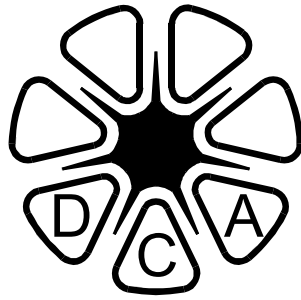




DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING NO. 459 – FRIDAY 3 JULY 2026

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

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

APOLOGIES: None

LEAVE OF ABSENCE: None

OFFICERS PRESENT: Madison Harvey, Kaleb Thomas and Amber Roth (Development Assessment Services)

COUNCIL REPRESENTATIVE: Apology

Meeting opened at 10.16 am and closed at 10.52 am

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

ITEM 1 **DWELLING-MULTIPLE (14 X 2 BEDROOM) IN A 3 STOREY BUILDING**
PA2026/0165
SUBJECT SITE **LOT 1861 (85) PROGRESS DR, NIGHTCLIFF, TOWN OF NIGHTCLIFF**
APPLICANT **CUNNINGTON ROSSE TOWN PLANNING AND CONSULTING**

Applicant: Rory Mackay (Cunnington Rosse Town Planning and Consulting) attended.

Submitters who attended in person: Helmy Bakermans and Carly Hibble (Carly Hibble represented herself and also represented the Body Corporate Committee of 73 Progress Drive).

Submitter Nick Kirlew, Convener Plan: The Planning Action Network Inc, attended via Microsoft Teams.

Interested party, Lesley Thompson, attended in person.

RESOLVED
41/26

That, the Development Consent Authority (the Authority) vary the requirements of Clause 3.7 (Land Subject to Storm Surge) and Clauses 5.2.4.4 (Layout of car parking areas), 5.2.6.1 (Landscaping in Zones other than Zone CB), 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), 5.4.7 (Communal Open Space), 5.4.8.2 (Building Design for Dwelling-multiple), and 5.4.17 (Building Articulation) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 1861 (85) Progress Drive, Nightcliff, Town of Nightcliff for the purpose of dwelling-multiple (14 x 2 bedroom) in a 3 storey building, subject to the following conditions:

CONDITION PRECEDENT

1. Prior to the endorsement of plans and prior to 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.
2. Prior to the endorsement of plans and prior to the commencement of works, 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.
3. 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.

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4. Prior to the commencement of works (including site preparation), a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Darwin 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. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council's system
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 is to address how construction will be managed on the site, and is to include details of waste management, traffic control and haulage routes, stormwater drainage and the use of City of Darwin land during construction.
6. Prior to the commencement of works (including site preparation), a waste management plan addressing the City of Darwin's Waste Management Guidelines must be prepared, to the requirements of the City of Darwin, to the satisfaction of the consent authority.
7. Prior to the commencement of works, a traffic impact assessment report is to be prepared by a suitably qualified traffic engineer in accordance with the Austroads Document Guide to Traffic Management Part 12: Traffic Impacts of Developments, in the report structure provided as Appendix of that document, with particular attention to vehicular, pedestrian, cyclist and public transport issues, intersection/road network performance and opportunities. The report must also include swept path analysis for waste collection vehicles entering and exiting the site, as well as an assessment of sightlines for the proposed driveway access and adjacent block wall fence to ensure the safety of pedestrians and cyclists using the footpath adjacent to the subject site. The report should identify any necessary upgrades to the surrounding street network as a result of the implications of the development. The developer will be required to institute all required upgrade measures resulting from the traffic assessment at no cost to City of Darwin.

GENERAL CONDITIONS

8. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
9. The finished floor level of the ground floor dwellings must be a minimum of 6.5 Australian Height Datum (AHD) and the finished floor level of the car parking area must be a minimum of 6.27 to 6.44 AHD.
10. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, and electricity to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time. Please refer to notations 1 for further information.

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11. 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.
12. 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.
13. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
14. Upon completion of any works within or impacting upon existing road reserves, the infrastructure within the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin and returned to the condition as documented in the dilapidation report.
15. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of City of Darwin, to the satisfaction of the consent authority.
16. Any gate over an access to a public road shall be placed on the subject site at least 4.5 metres from the face of the kerb line of the adjoining public road to the requirements of the City of Darwin, to the satisfaction of the consent authority.
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. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
19. All works recommended by the traffic impact assessment are to be completed to the requirements of the City of Darwin to the satisfaction of the consent authority.
20. 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.

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21. 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.
22. Before the use 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. The private open space areas of each ground floor dwelling shall be screened on each boundary by:
 - (a) the erection of a solid wall or screen fence not less than 1.8 metres high:
or
 - (b) fenced to a height not less than 1.8 metres high and planted with dense vegetation.

NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (powerdevelopment@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. The proposal includes works within the City of Darwin road reserve. All works must comply with City of Darwin policies and guidelines and are subject to a separate assessment and approval process by City of Darwin. City of Darwin requires that the applicant obtains all necessary approvals before commencing any construction in the road reserve.
3. 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

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works shall be constructed at the applicant's expense, to the requirements of City of Darwin.

4. Notwithstanding the approved plans, all signage is subject to City of Darwin approval, at no cost to Council.
5. This development permit is not an approval to undertake building work. You are advised to contact a Northern Territory registered building certifier to seek a building permit as required by the Northern Territory Building Act 1993 before commencing any demolition or construction works.
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 8936 4070 to determine if the proposed works are subject to the Act.
7. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5346. (surveylandrecords@nt.gov.au).

REASONS FOR THE DECISION

1. The application seeks consent for dwelling-multiple (14 x 2 bedroom) in a 3 storey building at Lot 1861 (85) Progress Drive, Nightcliff, Town of Nightcliff (the site). The site is 1740m² in area, is in Zone MR (Medium Density Residential) and is affected by the LSSS – (Land Subject to Storm Surge) overlay, with the entire site located within areas identified for secondary storm surge and the north-western and south-western corners of the site located within areas identified for primary storm surge, pursuant to the Northern Territory Planning Scheme 2020 (NTPS 2020).

The Authority notes that the site is irregular in shape with a frontage of 209.33m to Progress Drive and currently comprises a 2 storey apartment building with majority of the site frontage comprising a hard stand car parking area and some landscaping.

The locality of the site is described as follows:

- To the north of the site is Progress Drive and further north, on the opposite side of the road, is a range of residential properties including single dwellings, townhouses and apartment buildings located in Zone LMR (Low-Medium Residential).
- To the east, is an existing 2 storey apartment development located in Zone MR
- To the west, is an existing 4 storey apartment development located in Zone MR.
- To the south, is an existing 3 storey apartment development, located in Zone C (Commercial).

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The Authority noted that the locality, as described above, is categorised by a range of extant medium density residential buildings and some lower scale single dwelling properties. More broadly, the site and the locality form part of and/or are in close proximity to the Nightcliff and Coconut Grove Activity Centre.

At the meeting, Mr Rory Mackay (the applicant) told the Authority that the development has been architecturally designed to respond to climate conditions, the current and future envisioned streetscape of the medium density zoned property and the irregular triangular shape of the site. Mr Mackay noted the proposed development complies with building height, plot ratio, car parking space, private open space, maintains building setback lines and includes the rationalisation of the 2 driveways into one driveway access on the eastern side of the northern frontage.

Mr Mackay also acknowledged the proposed development results in several non-compliances with the NTPS 2020, however, advised that these have been assessed against the relevant criteria and found to be justified and unlikely to result in adverse impacts to the surrounding amenity.

Ms Marion Guppy (a member of the Authority) queried if the proposed development results in an increase in the number of dwellings that currently exists on the site.

Mr Mackay advised that there are currently 11 dwellings on the site, and the development proposes 14 dwellings. Mr Mackay highlighted that the residential plot ratio requirements under the NTPS 2020 would allow 22 dwellings to be developed on the site.

Ms Guppy further queried the rationalisation of the 2 driveways into one driveway access. Mr Mackay explained that the current site frontage is dominated by pedestrian and driveway access rather than landscaping and it is difficult to actually determine the extent of the driveways. Mr Mackay highlighted that the development proposes a 1.2m landscape buffer across the site frontage and a double width driveway. Ms Guppy noted that the proposed development creates a different streetscape when compared with what is existing.

Mr Panquee (a member of the Authority) queried the maximum building height of the proposed development.

Mr Mackay advised that the proposed development is 3 storeys. The Authority notes that in accordance with the maximum building requirements under Clause 5.2.1 (General Height Control), as the subject site has a frontage to a street with a reservation width exceeding 18m, is on the opposite side of a site in Zone LR and does not abut a site in Zone LR, the maximum building height requirement is 4 storeys.

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

The Authority notes that the NTPS 2020 applies to the land and dwelling-multiple (14 x 2 bedroom) in a 3 storey building requires consent under Clause 1.8 (When development consent is required). The development is identified as Impact Assessable under Clause 1.8(1)(c)(v), therefore, the strategic framework (Part 2 of the Scheme, including the Darwin Mid Suburbs Area Plan 2016), zone purpose and outcomes of Clause 4.4 (Zone MR – Medium Density Residential), and Clauses 3.7 (LSSS - Land Subject to Storm Surge), 5.2.1 (General Height Control), 5.2.4 (Car Parking), 5.2.6 (Landscaping), 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), 5.4.6 (Private Open Space), 5.4.7 (Communal Open Space), 5.4.8 (Residential Building Design), 5.4.17 (Building Articulation), 5.4.18 (Fencing), and 5.4.19 (Residential Plot Ratio), need to be considered.

As the application is Impact Assessable, the applicable exercise of discretion by the consent authority is Clause 1.10(4) (Exercise of Discretion by the Consent Authority) of the NTPS2020.

In considering an application for a use or development identified as Impact Assessable 'the consent authority must take into account all of the following:

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

An assessment of the relevant parts of NTPS2020 is as follows:

Part 2 – Strategic Framework

The Authority noted that in relation to Part 2 of the NTPS 2020, the site is located in the Darwin Mid Suburbs Area Plan 2016 (DMSAP 2016) and is identified for:

- Residential-medium density.
- Identified within the extent of activity centre.
- Adjoining an existing bicycle and pedestrian corridor and sub-arterial/primary transport corridor along the primary street frontage.
- The entire site located within areas identified for secondary storm surge and the north-western and south-western corners of the site located within areas identified for primary storm surge.
- Structures greater than 45m require Department of Defence consent.

The Authority highlights that the DMSAP 2016 specifies that the objectives and acceptable responses serve as action-based policy statements to guide land use and development.

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In relation to the relevant 'Residential' objectives and acceptable responses, the proposed development responds as follows:

- The application is for dwelling-multiple development. The land is located in Zone MR (Medium Density Residential).
- Landscaping with various types of shade trees and shrubs are provided along all boundaries of the lot.
- The site is well connected to the local road network and public transport, and provides sufficient on-site car parking. No adverse comments regarding traffic impacts were raised by the City of Darwin.

In relation to the relevant Activity Centres and Commercial Areas' objectives and acceptable responses, the Authority notes that, whilst the site is identified within the activity centre, it is shown as 'Residential only' on the Nightcliff and Coconut Grove Concept Plan and no additional objectives are identified.

In relation to the relevant "Movement and Transport" objectives and acceptable responses, the proposed development responds as follows:

- The existing 2 separate crossovers on site have been consolidated into a single crossover located at the north-eastern corner of the site, with a dedicated pedestrian entrance provided on the western portion of the frontage. This arrangement reduces potential conflicts between vehicles and pedestrians and enhances the safe movement of all users.
- The development maintains access to existing public transport services and supports the function of the surrounding transport network.
- In addition, the proposed frontage landscaping will enhance the streetscape and contribute to the creation of a green gateway along Progress Drive as it transitions into Casuarina Drive.

The relevant 'Environment and Heritage' objectives and acceptable responses are assessed through detailed consideration of the LSSS overlay provided at section 3 of these reasons.

Part 3 – Overlays

The Authority notes that, in relation to Part 3 of the NTPS 2020, the north-western and south-western corners of the site are located within the Primary Storm Surge Areas (PSSA) and the entire site is located within the Secondary Storm Surge Areas (SSSA) pursuant to Clause 3.7 LSSS – (Land Subject to Storm Surge) overlay of the NTPS 2020.

As the proposed development is located in the PSSA, planning consent is required. In addition, the proposed development does not comply with subclauses 8 to 10, where residential use should be avoided in both the PSSA and the SSSA.

Detailed consideration of this overlay and the required variations to subclauses 8 to 10 is provided at section 3 of these reasons.

Part 4 – Zoning

In relation to Part 4 of the NTSPS 2020, the Authority notes that the site is located in Zone MR (Medium Density Residential) which seeks to 'provide for a

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range of mid-rise housing options close to community facilities, commercial uses, public transport or open space, where reticulated services can support medium density residential development’.

The proposed development aligns with the intent of Zone MR noting the proposed development complies with the maximum building height requirement and the site is in close proximity to existing community facilities, commercial uses, public transport and open space, and is connected to existing reticulated services.

Part 5 - Development Requirements

The proposed development has been assessed as compliant with all relevant development requirements of the NTPS 2020 except for Clauses 5.2.4.4 (Layout of car parking areas), 5.2.6 (Landscaping), 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), 5.4.7 (Communal Open Space), 5.4.8.2 (Building Design for Dwelling-multiple), and 5.4.17 (Building Articulation) of the NTPS2020. This is discussed at section 3 of the reasons below.

3. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NT Planning Scheme 2020, the consent authority may consent to a proposed development which is not in accordance with a requirement set out in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:
 - (a) The purpose and administration clauses of the requirement; and
 - (b) The considerations listed under Clause 1.10(3) or 1.10(4).

An assessment of the non-compliances with the applicable Part 3 and 5 requirements of the NTPS2020 are considered below.

Clause 3.7 (LSSS – Land Subject to Storm Surge)

The Authority notes that the proposed development requires consent under subclause 6 and does not comply with subclauses 8 to 10, where residential use should be avoided in both the PSSA and the SSSA.

Subclause 6 provides that ‘the consent authority may consent to a use or development within the PSSA that is not in accordance with sub-clauses 8-10 only if it is satisfied that the application demonstrates that there is no increased risk to people and property, including adjoining property’.

At the meeting, Mr Mackay queried the application of general condition 9 in the recommendations of the DAS report which required ‘the finished floor levels of the dwelling must be a minimum of 300mm above the applicable flood level for the property’. Mr Mackay advised that condition 9 does not reflect the requirements of the LSSS overlay and would result in an increased height of the ground level dwellings.

The Authority notes the comments raised by Mr Mackay and has applied a revised condition 9 to the permit to specifically reference the finished floor

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levels that are proposed as part of the application, rather than a broad minimum 300mm above the applicable flood level for the property.

The Authority considers that the proposed variation of the requirement to avoid residential use in both the PSSA and the SSSA and requirement for consent under LSSS overlay, is appropriate for the following reasons:

- The primary storm surge inundation level is 5.52 Australian Height Datum (AHD) which the existing site levels, as identified on the feature survey, are raised above noting the site has a lowest point of 5.72 AHD adjacent to the northern boundary and the highest point of 6.18 AHD adjacent to the eastern boundary.
- The secondary storm surge inundation level is 6.37 AHD. To ensure no increased risk to people and property on the site, the proposed development will:
 - be retained by a wall to a maximum height of 0.3 metres to achieve a raised level of 6.2 AHD across the site.
 - comprise a finished floor level (FFL) of 6.5 AHD to all ground level dwellings and a FFL of 6.27 AHD to 6.44 AHD for the ground level car parking area. While part of the car park is below the secondary storm surge level, it is expected to remain trafficable, with a maximum modelled inundation depth of approximately 120mm.
- In addition, a storm surge assessment prepared by MDP Engineers Pty Ltd formed part of the application and confirms 'Tidal storm surge is governed by large scale external factors (including cyclonic events, wind set-up, tidal conditions etc.) and typically involves very large volumes of water extending across hundreds of kilometres of coastline. Consequently, hardstand areas and/or filling associated with this development will not result in any measurable increase in storm surge impacts to neighbouring properties'.

Clause 5.2.4.4 (Layout of car parking areas)

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

The proposed car parking area is setback 1.2m from Progress Drive and the 1.2m setback is landscaped with the exception of the area that forms the electricity easement, and does not comply with subclause 6(a) and 6(b) where a 3m landscaped setback to the car parking area is required.

Subclause 2 provides that 'the consent authority may consent to a car parking area that is not in accordance with sub-clause 6 if it is satisfied that the non-compliance will not unreasonably impact on the amenity of the surrounding locality'.

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The Authority considers that the proposed variation to the width of the landscaped setback to the car parking area is appropriate for the following reasons:

- The proposed setback of 1.2m is of an adequate size to accommodate planting. The proposed landscaping will assist with screening and filtering the car parking area when viewed from Progress Drive.
- The proposed car parking area is located under the first floor of the proposed development and is an open structure minimising visual bulk when viewed from the streetscape.
- The proposed landscaped setback is reflective of the existing streetscape character of Progress Drive, noting there are various examples of reduced setbacks to car parking areas along Progress Drive that provide little or no landscaping.

5.2.6.1 (Landscaping in Zones other than Zone CB)

The Authority notes the purpose of this clause is to 'encourage landscaping that enhances local amenity by:

- (a) contributing to safe and attractive public spaces and places;
- (b) responding to the local climate and soil characteristics;
- (c) supporting cooler internal and outdoor areas; and
- (d) recognising the value of retaining existing plants and trees'.

The front portion of the eastern boundary along the car parking and bin storage areas is not landscaped and does not comply with subclause 7 where side and rear setbacks in Zone MR and HR are to include 2m width of planting.

In addition, subclause 4 requires 'the quality and extent of the landscaping consented to must be maintained for the life of the development', to ensure compliance, a condition precedent requiring a landscaping plan to be endorsed is applied to the permit and a general condition requiring the landscaping to be maintained.

Subclause 2 provides that 'the consent authority may consent to landscaping that is not in accordance with sub-clauses 5, 6 and 7 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and is appropriate to the site having regard to the amenity of the streetscape, and the potential impact on the amenity of the locality and adjoining property'.

The Authority considers the proposed variation to the requirement for 2m wide side and rear landscaped setbacks is appropriate for the following reasons:

- The area of non-compliance is limited to the car parking area and bin storage area. These areas will have no adverse visual impacts when viewed from the adjoining property to the east noting there are no existing habitable room windows or private open space that have direct views towards the proposed development and a 2.2m high blockwork fence is proposed along the eastern boundary to screen these elements.
- In addition, landscaping is provided along all other side and rear boundaries, which contributes softening the built form, and maintaining visual amenity for adjoining properties and the public realm.

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

The Authority notes the purpose of this clause is to 'ensure that residential buildings and ancillary structures are located in a manner that:

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

The development proposes the following setbacks that are non-compliant with the requirements of subclause 3 as follows:

- Primary street frontage:
 - Ground floor gatehouse setback 0.7m (6m required)
 - Ground floor car park columns setback 5m (6m required).
- Eastern side boundary:
 - Ground floor bin storage area setback 1.4m (3m required)
 - Ground floor roof of bin storage area setback 1.4m (2.1m required)
 - Ground floor pedestrian egress gate and letterboxes located on the boundary (3m required)
 - First floor feature roof structure setback 1.2m (2.1m required)
 - Second floor roof setback 1.6m (2.1m required)
 - Unit 2, 8 and 14 window shading devices/treatments are setback approx. 2.5m (3m required).
- Southern rear boundary:
 - Ground floor blade wall/fence setback 1.5m (3m required).
 - Unit 1, 3 and 9 window shading devices/treatments are setback approx. 2.5m (3m required).
 - Stair 1 at ground, first and second floor has a minimum setback of 2.5m (3m required).
 - Stair 1 roofline at ground, first and second floor has a minimum setback of 0.7m (2.1m required).
 - Unit 2 roofline is setback 0.8m (2.1m required).
 - Unit 14 roofline is setback approx. 0.5m (2.1m required).

The Authority notes that all other elements of the proposed development have been assessed as compliant with the setback requirements of the clause.

Subclause 3 provides that 'the consent authority may consent to a development that is not in accordance with sub-clause 6-8 only if it is satisfied that the reduced setback is consistent with the purpose of this clause and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property'.

Having considered the elements of sub-clause 3 as highlighted below, the Authority determines that the proposed variations to the primary street, eastern side and rear boundary setbacks are appropriate for the following reasons:

Is compatible with the streetscape and surrounding development including residential buildings on the same site

The proposed built form is expected for a dwelling-multiple in a zone intended for medium density residential development, and the surrounding area provides various examples of built form with reduced primary street, side and rear setbacks.

At ground level, the development proposes visually permeable fencing along with landscaping along Progress Drive which ensures some extent of passive surveillance is provided whilst screening and filtering views when viewed from the streetscape. At the upper levels, the development provides windows and balconies that overlook Progress Drive which provide visual interest and improve passive surveillance of the adjacent public domain from upper levels.

The elements of the proposed development that are visible from the streetscape and encroach into the minimum setback requirements are limited to roofing, window shading devices/treatments, gatehouse, car park columns and bin storage area elements. The structures are small in scale, integrate into the proposed built form and not expected to have a significant visual impact on the streetscape.

Minimises adverse effects of building massing when viewed from adjoining land and the street

The non-compliant elements are minor in scale and provide articulation to the overall design. The design of the proposed development addresses bulk and scale through its variable form, setbacks, landscaping and architectural treatments that provides articulation and will create an appropriate level of visual interest and minimises the adverse effects of building massing when viewed from adjoining properties and the streetscape. In addition, landscaping is proposed along all boundaries to soften and reduce the perceived visual mass of the building.

Avoids undue overlooking of adjoining properties

The elements of the proposed development that encroach into the minimum setback requirements relate to non-habitable structures including walkways, window shading devices/treatments and roofing, and will have no overlooking impacts.

All habitable rooms and areas of private open space comply with the applicable minimum setback requirements, with the exception of the ground floor private open space areas. The ground floor private open space areas will be screened by a 1.8m high aluminium fencing which will limit any overlooking into adjoining properties, and noting condition 27 has been applied to the permit which requires 'the private open space of each ground floor dwelling to be screened on each boundary by: (a) the erection of a solid wall or screen fence not less than 1.8 metres high: or (b) fenced to a height not less than 1.8 metres high and planted with dense vegetation'.

Facilitates breeze penetration through and between buildings

The elements of the proposed development that encroach into the minimum setback requirements are modest in scale and do not unreasonably limit breeze penetration through and between buildings.

For the reasons above, the Authority considers the proposed variation to the setbacks acceptable to the site with regard to its location, scale, and impact on adjoining lots.

Clause 5.4.7 (Communal Open Space)

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

The proposed communal open space has an area of approximately 238.91m², which equates to 13.73% of the total site area, where 15% is required by subclause 5.

The Authority highlights that subclause 6 also requires 'communal open space is to be designed to: (a) be clearly delineated from private and public open space; (b) maintain reasonable privacy of nearby dwellings...'.

At the meeting, the Chair noted the non-compliant area of the communal open space area and, particularly, the location of the communal open space directly adjoining unit 2 habitable room windows. The Chair asked the applicant to explain the design of the communal open space and how this space is envisioned to be utilised.

Mr Mackay advised that the communal open space will comprise irrigated grass and landscaped plant species, and noted the presence of a privacy screen wall that will limit views from the communal open space into unit 2. Mr Mackay explained the privacy screen is positioned to align with the balcony columns of the dwellings on the upper floors, however, advised that the privacy screen could be relocated to be directly onto the habitable room windows of unit 2.

The Chair queried if the proposed landscaped plant species in the communal open space area will impede pedestrian access from unit 2's private open space into the communal open space area. Mr Mackay explained there will be a path treatment or stepping stones from unit 2's private open space to the irrigated grass area of the communal open space.

With reference to the above explanation, the Authority considers the design of the communal open space to comply with the subclause 6 requirements.

Subclause 4 provides that 'for zones and uses not covered by sub-clauses 2 and 3, the consent authority may consent to a development that is not in accordance with sub-clauses 5 and 6 if it is satisfied the communal open space has usable dimensions and is of a sufficient size for the development'.

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The Authority considers the proposed variation to the area of the communal open space is appropriate for the following reasons:

- The proposal responds to the unique site constraints through providing communal open space in areas of the site that would be otherwise underutilised.
- The proposed communal open space will be landscaped, is located in a central and accessible position of the development and is functional in its dimensions. The 1.27% shortfall is minor and does not significantly affect the usability or amenity of the space.
- All dwellings are provided with private open space that meets the minimum area requirements.

Clause 5.4.8.2 (Building Design for Dwelling-multiple)

The Authority notes the purpose of this clause is to 'promote site-responsive design of dwellings-multiple that provides a sympathetic interface with the streetscape and surrounding dwellings, is climatically appropriate and provides a pleasant living environment for the occupants'.

The proposed development does not comply with subclause 11(b), 12(a), 12(b) and 14, as follows:

- Air conditioning condensers are proposed to be located within private open space areas adjacent to bedroom openings, which does not comply with subclause 11(b), as it requires condensers to be sited away from openings to habitable rooms.
- A 1.5 m high visually permeable fence with dense shrubs (*Murraya Paniculata*) is proposed along the Progress Drive frontage outside the ground floor car park. This does not comply with subclause 12(a), which requires a minimum visual permeability of 50% for these areas.
- The proposed guttering and downpipes will be visible from the Progress Drive frontage, which does not comply with subclause 12(b) requiring a maximum 50% visual permeability in these areas.
- Balconies of Units 1, 3 and 9 have screening that exceeds 25% that faces a street. This does not comply with subclause 14 where maximum 25% is required.

At the meeting, the Chair asked the applicant to explain why the variation to subclause 14 was sought. Mr Mackay explained that the solid walls are provided for screening purposes and breeze penetration.

Subclause 4 provides that 'the consent authority may consent to a development that is not in accordance with sub-clause 11 if it is satisfied that all reasonable measures have been taken to mitigate potential noise impacts on habitable rooms within the site'.

Subclause 5 provides that 'the consent authority may consent to a development that is not in accordance with sub-clause 12 if it is satisfied that car parking areas, services and utilities, and bin storage areas are appropriately concealed or integrated into the development to 31 minimise visual impacts'.

Subclause 6 provides that ‘the consent authority may consent to a development that is not in accordance with sub-clauses 13 and 14 if it is satisfied that the balcony design allows for sufficient breeze penetration and limits the appearance of building massing when viewed from the public domain’.

The Authority considers the proposed variations to subclause 11(b), 12(a), 12(b) and 14 appropriate for the following reasons:

- In relation to subclause 11(b), the condensers are designed to be screened from view and oriented perpendicular to nearby habitable room openings, which assists in directing and dispersing operational noise away from those openings. In addition, screening gates provide a further buffer to reduce potential noise impacts. The proposed arrangement also allows for convenient access for maintenance and replacement of the air conditioning condensers.
- In relation to subclause 12(a), the extent of landscaping and permeable fencing is considered appropriate measures in balancing expectations for passive surveillance whilst still providing an effective buffer to soften the appearance of the car parking area from the street.
- In relation to subclause 12(b), the guttering and downpipes are relatively minor building structures and will integrate with the overall built form ensuring they are not visually dominant when viewed from the streetscape. In addition, landscaping is proposed along the Progress Drive frontage, which will mature over time to provide an effective visual buffer that partially conceals these services.
- In relation to subclause 14, the proposed extent of balcony screening provides weather protection to improve balcony usability without fully enclosing the space. The balconies retain sufficient openness to facilitate effective breeze penetration and natural ventilation, supporting a climate-responsive design that is suited to Darwin's tropical climate. The overall building form remains articulated, and the balcony design does not result in excessive bulk or visual mass when viewed from the public domain.

Clause 5.4.17 (Building Articulation)

The Authority note the purpose of this clause is to ‘ensure that residential buildings mitigate the perception of building mass and bulking when viewed from adjoining properties and the street and provide opportunities for cross-ventilation within building design’.

The western walls of Unit 3 and Unit 9 (and a small portion of the elevated walkway) extends 16.48m without articulation, which does not comply with subclause 4.

Subclause 2 provides that ‘the consent authority may consent to a development that is not in accordance with sub-clause 4 only if it is satisfied it is consistent with the purpose of this clause’.

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The Authority considers the proposed non-compliant building articulation to be appropriate for the following reasons:

- The proposed western walls of Unit 3 and Unit 9 will be finished in horizontal zinc custom orb cladding and contains windows, shading devices/treatments to the windows and a skillion roof, these design elements provide texture and articulation, minimising the visual bulk.
 - In addition, the windows are openable providing opportunities for cross-ventilation.
4. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent authority must take into consideration any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application.

The application was placed on public exhibition for a period of 2 weeks, between 15 May and 29 May 2026. Seven (7) public submissions were received during the exhibition period under Section 49 of the *Planning Act 1999* with respect to the proposal.

The Authority notes that comments and concerns raised were in relation to streetscape character, overdevelopment/building bulk, residential character, traffic and safety, construction impacts, storm surge and coastal risk, landscaping loss, setback and buffers, privacy and overlooking, light, air and outlook, visual impact, open space, property values, vegetation removal and consultation concerns.

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

Mr Nick Kirlew (Convener Plan: The Planning Action Network Inc) noted the cumulative effect of all the variations, and queried why the proposed development requires these variations. Mr Kirlew raised concerns with building in the storm surge area and the age of the benchmarks that area used in this area. Mr Kirlew advised it is important to understand how future residents would leave in the event of an emergency and deal with a cyclone event.

Mr Kirlew expressed concerns that the proposed development is bigger than the existing with a large undercroft car parking and large extent of hardstand. Mr Kirlew noted the applicant requested the following setbacks and variations including reduced front car parking setback, reduced landscaping setback, expansive paving, anti-climb fence and roller doors and masonry wall along the eastern boundary. Mr Kirlew requested an explanation of the merits of the proposed setbacks and variations.

Ms Helmy Bakermans queried the location of referenced privacy screening, and if clear details and contacts will be provided to report any issues during the construction of the development. Ms Bakermans told the Authority that the concerns of the developer were taken seriously whereas the concerns raised by submitters, in relation to the non-compliances, were not meaningfully considered. Ms Bakermans expressed concern with the extent of non-

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compliance and encroachment of the proposed development particularly towards the southern boundary and 73 Progress Drive, Nightcliff.

Ms Carly Hibble explained that she was representing herself and also the Body Corporate Committee of 73 Progress Drive. Ms Hibble expressed concerns with how the views of the submissions have been taken into account and balanced against the views of the developer. Ms Hibble highlighted that the report prepared by DAS does not adequately consider the submitters comments, noting the concerns raised were considered acceptable or minimal, and described their building as 4 storeys where it is a 3 storey building.

The Chair noted that the DAS report is not a report prepared by the Authority and it informs the Authorities decision but does not make the decision. The Authority acknowledges that the DAS report incorrectly stated the height of the existing residential development at 73 Progress Drive and confirms that the development is 3 storeys in height.

Ms Hibble advises that there are quite a few non-compliances that have been described as minor but when taken together the non-compliances are substantial and results in quite a significantly more imposing built form than the existing. Ms Hibble highlighted the built form associated with the western wing, above unit 1, will be visually the most imposing element of the proposed development when viewed from 73 Progress Drive.

At the meeting, the Chair noted the 73 Progress Drive was also located in the Land Subject to Storm Surge overlay and asked the submitters present at the meeting about their arrangements in the case of a cyclone.

Ms Bakermans advised that she has had no difficulty with getting in and out, and that she stayed in the building for the last cyclone event.

Ms Hibble noted that there is a large amount of Council land in front of their property that provides a buffer in the event of storm surge.

The Authority provided an opportunity for the applicant to respond to matters raised by submitters.

Mr Mackay explained that the proposed development has been architecturally designed to address the southern boundary through all main building elements achieving the compliant 3 metre setback. Mr Mackay noted that the pedestrian access to the dwellings and the communal open space are located within the 3 metre setback in order to reduce the extent of built form located on the back boundary.

The Chair queried the intended waste management for the proposed development. Mr Mackay explained that the bin area is located along the eastern side of the frontage for ease of access for kerbside pickup and is screened from view the street and neighbours.

The Authority has taken all comments into account and carefully considered the concerns of the submitters. The Authority has also taken into account the

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response provided by the applicant regarding submitters concerns expressed at the meeting.

Concerns relating to residential and streetscape character, overdevelopment and building bulk, storm surge, setbacks and buffers, privacy and overlooking, visual impact, impacts on breezeways and ventilation and open space are addressed in detail at section 3 of these reasons.

In relation to traffic and safety concerns, the Authority notes that the proposed car parking area and accessways comply with the requirements of Clause 5.2.4 (Car Parking) of the NTPS2020. In addition, as requested by the City of Darwin, a condition precedent is applied to the permit requiring a comprehensive Traffic Impact Statement (TIS) and all recommendations implemented, to the requirements of the City of Darwin ensuring that the development avoids adverse impacts on the local road network.

In relation to construction impacts, the Authority highlights that construction techniques and effects are not considered under the NTPS 2020 or the *Planning Act 1999*. The Authority notes there are obligations under *the Building Act 1993* and a standard note is applied to the permit advising the applicant/proponent to contact a Northern Territory registered building certifier to seek a building permit as required by the Northern Territory *Building Act 1993* before commencing any demolition or construction works.

In relation to property values, the Authority advises that fluctuations in property prices are not a relevant consideration in assessing an application under the provisions of the *Planning Act 1999*, or the NTPS 2020.

In relation to consultation concerns, the Authority highlights that neither the *Planning Act 1999* nor the NTPS 2020 requires consultation to be undertaken prior to the lodgement of a development application. The application was publicly exhibited in accordance with the requirements of the *Planning Act 1999*.

In relation to vegetation removal, the Authority notes that the site is in Zone MR and there are no specific vegetation protection requirements applicable to the site.

5. Pursuant to section 51(1)(j) of the *Planning Act 1999*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development.

The Authority notes that the site is generally flat and not affected by Australian Noise Exposure Forecast (ANEF) 20-unit value or greater contour line. The site is located within an area of identified storm surge, and this constraint is considered in detail at section 3 of these reasons.

The overall height and scale of the proposed development is largely consistent with that anticipated in Zone MR. Regarding servicing requirements, the application was circulated to the relevant authorities, and the comments received have been addressed through conditions and advisory notes on the development permit.

Additionally, the Development Coordination Division (who coordinate responses from internal divisions within the Department) of the Department of Lands, Planning and Environment did not identify or raise any issues of concern in relation to land capability.

Subsequently, the Authority considers site to have the capacity to support the proposed development.

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

The Authority notes that amenity is defined in the *Planning Act 1999* as 'in relation to a locality or building, any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable'.

Amenity is considered in the context of the site and its surrounds along with the applicable planning controls. The Authority considers that the proposed development is consistent with the broader intent of Zone MR (Medium Density Residential) to 'provide a range of mid-rise housing options' and is largely consistent with the character of the surrounding area, which includes other dwelling-multiple developments of a similar density and scale.

The Authority considers that the proposed development is consistent with the existing and future amenity of the area for the following reasons:

- The provision of a minimum 1.2m landscaped setback along Progress Drive will improve the appearance of the site and provide amenity to the streetscape.
- Overlooking and privacy impacts are minimised through application of a general condition requiring all fencing to ground level private open space areas to be either screen fenced or fenced and screened with vegetation. All other habitable room windows and balconies are

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unscreened and comply with the minimum setback requirements, which is considered adequate to minimise overlooking impacts.

- Sufficient on-site car parking and appropriately designed accessways are provided in accordance with the requirements of Clause 5.2.4 (Car Parking) of the NTPS2020. In addition, as requested by the City of Darwin, a condition precedent is applied to the permit requiring a comprehensive Traffic Impact Statement (TIS) and all recommendations implemented, to the requirements of the City of Darwin ensuring that the development avoids adverse impacts on the local road network.
- Overall the design, height, setbacks and appearance of the proposed development creates an appropriate level of visual interest, is compatible with the character of the area and will enhance the site's relationship with the public realm.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

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

SUZANNE PHILIP

Chair

10 July 2026