH Land. The City of Darwin is the landowner and provided a signed owners authorisation which formed part of the application.

The Authority clarifies that the application is located on Lot 3981 Town of Darwin, which is defined as the site pursuant to Schedule 2 of the Northern Territory Planning Scheme 2020 (NTPS 2020). The site comprises the existing City of Darwin Civic Centre and associated car parking and Civic Park. The proposed development is located on a 4694.35m<sup>2</sup> portion on the north-eastern corner of the site and is referred to as the development site. The development site was re-zoned from Zone CP (Community Purpose) to Zone B1 (Central Business) on 12 June 1991.

The development site is irregular in shape with a northern and eastern curved frontage to Harry Chan Avenue and is currently developed as a car park associated with the existing City of Darwin Civic Centre comprising 95 car parking spaces and some landscaping.

The Authority emphasises that the site cannot be considered in isolation and must be considered in the context it's locality. For the purposes of its assessment, the Authority considers the locality of the site to encompass all land bordered by and internal to the north-western side of Bennett Street, the north-eastern side of Cavenagh Street and Harry Chan Avenue and the Esplanade to the south-west and south-east.

The land uses in the locality are primarily civic / community, commercial or residential in nature notably consisting of:

## Darwin DCA Meeting No 436 – Friday 7 February 2025

- On the north-eastern and south-eastern side of Harry Chan Avenue are various office, mixed-use and residential buildings ranging in height from 6 to 13 storeys.
- On the corner of Smith Street and the Esplanade is Christ Church Cathedral, a declared heritage place, and associated car parking and landscaped areas.
- On the southern side of Smith Street is the State Square Precinct which consists of the future State Square Art Gallery (currently under construction), the Supreme Court, Parliament House and Administrator's Office.
- On the north-western side of Bennett Street are various mixed use and office buildings ranging in height from one to 20 storeys.

As described above, the locality is categorised by a range of extant lower scale buildings and more robust taller contemporary buildings and comprises a mix of uses. The Authority notes that it encompasses areas of significant community, cultural and heritage values. More broadly, the development site and the locality form part of Darwin's Central Business District (CBD).

2. At the commencement of the meeting, the Authority dealt with the threshold issue of conflict of interest raised by a number of submitters. The Authority clarified that pursuant to Section 97 of the *Planning Act 1999* the community members of the Development Consent Authority (DCA), Peter Pangquee and Jimmy Bouhoris, have disclosed an interest and have had no part in any of the discussions or considerations to date in relation to this application and will have no input into the determination made. Community members for a Division of the DCA are nominated by the relevant local government council and are appointed by the Minister under Section 89 Of the *Planning Act 1999*. Although Section 98A provides for the independence of community members, the Authority considers that the members' position as Councillors, where the council is the relevant landowner, clearly amounts to a relationship that, as per Section 97(1)(b) that *'is of a nature that it is likely to, or may reasonably be regarded as likely to, inhibit or prevent the exercise by the member of independent judgment in respect of an application'*.

The Authority addressed concerns regarding perceived conflict of interest in relation to specialist DCA member, Mark Blackburn, who was employed by the City of Darwin approximately 8 years ago. For the purposes of Section 97, the Chair advised that, since his employment with the Council ceased, Mr Blackburn has had no further relationship with the City of Darwin, other than that which would normally be expected as a resident or ratepayer of the city, and that the DCA does not consider that any relationship which requires disclosure under either Section 97(1)(a) or (b) exists. Further, the Chair also considered the question of apprehended bias that arises generally in administrative/quasi-judicial decision making. The basic test for such bias is *'whether a fair-minded lay observer with knowledge of the material objective facts might reasonably apprehend that the judicial or administrative decision-maker might not bring an impartial and unprejudiced mind to the resolution of the question at hand'*. Given the length of time which has elapsed since Mr Blackburn's previous employment by the City of Darwin, the Chair does not consider Mr Blackburn has an interest that

## Darwin DCA Meeting No 436 – Friday 7 February 2025

disqualifies him from taking part in the consideration and determination of this application.

Moreover, the Authority clarified that the role of the DCA is to make statutory planning decisions limited by the provisions of the *Planning Act 1999* and the Planning Scheme. Its ability to consider and determine this application is constrained by statute and is limited to the subject matter of that statutory framework. The Authority emphasised that Section 51(1) requires the consent authority, in considering a development application, to take into account any of the listed considerations that are relevant to the development. The Authority referenced recent Supreme Court decision, *Kalhmera Pty Ltd v Planning for People Incorporated & Ors [2024] NTSC 48*, noting paragraph 25 expressed that ‘*there is no guidance in the Planning Act as to how the s 51(1) matters are to be taken into account, or the weight to be given to any particular factor. There is, no indication from the text of the legislation that any particular matter is more important than any other in the DCA’s consideration. Further, the list is not exhaustive, as s 51(1)(t) requires the DCA to take into account “other matters it thinks fit”. A decision regarding a development application under the Planning Act involves the balancing of many different factors...’*. Section 51 directs the Authority to limit its consideration to the factors that are relevant to this development application. It is not a relevant planning consideration that another proposal or site might provide a better planning outcome. The Authority is specifically directed to determine the application before it only, and, to assess that application against the factors set out in Section 51. The Authority does not consider that matters such as the funding arrangements, need or commercial competition are relevant to this development application for the purposes of the *Planning Act 1999*. Further, while the Part 6 of *Planning Act 1999* deals with Developer Contributions, the Authority has no role in the approval, administration or regulation of the administration of any contribution plans made under that Part. Nor is it the role of the Authority to enforce legislation outside of the *Planning Act 1999*, such as the *Local Government Act 2019*.

3. 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 CB (Central Business) under NTPS 2020 and the purpose is to promote an active and attractive mixed use environment that maximises its function as the commercial, cultural, administrative, tourist and civic centre for the surrounding region that is integrated with high density residential development. The Zone Outcomes specifically require that Community Centres and Places of Assembly support the needs of the local or regional population and contribute to the diversity and activity of uses within the zone. While community centres and place of assembly uses reference the needs of the local or regional population, the Authority notes that need is not a general consideration in respect of the other uses in this application including the office and food premises. The uses proposed in the development application are identified as Merit Assessable under Zone CB (Central Business), however, the site is subject to a Part 3 Overlay as a Gateway location (Clause 3.13) which makes the application Impact

## Darwin DCA Meeting No 436 – Friday 7 February 2025

Assessable. Therefore, the following elements of NTPS 2020 need to be considered in determining the application

- the strategic framework (Part 2 of the Scheme – Darwin Regional Land Use Plan (DRLUP), Central Darwin Area Plan 2019),
- zone purpose and outcomes of Clause 4.10 (Zone CB),
- the purpose and requirements of Clause 3.13 (Gateway Locations),
- Clause 5.2.1 (General Height Control),
- Clause 5.2.4 (Vehicle Parking),
- Clause 5.2.5 (Loading Bays),
- Clause 5.2.6 (Landscaping),
- Clause 5.3.7 (End of Trip Facilities in Zones... CB...),
- Clause 5.5.1 (Interchangeable Use and Development),
- Clause 5.5.3 (Commercial and Other Development in Zones... CB...),
- Clause 5.5.4 Expansion of Existing Use or Development in Zones CB...),
- Clause 5.5.11 (Food Premises),
- Clause 5.5.15 (Design in Commercial and Mixed Use Areas),
- Clause 5.5.16 (Active Street Frontages),
- Clause 5.8.4 (...Place of Assembly....) and
- Clause 5.9.2 Darwin City Centre

In particular, the purpose of Clause 5.5.3 requires that relevant developments promote site-responsive designs which are attractive and pleasant and contribute to a safe environment. A number of specific requirements are imposed by the clause, including, preservation of vistas, minimisation of expanses of blank walls, provision of safe and convenient movement of vehicles and pedestrians to and from the site, provision of convenient pedestrian links and protection for pedestrians from sun and rain. Importantly, it also requires that the development be sympathetic to the character of buildings in the immediate vicinity. Similarly, the purpose of Clause 5.5.15 is to encourage a diverse mix of commercial and mixed use developments that are safe, contribute to the activity and amenity of commercial centres, are appropriately designed for the local climate, and minimise conflicts between different land uses within and surrounding the commercial centre. A number of specific requirements are imposed by the clause and echo those of Clause 5.5.3, including, preservation of vistas and minimisation of expanses of blank walls facing the street and public open spaces and limiting external finishes that could cause nuisance to residents or the general public, such as materials that would result in excessive reflected glare. Importantly, it also requires that the development be sympathetic to the character of buildings in the immediate locality. Given the significance of the site and the nature of the immediate locality as outlined previously, the Authority considers that it does not have sufficient information to determine the application and in that regard requires that the applicant provide a more extensive consideration of Clauses 5.5.3 and 5.5.15 of the NTPS 2020, including, how the proposal is sympathetic to the character of buildings in the immediate locality, how the expanses of blank walls are minimised and the reflective glare is minimised. Further, the purpose of Clause 5.5.16 is to provide a site-responsive interface between commercial buildings and the public domain that: (a) is attractive, safe and functional for pedestrians; (b) encourages activity within the streetscape;

## Darwin DCA Meeting No 436 – Friday 7 February 2025

and (c) encourages passive surveillance of the public domain. Subclause 4 requires that every application should include written acknowledgment from the agencies responsible for power and water, fire rescue services and the relevant local government council to confirm that all reasonable measures were taken to minimise the impact of servicing requirements on active street frontages, while subclause 6 specifies that buildings are to provide a minimum of 60% of the length of each site boundary that fronts a primary or secondary street, or public open space, as active street frontage. The Authority is not satisfied that the proposal provides a satisfactory interface with Harry Chan Avenue as required by the Clause. Nor is it satisfied that the proposal meets the requirements in subclause 2 to waive compliance with sub-clause 6: (a) an alternative solution effectively meets the purpose of this clause; (b) the site design reflects the established character of the area; or (c) it is satisfied that compliance would be impractical considering servicing requirements and any advice provided under sub-clause 4. In order to determine the application, the Authority requires further information by way of amended drawings reflecting a re-design of ground floor of building along Harry Chan Avenue to achieve better compliance with Clause 5.5.16 Active Street Frontage. The requirements of NTPS 2020 are further discussed below.

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

The application was exhibited between 6 December and 20 December, in accordance with the requirements of the *Planning Act 1999* and the *Planning Regulations 2000*. Twenty public submissions were received during the exhibition period under Section 49 of the *Planning Act 1999* and two late submissions were received. In respect of the late submissions, the Authority can consider the matters raised in submissions lodged outside the time frame set by Section 49. As noted in the NTCAT decision in *Association of Islamic Da'Wah in Australia Inc v Development Consent Authority [2019] NTCAT 14*, section 51(t) of the *Planning Act 1999*, allows the consent authority, in considering a development application, to take into account 'other matters it thinks fit'. The Authority considers the matters raised in the late submissions to be substantial and those matters should be considered by the Authority in respect of the current application.

The Authority noted that various submissions raised concerns regarding a lack of public consultation in respect of the project. However, the *Planning Act 1999* prescribes no requirements for consultation in respect of development applications made under Section 46, apart from the requirements of Part 5 Division 2. The Authority considers that the relevant requirements of Section 47 and the *Planning Regulations 2000* for public notice have been fully complied with by the applicant. How applicants choose to consult with the community outside of the planning process is not stipulated under the *Planning Act 1999*.



## Darwin DCA Meeting No 436 – Friday 7 February 2025

The main concerns raised by the submitters in their submissions are:

- The proposed development's location in the Civic Square is inappropriate and will alter the existing civic and community purpose.
- The design of the building is excessive in height and does not respond to the existing character of the area and Darwin's tropical identity.
- The design of the building does not provide activation of Harry Chan Avenue frontage.
- The design of the building will overshadow the adjoining properties and reduce access to natural light.
- Adverse amenity impacts.
- Concerns regarding removal of existing vegetation.
- Concerns regarding the impact of the building on cultural significant elements including the tree of knowledge, Christ Church Cathedral, WWII oil tunnels and Chinese settlement history.
- Traffic and car parking impacts.
- Concerns regarding the funding arrangements and any obligations of the City of Darwin car parking contribution.
- Insufficient public consultation and concerns around inadequate exhibition period, given the lodgement before Christmas.
- Concerns regarding the effects of climate change and if the proposed building is designed with this in mind.
- Concerns regarding compliance with the NCC cyclone code.
- Precedent.
- Non-compliance with legislative requirements of the Planning Act 1999.
- Conflict of interest between the landowner (City of Darwin) and Darwin DCA members.

In addition to the written submissions, the Authority heard from submitters and those interested parties who lodged late submissions, present at the meeting.

At the meeting, Mr Andrew Liveris raised concerns that the scale and design of the proposed building is not appropriate to the site's location in the State Square / Civic Park precinct. Mr Liveris expressed his concerns with the car parking being located above ground rather than in a basement. Mr Liveris stressed that the DCA should take into account the ownership and financial arrangements for the project.

Ms Laurie Palfy expressed concerns to the Authority regarding the ownership of the proposed building. Ms Palfy stated that the proposal is supposedly a community building however it does not match the existing character of the area, provide amenity or align with the expectations of the community. Ms Palfy queried the location of loading bays and if free car parking will be provided for users of the library, to ensure its accessibility. Ms Palfy raised concerns that the application does not adequately address sustainability and that the architectural design statement does not reflect the locality of the site in Civic Park. Ms Palfy emphasised that Civic Park



## Darwin DCA Meeting No 436 – Friday 7 February 2025

provides a peaceful place in the Darwin CBD that is of a special character and is surrounded by other civic and historic buildings. Ms Palfy further raised concerns with the legality of the application.

Mr Alan Garraway expressed to the Authority that the highest standard of conduct of governance is required for an application with such substantial public interest and raised concerns that Mr Mark Blackburn has a conflict of interest with the application. Mr Garraway highlighted that previous surrounding developments have limited their height to no more than that of Parliament House. Mr Garraway supported the submission made by the NT Institute of Architects that the proposal development is inappropriate and incompatible. Mr Garraway highlighted that the development site was previously located in Zone CP (Community Purpose) and was subsequently re-zoned to CB (Central Business) and that he raised concerns at the time of the re-zoning. Mr Garraway reflected on the City of Darwin's previous dealings with developers and raised concerns with the standard of developments constructed. Mr Garraway further advised that the DCA needs to deal with the subdivision of the land prior to dealing with the development application. Mr Garraway considered the implication of a 'Gateway' site and how the proposed development reflects and responds to the history of the site and the broader area. Mr Garraway submitted that the height of the building is the problem, and that the development represents the lowest standard of offices and sets a low bar for planning precedence.

Mr Peter Forrest told the Authority about the area surrounding the proposed development and explains that it is the most historic precinct in Darwin and presents many obligations and opportunities. Mr Forrest stated that good planning starts with thinking about the relationship of the building to its surrounds and highlights that the proposed building is boring, bland and totally uninteresting. Mr Forrest raised concerns that the proposed development does not take into account the history of the site and its surrounds.

Ms Heather Ferguson told the Authority that this area contains all of our oldest, historic buildings and it's a heritage place, a civic place, a place of pride and also a spiritual place. Ms Ferguson referred to the Culture and Heritage Theme of the Central Darwin Area Plan 2019 (CDAP 2019) which *seeks to protect and enhance site of cultural significance and historic value to enrich community awareness and experience* and expressed concern that the proposed 21 storey building does not acknowledge the character and value of this historic civic precinct. Ms Ferguson expressed concerns that the height of the building denigrates the civic importance of the building. Ms Ferguson further queried if the building will actually be used for commercial purposes and if commercial uses are actually viable. Ms Ferguson expressed concern regarding the removal of trees and would like to see protection for vegetation, however, acknowledged that this is a matter for Councils. Ms Ferguson told the Authority that the overshadowing of the Cathedral is not appropriate.

Ms Jan Thomas expressed to the Authority that the area is beautiful and needs to be protected. Ms Thomas highlighted that the Darwin CBD is

## Darwin DCA Meeting No 436 – Friday 7 February 2025

depressed and there is a lack of retail choice and services that provide amenity akin to that of a capital city. Ms Thomas strongly objected to the 10 levels of commercial office space and expresses that this should not be managed by a private entity. Ms Thomas told the Authority that the proposed development is completely out of character with its location and does not suit the precinct nor in keeping with the tropical environment. Ms Thomas expressed concerns that the City of Darwin has not considered its own role and objectives and have not appropriately represented the community, and it's needs.

Ms Joanna Rees told the Authority that she is speaking on behalf of the NT Institute of Architects and would like to make further submissions. Ms Rees acknowledged the zoning of the development site in CB (Central Business) which supports mixed-use development, however, expressed that there is more about the place that is deserving of consideration in the design. Ms Rees expressed that the future Civic Plaza design should be included in the proposal, as many aspects of the proposed development refer and relies on the Civic Plaza including the provision of pedestrian, cycling and green links. Ms Rees raised concerns that the proposed design, including the form and materials, should be revised to be truly exemplary, as required by the CDAP 2019, and that the architectural design is just standard. Ms Rees expressed that the tower level and podium materials and forms should be revised to be harmonious between each other and the surrounding environment and have meaningful relationships with each other and the environment – at the moment it looks like a tower plonked on a podium. Ms Rees referred to Crime Prevention through Environmental Design (CPED) and emphasised that it is an important part of city-making at this time. With regards to CPED Ms Rees raised that passive surveillance opportunities at ground level should be provided (merely making safe pedestrian and cycle pathways through the development site is not enough) and that the proposed blank walls along Harry Chan Avenue provide opportunities for graffiti. Ms Rees further referred to the CDAP 2019 that identifies the site as a Gateway Precinct which requires exemplary architectural standard and stated that the proposal is of a reasonable architectural standard, but could be better through features, materiality and form making. The CDAP 2019 also provides the option for the proposal to juxtapose the existing heritage places, however, Ms Rees expressed that this is the weakest option available with reference to respecting and enhancing heritage.

Ms Margaret Clinch expressed concern to the Authority that the proposed building is actually a commercial building purporting to be a civic centre, noting that by its nature, size and proportions it is a commercial building. Ms Clinch emphasised that it is not suitable for its location in the public domain nor as a replacement building for the existing civic centre. Ms Clinch expressed concerns that the demolition of the existing civic centre is against recycling ideals. Ms Clinch raised concerns with the community consultation previously undertaken regarding the redevelopment of the existing civic centre. Ms Clinch highlighted that Social Infrastructure, Culture and Heritage map in the CDAP 2019 identifies the area and the proposed development is required to consider the objectives of each theme. Ms Clinch stated that the proposed development does not meet with the

## Darwin DCA Meeting No 436 – Friday 7 February 2025

character or heritage of the area. Ms Clinch raised concerns that none of the facilities referred to in initial community consultation are proposed, there are no facilities that could be of value to the community and this building is a complete farce and a complete deception.

Mr Michael Anthony raised concerns to the Authority that the *Local Government Act* has been ignored in the application.

Dr Cameron Ford SC addressed various elements of the Development Assessment Services (DAS) report to demonstrate to the Authority that it is unsafe for the Authority to rely on the report when making its determination. Dr Ford expressed that the DAS report is superficial and ignores the height of the proposal and it uses obfuscating and circuitous language that doesn't give confidence that the matters have been taken into account fully. Dr Ford acknowledged that the DAS report addresses the planning requirements (as they must do) however, stressed that it does not look at the proposed development and the multiple of non-compliances holistically. To highlight his concerns with the DAS report, Dr Ford refers the Authority to various sections of the DAS report. Dr Ford referred to page 24 sub-clause 7 of the DAS report in relation to land capability to question whether the report adequately considers if the height and scale of the development is consistent with the Civic precinct bounded by Bennett Street, Harry Chan Avenue and the Esplanade. Dr Ford expressed that the proposed development is quite out of character with the Civic precinct and wholly inconsistent and sets an undesirable precedent for the area. Moreover, Dr Ford referred to page 7 of the DAS report which assesses the themes of the CDAP 2019 and questions if the report adequately considers if the area actually needs the proposed development, consistent with the Social Infrastructure Theme. Dr Ford further critiqued the report for failing to adequately address the Culture and Heritage Theme and Movement and Transport Theme. Furthermore, Dr Ford referred to page 9 of the DAS report and questions how the proposed development contributes to the vibrancy of the precinct, as required under Zone CB. Dr Ford referred to page 11 and critiques the report for failing to adequately address the purpose of clause 5.5.15 which includes to '*...minimise conflicts between different land uses within surrounding the commercial centre*' and he posited that the proposed building maximises conflicts between the commercial and civic land uses. Dr Ford then referred to page 13 of the DAS report regarding Volumetric Control and critiques the assessment as being too general. Dr Ford summarised that both the application and the DAS report are too superficial to be relied upon. Dr Ford emphasised that buildings are for life but the reality is this building will outlive everyone in the room and further highlighted that once done it cannot be undone and urges the DCA to reject the proposal.

Ms Alicia Gregg expressed to the Authority that she strongly rejects the proposal.

Mr Tim Crammond raised concerns that the proposed development will draw commercial development out of the intended CBD.

## Darwin DCA Meeting No 436 – Friday 7 February 2025

The Authority asked the applicant to explain the future ownership arrangement of the proposed development. Mr Brad Cunnington advised that the City of Darwin will own 51% of the building and DCOH will own 49% of the building. Mr Cunnington confirmed that there will be 2 future subdivision applications, one to excise the development site from the existing lot and another to strata title the building. The Authority acknowledged that from a commercial perspective, the developer may not want to undertake the expense of a subdivision, without the prior approval of the development and that there was no requirement in the Act or Scheme which required that the proposed subdivision application take place first

The Authority provided an opportunity for the applicant to respond to matters raised by submitters at the meeting. Mr Cunnington highlighted to the Authority that cherry-picking specific elements of the contextual comments of the Social Infrastructure Theme is not how the CDAP 2019 was designed to be interpreted. The CDAP 2019 specifies that planning principles and contextual comments provide guidance to the interpretation of the objectives and acceptable responses. Mr Cunnington acknowledged that the site is identified for community and civic purpose on the CDAP 2019 and also acknowledged the objectives and acceptable responses included under the Social Infrastructure Theme. Mr Cunnington emphasised that the acceptable responses are not exclusionary and that the CDAP 2019 does not alter the underlying Zone CB (Central Business) and does not prevent the consideration of other uses that can be considered in Zone CB (Central Business).

Mr Cunnington clarified that a needs assessment is undertaken to inform the development of the CDAP 2019, however, need itself is not a planning consideration. The Authority agreed that need is not a planning consideration.

Mr Cunnington advised that the development should be considered holistically, however, also referred to Clause 1.10(4) of Part 1 of the NTPS 2020 which provides guidance in the interpretation of Impact Assessable development. Mr Cunnington expressed to the Authority that the consideration of locality should not be measured by hard borders but rather be defined by measure of influence of a development proposal.

Mr Cunnington highlighted that the application clearly states the City of Darwin's intention for Civic Plaza, whilst, acknowledging that at this stage there are no formal plans. Mr Cunnington further emphasised that this proposal facilitates the re-development of an existing car park for a mixed use development including a library and civic centre and allows for significantly improved outcomes, compared to what is existing, for the Civic and State Square precinct.

In relation to Gateway Location, Mr Cunnington acknowledged that the map in the CDAP 2019 refers to 'exemplary architectural standard' however emphasised that this then must lead into a consideration of the objectives and acceptable responses under the relevant themes and also consideration of the Gateway Overlay requirements.

## Darwin DCA Meeting No 436 – Friday 7 February 2025

In relation to heritage matters, Mr Cunnington advised that there have been discussions with the Heritage Branch of the NT Government and that what is shown in the application documentation does not reflect the full extent of heritage details. Mr Cunnington also confirmed that there have been discussions with members of the Chung Wah Society in relation to how the condition precedents will evolve into the next stage of design. Mr Cunnington explained that there are landscaping outcomes and more human scale design that respond to the sites importance and emphasised that it is not the developer's intention to override the importance and the community value of the space.

Mr Cunnington acknowledged that the building proposed is big and further emphasised that the proposal is consistent with the NTPS 2020, the strategic framework including the CDAP 2019 and provided an appropriate outcome.

The Authority has taken all comments into account and carefully considered the concerns of the submitters and interested parties who lodged late submissions. The Authority has also taken into account the response provided by the applicant regarding submitters concerns expressed at the meeting.

The matters raised in the submissions have contributed to the Authority's decision to defer the application in order to obtain further information addressing, the relevant considerations identified by submitters, as well as, the concerns of the DCA in relation to the requirements of the NTPS 2020 and *the Planning Act 1999*.

The Authority notes that matters relating to funding arrangements, DCA members conflict of interest and adherence with the *Local Government Act 2019* are not relevant and are discussed at reason one above.

In relation to submitters' concerns that approval of this application would set a problematic precedent, the Authority notes that future development permit applications on this site or neighbouring and nearby land will be assessed against relevant planning policy and site conditions, based on their own merits at the time of assessment. The possibility of setting an undesirable precedent cannot be substantiated and is not a relevant planning consideration.

In relation to concerns regarding sustainability and climate change, the Authority observes that there are no specific requirements in relation to addressing climate change as part of the *Planning Act 1999* or the NTPS 2020. The Authority notes that Environmentally Sustainable Development (ESD) measures are proposed to be incorporated into the building design and that, if a permit were to issue, the Authority will apply a condition precedent to require the landscape plan be updated to reflect the water sensitive urban design measures and a general condition to require the on-going maintenance of the ESD measures.

## Darwin DCA Meeting No 436 – Friday 7 February 2025

In relation to the legality of the application, the Authority considers that the application was properly made in accordance with the requirements of Section 46(3) of the *Planning Act 1999*.

In relation to future ownership of the proposed building, the Authority further reiterates that this is not a planning consideration under the *Planning Act 1999*, except in relation to Section 46(3) as discussed above.

In relation to overshadowing impacts, the Authority highlights that overshadowing is not a relevant consideration in assessing an application under the provisions of the *Planning Act 1999* or the NTPS 2020.

In relation to vegetation removal, the Authority notes that all existing vegetation on the development site, except for one tree, are proposed to be removed. The Authority highlights that the site is in Zone CB and there are no specific vegetation protection requirements applicable to the development site.

5. In relation to Part 5 of the NTPS 2020, the Authority notes the assessment of DAS which found that the proposed development complies with the relevant requirements except for Clauses 5.2.4.4 Layout of Car Parking Area, 5.2.5 Loading Bays, 5.3.7 End of Trip Facilities in Zones HR CB C SC and TC, 5.5.15 Design in Commercial and Mixed Use Areas, 5.5.16 Active Street Frontages, 5.9.2.2 Volumetric Control and 5.9.2.13 Design of Car Parking Areas and Vehicle Access.

However, the Authority does not consider that the application contains sufficient information to allow it to properly consider compliance with Clause 5.5.3 General Building and Site Design and Clause 5.5.15 Design in Commercial and Mixed Use Areas.

The Authority notes the purpose of Clause 5.5.3 is to '*promote site-responsive designs of commercial, civic, community, recreational, tourist and mixed use developments which are attractive and pleasant and contribute to a safe environment*' and the purpose of Clause 5.5.15 is to '*encourage a diverse mix of commercial and mixed use developments that are safe, contribute to the activity and amenity of commercial centres, are appropriately designed for the local climate, and minimise conflicts between different land uses within and surrounding the commercial centre*'.

At the meeting, the Authority highlighted that there are a number of specific requirements imposed by the clauses, including, minimising blank walls and excessive glare, the preservation of vistas along streets to buildings and place of architectural, landscape or cultural significance and importantly, that the development be sympathetic to the character of buildings in the immediate vicinity / locality. The Authority notes that various submitters raised concerns in relation to the design, bulk and height of the building and regarding the proposal's respect for the existing character of the area.

The Authority questioned Mr Cunnington regarding the extent of blank walls along Harry Chan Avenue. Mr Cunnington highlighted that the podium level



## Darwin DCA Meeting No 436 – Friday 7 February 2025

carparking has been designed to overhang the ground level, to draw the gaze upwards and minimise visual bulk. In addition, Mr Cunnington explained that the visual impact of the blank walls is minimised by the use of varied setbacks and landscaping.

Furthermore, in relation to being sympathetic to the character of existing buildings, Mr Cunnington highlighted there are various clauses in the NTPS 2020 that deal with building size and response and also specifically with building layout, setbacks and height and these need to be considered holistically. These clauses include 5.2.1 General Height Control, 5.9.2.1 Building Design in Darwin City Centre, 5.9.2.2 Volumetric Control, 5.5.3 General Building and Site Design and Clause 5.5.15 Design in Commercial and Mixed Use Areas.

Principally, Mr Cunnington noted that there is no maximum building height specified for development in Zone CB. In addition, Mr Cunnington expressed that these clauses do not limit or constrain the size of buildings to replicate what is currently existing.

Mr Cunnington explained the key design elements employed to limit visual bulk included pushing the building to the south-western most corner, the double height activation, mid tower plant enclosure, ground level setbacks and colour and materiality palette to be reflective of the surrounding environment.

In relation to the appropriateness of the proposed developments' height, scale and design, the Authority notes that it heard the applicants and submitters responses at the meeting and also has reviewed DAS's report. In this context, the Authority considers that it does not have sufficient information to determine the application and requires the applicant to provide an expanded architectural design statement to address how the proposal achieves compliance with specific requirements of Clause 5.5.3 General Building and Site Design and Clause 5.5.15 Design in Commercial and Mixed Use Areas. Sub-clause requirements of relevance include:

- Clause 5.5.3 sub-clause 2 '*preserve vistas along streets to buildings and places of architectural, landscape or cultural significance*'.
- Clause 5.5.3 sub-clause 3 '*be sympathetic to the character of buildings in the immediate vicinity*'.
- Clause 5.5.3 sub-clause 4 '*minimise expanses of blank walls*'.
- Clause 5.5.3 sub-clause 9 '*minimise use of reflective surfaces*'.
- Clause 5.5.15 sub-clause 12 '*building design is to be sympathetic to the character of buildings in the immediate locality*'.
- Clause 5.5.15 sub-clause 14 '*building design is to minimise the expanse of blank walls facing the street and public open spaces and limit external finishes that could cause nuisance to residents or the general public, such as materials that would result in excessive reflected glare*'.

In relation to Clause 5.5.16 Active Street Frontage, the Authority notes that the development site is not identified in the CDAP 2019 as located along a priority activated frontage and therefore Clause 5.9.2.5 Development along Priority Activated Frontages does not apply.



## Darwin DCA Meeting No 436 – Friday 7 February 2025

The Authority notes the purpose of Clause 5.5.16 is to *provide a site-responsive interface between commercial buildings and the public domain that:*

- a) is attractive, safe and functional for pedestrians;*
- b) encourages activity within the streetscape; and*
- c) encourages passive surveillance of the public domain.*

Specific requirements of the clause include limiting services on street level frontages and buildings to provide active street frontage to a minimum of 60% of the length of the site boundary that fronts the primary street. The Authority notes that the proposed development does not comply with the above-mentioned requirements.

At the meeting, the Authority questioned the applicant regarding the lack of activation along the Harry Chan Avenue frontage. The applicant explained that the application is seeking a re-orientation of the activation requirements, rather than a technical reduction and that the non-compliance is due to the activation being provided to the south-west and south-east sides of the building. The applicant explained that the design is oriented to the future Civic Plaza.

The applicant acknowledged that without question the proposed development presents an inactive frontage to Harry Chan Avenue. The applicant argued that despite this, the design provides a significant building setback, landscaping, public seating, heritage and directional signage to maximise the amenity along the Harry Chan Avenue to respond to the purpose of the clause. The applicant highlighted that the character of Harry Chan Avenue is quite an inactive frontage at the moment, albeit there are elements of activation.

The Authority questioned why the required building services have not been provided in a basement. The applicant emphasised that there are always some building services that are required to be provided at ground level (even if a basement was proposed) and further explained that the main reasons for not including a basement are the construction cost and the existing heritage oil tunnels that run beneath the development site.

At the meeting, the Authority was also addressed by various submitters in relation to the proposed development's lack of activation along Harry Chan Avenue.

Administratively, sub-clause 2 specifies that *the consent authority may consent to a development that is not in accordance with sub-clauses 5, 6 and 7 if:*

- a) an alternative solution effectively meets the purpose of this clause;*
- b) the site design reflects the established character of the area; or*
- c) it is satisfied that compliance would be impractical considering servicing requirements and any advice provided under sub-clause 4.*

With reference to (a), the Authority acknowledges that the proposed design provides an alternative solution through activation to the future Civic Plaza

## Darwin DCA Meeting No 436 – Friday 7 February 2025

and proposed pedestrian thoroughfare. However, the Authority questions how this alternative solution meets the purpose of the clause particularly in relation to encouraging activity in the streetscape and providing passive surveillance of the public realm.

With reference to (c), the Authority has not been provided advice regarding servicing location requirements from Power and Water Corporation. Without this advice, the Authority can not determine if the services on the street level frontage have been minimised and located to that which are necessary.

The Authority notes that with reference to the constraints of the development site location, it is unlikely that strict adherence with the requirements of this clause is possible. However, there is scope for better compliance with the clause to be achieved.

In this context the Authority considers that it does not have sufficient information to determine the application and requires the applicant to re-design of ground floor of building along Harry Chan Avenue to achieve better compliance with Clause 5.5.16 Active Street Frontage.

6. Noting that the application is being deferred, the Authority nevertheless has considered Clauses 5.9.2.11 and 5.9.2.12 of the NTPS 2020 in relation to the car parking requirements, in order to clarify the proposed “Car Park” use.

The Authority considers that there is a clear distinction between the car parking component of the development required by Clause 5.9.2.11 and the “Car Park” use sought to be approved in this application. The Schedule 2 of the NTPS 2020 definition of the “Car Park” use limits it to *‘the parking of motor vehicles otherwise than as an ancillary use of land’*. To the extent that car parking is required to be provided for the development by Clause 5.9.2.11, it cannot be considered to form part of the separate “Car Park” use.

### 5.9.2.11 Car parking spaces in Darwin City Centre

The purpose of the clause is to *ensure that sufficient off-street car parking spaces, constructed to a standard and conveniently located, are provided to service the proposed use of a site.*

Subclause 5 specifies that use and development is to include the minimum number of car parking spaces specified in the table to this clause (rounded up to the next whole number).

The proposed land uses of office, community centre, place of assembly and food premises-café/restaurant have a statutory rate of 2 for every 100m<sup>2</sup> of net floor area and generates a requirement for 309.38 car parking spaces (rounded up 310 car parking spaces).

The proposed land use of “Car Park” requires the minimum number of car parking spaces to be determined by the consent authority.

## Darwin DCA Meeting No 436 – Friday 7 February 2025

In relation to car parking spaces, the Authority notes that the proposed development provides 460 car parking spaces (including 10 DDA spaces and 2 small car spaces) and applicant has advised that *'the distribution, ownership and allocation of car parking spaces for the individual use elements will ensure that compliance with the car parking requirements under Clause 5.9.2.11 / 5.9.2.12 are achieved'*.

In the event that a permit is issued, in order to differentiate between the spaces provided as ancillary to the development, a condition precedent and general condition would be required to specify the number of car parking spaces to be provided for the "Car Park" component of the development.

### 5.9.2.12 Reduction in car parking spaces in Darwin City Centre

The Authority notes that, pursuant to Clause 5.9.2.11 Car parking spaces in Darwin City Centre, there is a surplus of 150 car parking spaces.

The purpose of Clause 5.9.2.12 is to *provide for a use or development with fewer car parking spaces than required by clause 5.9.2.11 (Car parking spaces in Darwin City Centre)*.

The Authority notes that the applicant has sought consent to apply the reductions available pursuant to sub-clause 1 and sub-clause 2. The Authority further notes that the reduction of car parking requirements under Clause 5.9.2.12 is at its discretion.

The Authority acknowledges the various calculations made by DAS and the applicant in relation to the percentage reductions under the clause and while it supports a reduction in the car parking requirements it is not satisfied with the amount of reduction sought. In this case, having had regard to the primary requirement in Clause 5.9.2.11 to ensure that sufficient off- street car parking, constructed to a standard and conveniently located, is provided to service the proposed use of a site, the Authority considers that the amount of the reduction should be varied by an additional 51.5 spaces to the amount of 310 spaces assessed by DAS, so that the total parking car parking requirement for the development is 258 spaces.

In reaching its determination with respect to the car parking reduction, the Authority has taken into account the concerns of the public submitters and also notes in respect of the 5% reduction category 2(c) of the table to Clause 5.9.2.12 that there appears to be limited availability of parking at Nichols Place and the proposed development will effectively remove 97 existing spaces in the on-site car park which it will replace. The applicant is invited to provide evidence as to why Nichols Place should be considered as available public car parking. In addition, the applicant argued that category 2(b) rather than 2(c) can be applied, as the proposed development includes the provision of public car parking within the development exceeding 100 spaces. The Authority does not support this interpretation given the table's specific reference to 'existing' car parks.

## Darwin DCA Meeting No 436 – Friday 7 February 2025

In accordance with sub-clause 1 of Clause 5.9.2.12, the Authority notes the development proposes 16 motorcycle spaces and in accordance with sub-clause 1(a) and considers to reduce the car parking space requirement by 5 car parking spaces. The applicant argued that in accordance with sub-clause 1(b) the inclusion of 24 bicycle spaces above the minimum requirement in Clause 5.3.7 results in a further reduction of 2.4 car parking spaces. The Authority does not support this interpretation, given the 24 additional bicycle spaces are provided in the publicly accessible open space which is not considered a safe location with adequate security or protected from the weather, for the purposes of bicycle parking facilities.

In accordance with category 1(a) of sub-clause 2 of Clause 5.9.2.12, the Authority considers an additional reduction of 15% can be applied, as the development site is located within a 200m walking distance of the Darwin Bus Interchange.

As a result, a reduction of 51 car parking spaces can be applied ( $309.38 - 51.5 = 257.88$ ) and rounded up 258 car parking spaces are required. After applying the reduction there is a surplus of 202 car parking spaces.

The Authority considers the surplus 202 car parking spaces, that are not ancillary to the proposed office, community centre, place of assembly and food premises, are allocated to the proposed public car park.


**FOR: 3**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:** Notice of Deferral

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



Suzanne Philip

2025.02.20

15:09:24

+09'30'

**SUZANNE PHILIP**

Chair

20 February 2025