



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING NO. 461 – FRIDAY 7 AUGUST 2026

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

MEMBERS PRESENT: Suzanne Philip (Chair), Marion Guppy, Rod Applegate, Mick Palmer and Peter Pangquee (not present for item 3)

APOLOGIES: None

LEAVE OF ABSENCE: None

OFFICERS PRESENT: Margaret Macintyre (Secretary), Kaleb Thomas, Samay Chandhiok and Amber Roth (Development Assessment Services)

COUNCIL REPRESENTATIVE: Apology

Meeting opened at 11.20 am and closed at 3.50 pm

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

ITEM 1 **TELECOMMUNICATIONS FACILITY WITH 30M HIGH MONOPOLE AND**
PA2026/0217 **ASSOCIATED ANTENNAS AND EQUIPMENT SHELTERS**
SUBJECT SITE **LOT 9775 (28) TAMBLING TERRACE, LYONS, TOWN OF NIGHTCLIFF**
APPLICANT **SAQ CONSULTING PTY LTD**

Applicant – Mark Baade (SAQ Consulting Pty Ltd) attended.

Submitter Nick Kirlew (on behalf of Plan: The Planning Action Network Inc.) attended via a Microsoft Teams link

RESOLVED
47/26

That the Development Consent Authority (the Authority), pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 9775 (28) Tambling Terrace, Lyons, Town of Nightcliff for the purpose of a telecommunications facility comprising a 30m high monopole and associated antennas and equipment shelters, subject to the following conditions:

1. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
2. The owner of the land must enter into agreements with the relevant authorities for the provision of electricity services to each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
Please refer to notation 1 for further information.
3. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
4. 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.

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. Darwin International Airport advises that separate requests for assessment and approval must be submitted to Darwin International Airport for any cranes used during construction that will infringe on either the Obstacle

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Limitation Surfaces (OLS) or Procedures for Air Navigation Services – Operations (PANS-OPS) surfaces for Darwin Airport.

3. 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.

REASONS FOR THE DECISION

1. The application sought consent for a telecommunications facility comprising a 30m high monopole and associated antennas and equipment shelters at Lot 9775 (28) Tambling Terrace, Lyons, Town of Nightcliff (the site). The proposed development is located within the Zone OR (Organised Recreation) portion of the site and is intended to improve Optus 4G and 5G network coverage and capacity within the surrounding area.

At the meeting, Mr Mark Baade (SAQ Consulting, the applicant) advised that Waveconn Operations is a neutral-host infrastructure provider, with Optus as the initial carrier. The facility has been designed with sufficient compound space and structural capacity to accommodate future co-location by other telecommunications carriers.

Mr Peter Pangquee, a member of the Authority, sought clarification regarding alternative sites. Mr Baade advised that suitable alternatives within the predominantly residential locality were limited and that the proposed location utilises an otherwise unused portion of the large site without interfering with its recreational function. Existing vegetation also provides screening from nearby residences. Ms Suzanne Philip, Chair of the Authority, noted that the Northern Territory Planning Scheme 2020 (NTPS2020) no longer requires consideration of three alternative sites for telecommunications facilities.

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 NTPS2020 applies to the land and the proposed telecommunications facility requires consent under Clause 1.8 (When development consent is required). It is identified as Impact Assessable under Clause 1.8(1)(c)(i); therefore, the Strategic Framework (Darwin Regional Land Use Plan 2015), Zone OR (Organised Recreation) purpose and outcomes, and relevant development requirements under Part 5, including 5.2.4 (Car Parking Spaces), 5.2.5 (Loading Bays) and 5.8.10 (Telecommunications Facility), need to be considered.

The Authority notes that the application has been assessed against the above-mentioned provisions of the NTPS 2020 and that the proposal complies with all relevant requirements.

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Clause 1.10(4) of the NTPS 2020 states that *in considering an application for a use or development identified as Impact Assessable the consent authority must take into account all of the following:*

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

The Authority notes the assessment against Clause 1.10(4) of the NTPS 2020, as set out below.

In response to subclause 1.10(4)(1), Part 5 of the NTPS 2020 has been considered. Clauses 5.2.4 (Car Parking), 5.2.5 (Loading Bays) and 5.8.10 (Telecommunications Facility) are applicable to the proposal and the development complies with their requirements.

In response to subclause 1.10(4)(2), no overlays under Part 3 of the NTPS 2020 apply to the site.

In response to subclause 1.10(4)(3), the proposal is considered consistent with the purpose and relevant outcomes of Clause 4.18 Zone OR (Organised Recreation). The 64m² compound is located outside the established sporting areas and adjacent to the existing club building, allowing the organised recreation activities on the broader site to continue without displacement or material conflict. The facility is located approximately 20m west of Danimila Terrace, with existing vegetation screening the ground-level infrastructure from the road and surrounding area. When viewed from the west, the existing club building provides further screening from the car parking area and sporting grounds. Access will utilise the existing arrangements from Danimila Terrace and, given the unmanned nature of the facility and infrequent maintenance visits, no material impact on the local road network is anticipated. Accordingly, the proposal is consistent with the purpose and relevant outcomes of Zone OR.

In response to subclause 1.10(4)(4), the Darwin Regional Land Use Plan (DRLUP) 2015 applies to the development site and identifies the site as Urban / Peri-Urban. The proposed telecommunications facility will improve 4G and 5G network coverage and capacity within Lyons and surrounding areas, supporting telecommunications services for the established urban community. The facility occupies a small portion of the broader site, is located outside the existing sporting areas and does not require vegetation removal, allowing the established recreational function of the land to continue. The proposed telecommunications facility is consistent with the strategic intent of the DRLUP by supporting the efficient provision of telecommunications

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infrastructure and services within an established Urban / Peri-Urban Residential area.

3. 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 26 June and 10 July 2026. One public submission was received during the exhibition period under Section 49 of the *Planning Act 1999*.

The Authority notes that comments and concerns raised were in relation to telecommunications infrastructure not adopting a coordinated, shared-infrastructure approach and not co-locating servicing carriers; fragmentation of Zone OR land; consideration of existing sports lighting towers as an alternative location; impact on open visual character of the recreation area and requested the facility accommodate additional telecommunication providers, an acoustic audit and a 1.5m wide native landscaping buffer around the compound.

In addition to the written submission, the Authority heard from the submitter present at the meeting through online teleconference. Mr Nick Kirlew on behalf of Plan: the Planning Action Network Inc. spoke to his submission and requested consideration of a condition requiring the facility to accommodate additional carriers. Mr Kirlew also raised concerns regarding the use of organised recreation land, the absence of additional landscaping and potential noise impacts on nearby residents.

In response, Mr Baade reiterated that future co-location forms part of Waveconn's business model and advised that the applicant would accept a co-location condition if considered appropriate by the Authority. He advised that existing vegetation provides substantial screening and additional landscaping would provide limited practical benefit. Regarding noise, Mr Baade advised that the equipment cabinets would use cooling fans rather than air-conditioning and would be required to comply with applicable NT EPA noise requirements.

The Chair noted that compliance with applicable environmental noise standards is a statutory requirement under other legislation and sought clarification regarding consultation with nearby residents. Mr Baade advised that consultation occurred through the development application exhibition process and that no submissions were received from nearby residents.

The submission received and evidence heard at the meeting have been taken into account by the Authority and carefully considered in the context of this application.

Concerns relating to not providing a coordinated, shared telecommunications infrastructure approach and the request for co-location of carriers and for the existing sports lighting towers as an alternative location, are not specific

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requirements within the *Planning Act 1999* or the NTPS 2020, and the Authority notes it can only consider the application before it.

Concerns regarding the proposed developments alignment with the purpose and outcomes of Zone OR, impact on the visual character of the recreation area and request for a landscaping buffer are addressed at section 2 of these reasons.

4. 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 flat, is not identified as being subject to primary or secondary storm surge or flooding and is not affected by the Australian Noise Exposure Forecast (ANEF) 2043 contour. The proposed telecommunications facility occupies a small 64m² compound within the broader 12.90 ha site and does not require vegetation removal.

The Development Coordination Branch, Land Resources Division of the Department of Lands, Planning and Environment (DLPE) did not identify any issues concerning the physical capability of the land to support the proposed development.

Accordingly, the land is considered capable of supporting the proposed telecommunications facility without adversely affecting the physical characteristics of the site or surrounding land.

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

The Authority notes that the primary amenity consideration is whether the facility's visual presence and operation would detract from the qualities that make the locality harmonious, pleasant, and enjoyable. The facility is located behind the existing club building, approximately 20m west of Danimila Terrace, with residential land separated from the site by the road reserve. Existing vegetation screens the ground-level equipment, while the compact headframe and non-reflective finish reduce the visual prominence of the 30m monopole. The facility is unmanned and requires minimal maintenance visits; therefore, no material traffic impacts are anticipated. Accordingly, the proposal is not expected to unreasonably detract from the existing or future amenity of the locality.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

ITEM 2
PA2026/0187
SUBJECT SITE
APPLICANT

EXCAVATION AND FILL (EROSION GULLY REMEDIATION)
LOT 4873 (577) LEE POINT ROAD, LEE POINT, TOWN OF NIGHTCLIFF
CUNNINGTON ROSSE TOWN PLANNING AND CONSULTING

Applicant – Brad Cunnington and Rory Mackay (Cunnington Rosse Town Planning and Consulting) and Mikaeli Applin (Defence Housing Australia) attended.

Submitters who attended via a teams link – Dr Nancy Batenburg; and Nick Kirlew (on behalf of PAn: The Planning Action Network Inc).

Submitters who attended in person:- Graham Kirby on behalf of Friends of Casuarina Coastal Reserve Inc, Christine Cox, David Percival, Justin Tutty, Terrance Sirianni and on behalf of Friends of Lee Point Ian Redmond and Gayle Laidlaw.

Interested party Grisha Leeman attended in person.

RESOLVED
48/26

That, pursuant to section 53(a) of the *Planning Act 1999*, the Development Consent Authority (the Authority) consent to the application to develop Lot 4873 (577) Lee Point Road, Lee Point, Town of Nightcliff for the purpose of excavation and fill (erosion gully remediation), subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the commencement of works (including site preparation), the applicant is to prepare a site construction management plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP should specifically address the impact to Council owned public spaces and include a waste management plan for disposal of waste to Shoal Bay, traffic control for affected City of Darwin roads, haulage routes, stormwater drainage and sediment control, use of City of Darwin land, and how this land will be managed during the construction phase.
2. Prior to the commencement of works (including site preparation), a Type 2 Erosion and Sediment Control Plan (ESCP) must be developed in accordance with the Department of Lands, Planning and Environment (DLPE) ESCP Procedures. The ESCP must be certified by a suitably qualified and experienced professional and must be submitted to Development Assessment Services (via email: das.ntg@nt.gov.au). Please refer to notes 1, 2 and 3 for further information.

GENERAL CONDITIONS

3. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
4. 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.

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5. At completion of works, certification must be provided by a suitably qualified and experienced professional regarding satisfactory implementation of permanent erosion and sediment control measures and site stabilisation. This certification must be submitted to Development Assessment Services via email: das.ntg@nt.gov.au.
6. Should the certified Type 2 ESCP require amendment, the revised ESCP must be certified by a suitably qualified and experienced professional and submitted to Development Assessment Services (via email: das.ntg@nt.gov.au).
7. All works relating to this permit must be undertaken in accordance with the certified Type 2 ESCP.

NOTES

1. The DLPE ESCP Procedures factsheet is available at: <https://environment.nt.gov.au/rangelands/technical-notes-and-fact-sheets/land-management-technical-notes-and-fact-sheets>.
2. A suitably qualified and experienced professional in erosion and sediment control as defined by the International Erosion Control Association (IECA) Australasia at <https://www.austieca.com.au/rsp-esc/suitably-qualified-professional>.
3. Information regarding erosion and sediment control can be obtained from the IECA Best Practice Erosion and Sediment Control 2008 books available at www.austieca.com.au and Land Management Factsheets available at <https://nt.gov.au/environment/soil-land-vegetation>. For further advice, contact the Development Coordination Branch: (08) 8999 4446.
4. The permit holder is advised that it is an offence to disturb or destroy prescribed archaeological places without consent under the *Heritage Act 2011*. Should any heritage or archaeological material be discovered during the clearing operation, cease operation and please contact the Heritage Branch of the Department of Lands, Planning and Environment.
5. All land in the Northern Territory is subject to the *Weeds Management Act 2001* (WM Act). The WM Act describes the legal requirements and responsibilities that apply to owners and occupiers of land regarding declared weeds. Section 9 general duties include the requirement to take all reasonable measures to prevent land being infested with a declared weed and to prevent a declared weed from spreading. There are additional duties including a prohibition on buying, selling, cultivating, moving or propagating any declared weed and the requirement to notify the Weed Management Branch of a declared weed not previously present on the land within 14 days of detection.
Should you require further weed management advice contact the weed management branch by phone on (08) 8999 4567 or by email to weedinfo@nt.gov.au.

6. There are statutory obligations under the *Waste Management and Pollution Control Act 1998* (the Act), that require all persons to take all measures that are reasonable and practicable to prevent or minimise pollution or environmental harm and reduce the amount of waste. The proponent is required to comply at all times with the Act, including the General Environmental Duty under Section 12 of the Act. There is also a requirement to obtain an authorisation prior to conducting any of the activities listed in Schedule 2 of the Act. Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority website at <https://ntepa.nt.gov.au/publications-and-advice/environmental-management>.

The Act, administered by the Northern Territory Environment Protection Authority, is separate to and not reduced or affected in any way by other legislation administered by other Departments or Authorities. The Environment Operations Branch of the Environment Division may take enforcement action or issue statutory instruments should there be non-compliance with the Act.

REASONS FOR THE DECISION

1. The application is for excavation and fill (erosion gully remediation) at Lot 4873 (577) Lee Point Road, Lee Point, Town of Nightcliff. The 81.33 ha lot (the site) is in Zones FD (Future Development) and CN (Conservation) of the Northern Territory Planning Scheme 2020 (NTPS2020). Notwithstanding, Ms Suzanne Philip, Chair of the Authority, clarified that the areas subject to this application (the development sites) are located towards the western side of the property and are all located within Zone CN, on the western side of a small escarpment which extends across the majority of the site.

The application seeks approval for excavation and fill works to remediate historic erosion gullies within the Zone CN portion of the site. The erosion areas consist of several large gullies in the south-western part of the site (stage 1) and smaller erosion features in the north-west (stage 2) near former Defence infrastructure. The application states that the proposed rehabilitation works are required under the Project Development Agreement between Defence Housing Australia (DHA) and the Northern Territory Government, which requires rehabilitation of the conservation land before it is transferred into public ownership and incorporated into the Casuarina Coastal Reserve.

The proposed works involve reshaping and stabilising the gullies, importing clean fill material sourced from the adjacent Lee Point residential development works (specifically identified as from the development of a stormwater detention basin), restoring ground levels to match the surrounding landscape, and revegetating disturbed areas with native species. Limited vegetation clearing will be necessary to provide safe access for machinery and to undertake the earthworks, however clearing is proposed to be minimised, significant trees retained where practicable, and all disturbed areas rehabilitated following construction. The works are planned to occur

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during the dry season and will be supported by erosion and sediment control measures to prevent further environmental impacts.

A key objective of the application is to address long-standing erosion issues that have contributed excessive sediment into the receiving environment, namely Sandy Creek and the Casuarina Coastal Reserve. The rehabilitation works are intended to restore natural landforms, reduce sediment movement, improve downstream water quality, and result in a stable landform. In conjunction with the broader Lee Point residential development, future stormwater management infrastructure will divert upstream runoff away from the rehabilitated gullies, significantly reducing the likelihood of erosion reoccurring once the works are complete.

The meeting was attended by Mr Brad Cunnington (Cunnington Rosse Town Planning and Consulting, the applicant), who provided an overview of the application, and the history of the Lee Point residential development (also known as '2CRU'). Mr Cunnington advised that the proposed works would enable the landowner, DHA, to remediate the gullies, and further advised that the gully works consist of benching the gullies, compacting and stabilising of imported fill, then rehabilitating the worksites. Mr Cunnington further advised that these works are part of the project development agreement relating to the Lee Point residential development and will aide in the integration to the Zone CN area of the site into the Casuarina Coastal Reserve.

Ms Marion Guppy, a member of the Authority, identified that the gullies had formed over a number of years. Ms Guppy queried Mr Cunnington as to whether the proponent was sure that measures would be implemented to ensure that the identified gullies would not be subject to future erosion.

Mr Cunnington advised that the proposed works at the site and in the vicinity, such as the nearby stormwater detention basin, would adequately reduce the amount of overland flow being directed into these gullies. Mr Cunnington advised that the proposed works will allow for site-borne soil to be used on-site. Mr Cunnington advised that the site has a history of development and use by Defence, and that these uses and disturbance would have contributed to excessive run-off being generated. Mr Cunnington further clarified that the detention basin will capture the urban flows and divert them around the site of the existing gullies, noting that the site currently funnels all water from 2CRU into this area. Mr Cunnington advised that in relation to concerns around the sequencing of works, that even in isolation, the construction and implementation of erosion and sediment control measures will still provide a greater protection than the existing situation. Mr Cunnington further highlighted that site photos provided with the application demonstrate the significant issues associated with the gullies.

2. At the commencement of the meeting, the Authority dealt with a concern raised by Mr Graham Kirby as to who Community Members of the Authority, Mr Peter Panquee and Mr Mick Parlmer, represent at this meeting.

The Chair advised that the Authority is composed of her, Specialist Members and Community Members. Such members do not represent any body or group but are appointed to act as members by the Minister pursuant to the terms of the *Planning Act 1999*. In the case of Community Members nominations are received from the relevant local government council and the Minister makes appointments from those nominations. The Chair confirmed that Mr Pangquee and Mr Palmer act as members of the Authority and not in their capacity as Councillors at the City of Darwin. The Authority notes that the *Planning Act 1999* section 98A requires that community members must make decisions on a development application independently of any direction or decision from the local government council.

3. 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 NTPS2020 applies to the land and excavation and fill (erosion gully remediation) requires consent under clause 1.8 (When development consent is required). It is identified as *Impact Assessable* under clause 1.8(1)(c)(i); therefore, the Lee Point Planning Principles and Area Plan (being the most detailed strategic framework document), the zone purpose and outcomes of Zone CN (Conservation), and clauses 5.2.1 (General Height Control), 5.2.4 (Car Parking), 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR) and 5.8.9 (Excavation and Fill), need to be considered.

The Authority notes the assessment completed by DAS which found that the proposal complies with the relevant requirements of the NTPS2020.

A summary of the relevant parts of the NTPS2020 is as follows:

Part 2 – Strategic framework

Lee Point Planning Principles and Area Plan

The purpose of the Lee Point Planning Principles and Area Plan (LPPAP) is to *Preserve and integrate areas and items of environmental and heritage significance by:*

- (a) *limiting development below the escarpment to community uses, tourism activity and pedestrian /cycle tracks that protect the environmental values of the coastal reserve and adjoining vegetation types;*
- (b) *implementing appropriate environmental and engineering measures including but not limited to the application of principles of water sensitive urban design;*

The Authority considers that the application supports this outcome as the proposed infilling and stabilisation works will arrest the existing erosion which is taking place. The works are reasonably expected to reduce sediment loss, improve the capacity for native vegetation establishment, and promote the gradual re-establishment of habitat characteristics over time. As a result,

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the proposal is expected to deliver a net environmental benefit, with the long-term ecological outcomes supporting the outcomes envisaged by the LPPAP.

Part 3 – Overlays

Clause 3.2 (CNV – Clearing of Native Vegetation)

The Authority notes that the purpose of this overlay is to *Ensure that clearing of native vegetation does not unreasonably contribute to environmental degradation of the locality.*

While this application on balance proposes the rehabilitation of gullies, the application states that vegetation may be removed where necessary as part of the rehabilitation, and for site access.

Administratively, subclause 5 states *This Overlay does not apply to the clearing of native vegetation that: (a) is required or controlled under any Act in force in the Territory, including but not limited to: ... (ii) Environment Protection and Biodiversity Conservation Act 1999 (Cth)....*

The application has provided evidence that EPBC 2015/7591 was varied on 27 July 2025 to include condition 2B, which states *The approval holder may undertake clearing in the area identified in Attachment D2 as Casuarina Coastal Reserve and CCR for the purpose of rehabilitating existing erosion gullies and maintenance of existing bike tracks.*

The Authority considers that sufficient evidence has been provided which demonstrates that the clearing of native vegetation as part of this application is a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999*, and therefore not subject to the requirements of this overlay.

Clause 3.7 (LSSS – Land Subject to Storm Surge)

The Authority notes that purpose of this overlay is to *Identify areas with a known risk of inundation from primary or secondary storm surges and ensure that development in these areas demonstrates adequate measures to minimise the associated the risk to people, damage to property and costs to the general community caused by storm surge.*

Of relevance, clause 3.7(8) requires that *Development in the PSSA should be limited to uses such as open space, recreation, non-essential public facilities (wastewater treatment works excepted) and short-stay tourist camping/caravan areas*, where the western boundary of the site, and possibly a small extent of identified gullies are located within the primary and secondary storm surge area.

The Authority notes that the application does not propose the construction of any permanent structures or establishment of ongoing land uses within land identified as being subject to storm surges. While the application may

infill gullies within the secondary storm surge zone, this infilling is not considered likely to be of a scale that would alter storm surge extents in the locality. As such, the application is considered acceptable against the requirements of this overlay.

Part 4 – Zoning

Clause 4.23 (Zone CN – Conservation)

The Authority notes that the purpose of this zone is to *Conserve and protect the flora, fauna and character of natural areas*.

The proposed rehabilitation and subsequent stabilisation of erosion gullies directly support the purpose of Zone CN by conserving and protecting the environmental values of the site. The active erosion taking place at the development sites represents an ongoing threat to the downstream environment, resulting in the loss of soils, degradation of vegetation communities and the transport of sediment to adjacent habitats and watercourses. By infilling and stabilising the gullies with local material, the proposal will arrest these degradation processes, reduce the potential for further environmental decline and assist in maintaining the ecological integrity of the broader natural area. The works are therefore directed towards protecting existing flora, fauna habitat and landscape values that may otherwise be adversely affected by continued erosion.

Of particular note is zone outcome 6(d), which states *Development is located, designed and managed to: ... (d) minimise excavation and filling and other changes to landform*.

The application is considered likely to facilitate the restoration of the site to its former natural character over time. Following stabilisation of the infilled gullies, the rehabilitated landform will provide improved conditions for the establishment and regeneration of native vegetation, contributing to the restoration of habitat values and ecological function. The works are intended to return the site to a more stable and self-sustaining condition that is consistent with its environmental values.

The Authority considers that, on balance, the rehabilitation of the gullies will further the intention of Zone CN by promoting the long-term conservation and protection of the flora, fauna and character of the natural area.

Part 5 – Development requirements

While the application is determined to be compliant with the other identified relevant development requirements, the Authority further considered clause 5.8.9 (Excavation and Fill).

Clause 5.8.9 (Excavation and Fill)

The Authority notes that the purpose of this clause is to *Ensure that the excavation or filling of land does not adversely affect adjacent land or waters, or*

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the quality of adjacent waterways, and associated riparian areas and is suited to the intended future use of the site.

Of relevance are subclauses 3 and 4. Subclause 3 requires that *Provide a hydrological assessment of potential upstream and downstream impacts of the excavation or filling.*

In response to subclause 3, the application provided a technical memorandum completed by Byrne consulting. This technical memorandum detailed the proposed methodology which would minimise the loss of existing vegetation while remediating the gullies, and erosion and sediment controls which can be implemented to prevent adverse outcomes during remediation works. The technical memorandum states –

The finished surface will be designed to tie in with the surrounding topography, including maintaining natural depressions and drainage lines where appropriate. In relation to the upstream and downstream impacts of the proposed works.

The Works will have no adverse impacts on upstream catchments. Existing hydrological flow paths will be maintained, until such time that upstream flow paths are diverted around the Site during the future 2CRU Subdivision works.

The Works will have a positive impact on downstream environments, by effectively stabilising the Site and mitigating the risk of ongoing erosion. Existing hydrological flow paths will be maintained, until such time that upstream flow paths are diverted around the Site during the future 2CRU Subdivision works. Existing storm water flow volumes will be maintained into CCR and Sandy Creek.

The above is considered an acceptable assessment of the upstream and downstream impacts of the proposed works.

Subclause 4 then requires that an application *Provide a plan of management to control erosion and sedimentation, particularly of creeks and riparian areas.*

In response to subclause 4, while the application included an erosion and sediment control plan prepared by a certified professional in erosion and sediment control, its implementation and ongoing compliance can be addressed through standard permit conditions.

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 two weeks, between 5 June and 19 June 2026. Ten (10) public submissions were received under section 49(1) of the *Planning Act 1999*, with respect to this application.

Of the total submissions received, 8 submitters expressed an objection to the application, and 2 expressed conditional support for the proposal subject to comments and recommendations.

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The main thematic comments and concerns identified include:

1. Lack of information about the future detention basin and drainage system.
2. Concern that remediation depends on infrastructure not yet constructed.
3. Risks to Sandy Creek, mangroves and Casuarina Coastal Reserve and concerns about erosion, sedimentation and hydrology.
4. Questions regarding environmental assessment and EPBC compliance.
5. Requests for independent expert review.
6. Concerns about habitat loss and conservation outcomes.
7. Desire for greater consultation, including with Larrakia traditional owners.
8. Need for clearer rehabilitation, monitoring and long-term management measures.

The Authority's consideration of the themes raised in the written public submissions is provided below.

1. *Lack of information about the future detention basin and drainage system.*

The Authority highlights that there are no requirements relevant to this application within the *Planning Act 1999* or NTPS2020 which mandate consideration of the proposed stormwater arrangements of the Lee Point residential development, noting that the development site is confined to the Zone CN portion of the site and the application relates to the filling of the erosion gullies.

In addition, it is noted that clause 3(c)(ii) of Schedule 3 (Exceptions) of the NTPS2020 states *This Planning Scheme does not prevent any of the following: ... (c) the construction, alteration, repair or maintenance of: ... ii. public infrastructure for stormwater drainage and flood mitigation.*

2. *Concern that remediation depends on infrastructure not yet constructed.*

The application states that the fill material will be sourced from spoil produced as part of the construction of a nearby detention basin. The Authority notes that there are no specific requirements within the *Planning Act 1999* or NTPS2020 that need to be considered in relation to such development outside of the current application. Notwithstanding, the Authority considers that this approval simply provides the developer with an option for managing this spoil material.

3. *Risks to Sandy Creek, mangroves and Casuarina Coastal Reserve and concerns about erosion, sedimentation and hydrology.*

The Authority notes that the proposed works are specifically intended to address existing land degradation associated with active erosion gullies, with

sediment currently being deposited in downstream environments. In the absence of intervention, continued erosion is likely to result in further soil instability and adverse impacts on downstream environmental quality. Any short-term disturbance associated with construction activities will be localised and temporary in nature and will be managed through the implementation of appropriate environmental controls and rehabilitation measures.

4. Questions regarding environmental assessment and EPBC compliance.

The application provided evidence that the permit which currently controls environmental impacts at the site under the *Environment Protection and Biodiversity Conservation Act 1999* was varied to specifically reference the gully rehabilitation works. In relation to other environmental assessment concerns, The Authority highlights that no adverse comments were received from the environmental divisions of the Department of Lands, Planning and Environment.

5. Requests for independent expert review.

The Authority notes that there are no specific requirements within the *Planning Act 1999* or NTPS2020 that mandating subject matter experts to review applications, or elements thereof.

6. Concerns about habitat loss and conservation outcomes.

The application seeks to re-utilise site-borne spoil produced from the excavation of a stormwater detention basin for the rehabilitation of gullies formed from uncontrolled erosion. The Authority considers proposed infilling and stabilisation works are necessary to arrest the degradation process and protect the long-term ecological function of the site. Any short-term disturbance associated with construction activities will be localised and temporary in nature and will be managed through the implementation of appropriate environmental controls and rehabilitation measures.

7. Desire for greater consultation, including with Larrakia traditional owners.

The Authority highlights that there are no requirements within the *Planning Act 1999* or NTPS2020 mandating consultation to be undertaken by an applicant prior to lodging an application. Further, it is noted that, with the exception of the local government council and any service authorities the consent authority considers relevant, there are no requirements within the *Planning Act 1999* or NTPS2020 in relation to whom an application must be circulated to. The Planning Act requirements are limited to Public Notification as detailed in section 47. Those requirements were met by the applicant.

8. Need for clearer rehabilitation, monitoring and long-term management measures.

The Authority has determined that it is not necessary or proportionate to impose permit conditions requiring such measures in this instance. The

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proposal is limited in scale and nature, comprising rehabilitation works intended to stabilise existing erosion features and facilitate natural regeneration of the site. The anticipated impacts are localised and relatively low risk, and there is no evidence to suggest that ongoing management, monitoring or reporting requirements are warranted to achieve the objectives of the development permit. Imposing extensive post-construction obligations would place an unreasonable burden on the proponent that is disproportionate to the scale, complexity and potential environmental effects of the works. As such, the Authority considers that permit conditions requiring the implementation of any monitoring or long-term management as part of any development permit issued under the *Planning Act 1999* are unnecessary.

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

Mr Nick Kirlew (on behalf of PPlan: The Planning Action Network Inc) highlighted concerns around how development such as this impacts on the community. Mr Kirlew advised that DHA has only met with the local community twice. Mr Kirlew emphasised that was little information in the public domain about what Stage 2 of the Lee Point residential development comprises, and that the community do not understand the engineering, noting that PPlan would need to employ engineers to confirm engineering elements. Mr Kirlew opined that DHA have a poor record of land management at the site, as demonstrated through land clearing, sedimentation of the Sandy Creek and through bushfires taking place at the site. Mr Kirlew advised that any positive determination would be premature. Mr Kirlew queried what the federal government think about this development and emphasised that PPlan is not convinced that the federal government is aware of the proposal. Mr Kirlew also raised concerns that the variation to the EPBC approval was made for a specific matter and may not have been dealt with correctly. Mr Kirlew queried whether this application should have been referred to a separate approval body and emphasised that PPlan wants to be convinced that this process is correct. Mr Kirlew advised that the Authority is being asked to approve the proposed works despite insufficient information provided with the application. Mr Kirlew emphasised that PPlan is seeking accountability, such as confirmation that Sandy Creek will not be damaged, and that DHA would rectify any damages.

Mr Graham Kirby queried the expected timing of any works and further queried, if works were approved and not completed by the commencement of the 2026-27 wet season, would interim erosion and sediment control measures be installed. Mr Cunningham responded that the site has a current erosion and sediment control plan, but otherwise had no comment in relation to this matter. Mr Kirby noted the existing nature of the gullies and emphasised their risk to children and other members of the community. Mr Kirby stated that there is no warning signage, and that such signage should be installed at the area. Mr Kirby subsequently queried the volumetric size of the gullies, and whether sufficient material is expected to be excavated for the gully remediation. Mr Cunningham responded that the proposed

stormwater detention basin is larger than the volume of the gullies, however, noting that additional fill would be sought if insufficient spoil was excavated. It was not a matter of making the detention basin of a size to fit the required fill.

Mr Ian Redmond identified that a common theme in the public submissions related to inadequate information about stormwater management. Mr Redmond states that no information about the preliminary design of the stormwater drainage, dimensions thereof, or the location of the detention pipe will outfall into the Casuarina Coastal Reserve was provided with the application. Mr Redmond stated that while the purpose of the application is to restore the area, the works will instead remove as much quality habitat as it will restore. In relation to this matter, Mr Redmond raised concerns regarding runoff and discharge into Sandy Creek. The Chair subsequently clarified that stormwater management arrangements including the design and construction of any stormwater detention basins or piping are exempt under the NTPS2020, noting Schedule 3 Exceptions of the NTPS2020. Mr Cunningham further clarified that the site of the stormwater detention basin has been identified and that a stormwater plan has been approved by the City of Darwin. Mr Cunningham noted that there are no impediments for DHA to progress the stormwater arrangements under the *Planning Act 1999*. Notwithstanding, Mr Cunningham noted that detailed construction approval is an ongoing process, and that while there are engineering elements being confirmed, these will be dealt with by the relevant service authorities and will not require consent from the Authority.

The Chair clarified that the Authority is a creature of statute, with their power and responsibilities identified within the *Planning Act 1999* and principles of administrative law. The Chair emphasises that the application being considered relates to the excavation and fill at the identified development sites, specifically in relation to the infilling of gullies as identified in the application. Mr Redmond then queried the interaction of the application with Zone CN outcome 6(d), and how the excavation element of the relevant development requirement was being considered. The Chair clarified that the Authority is considering an application for the infilling of gullies, and that other matters relating to the Lee Point residential development including associated stormwater management do not form part of this application. The Chair further explained that while the relevant development requirement is titled 'excavation and fill', that this is only a clause title, and not reflective of any requirement for both the excavated source material and destination fill site to be considered as part of one application. Mr Redmond queried the Authority on what opportunity there is for the public to have comment on the stormwater management matters in the area. Mr Redmond then identified that alternative stormwater management options could be considered which improve environmental outcomes. The Chair explained that, for the reasons as detailed at this meeting, stormwater is a matter for other service authorities. The Chair further clarified that the Authority does not consider alternative locations for development and must consider the application as submitted. Notwithstanding, Mr Redmond stated any stormwater outfalls should not be located within mangrove forests, and that an existing open, unlined drain may be a more cost-effective solution.

Mr Redmond stated that there were other sources of spoil located on-site that could be utilised for the infilling of gullies. Mr Cunningham responded that there is established case law about the ability of the Authority to consider alternative sites than that proposed in an application. Notwithstanding, Mr Cunningham emphasised that a significant body of work went into the application to ensure that the best outcome is being achieved from both an engineering and environmental approach, and that controls will be put in place to minimise the amount of clearing, such as clearly defined no go areas. Mr Cunningham opined that the minor clearing and subsequent rehabilitation of the areas around the gullies will improve environmental outcomes. Mr Cunningham further noted that the Flora and Fauna Division did not raise any concerns in relation to this application.

Mr Tutty acknowledged that the erosion at the site is serious, and that works need to occur. However, Mr Tutty raised concerns that section 51(2) of the *Planning Act 1999* has not been appropriately considered and emphasised that the Lee Point residential development was considered under the *Environmental Assessment Act 1982*, and that the application seeks significant variation to what was considered and approved by the NT EPA.

The Authority note that section 51(2) of the Act states *If a development proposal is required to be referred to the NT EPA under Part 4, Division 3 of the Environment Protection Act 2019, the consent authority must not make a decision under this Division in relation to a development application for the proposal unless:*

- (a) the NT EPA has determined that an environmental impact assessment is not required under that Act for that proposal; or*
- (b) if the NT EPA has determined that an environmental impact assessment is required – an environmental approval has been granted under that Act for the proposal and the decision is consistent with that approval; or*
- (c) the Environment Protection Act 2019 otherwise permits the making of the decision.*

Mr Cunningham advised that in relation to the references to different legislation, and to the suggestion that the proposed works represent a significant variation to an existing approval, their position is that 51(2) does not prevent the Authority from making a determination under the *Planning Act 1999*. Mr Cunningham advised that the NT EPA assessment report for the Lee Point residential development included reference to the gully erosion works, and as such, these works were identified and considered at that time. Mr Cunningham also reiterated that the relevant approval under the *Environment Protection and Biodiversity Conservation Act 1999* states the gully areas can be cleared and remediated. The Authority confirms that the application does not require referral to the NT EPA as the relevant body, the Environment Division of the Department of Lands, Planning and Environment, which performs functions on behalf of the NT EPA, did not require such referral. As such, the relevant trigger for the application of Section 51(2) has not occurred and the Authority may make a decision in relation to this application.

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Mr Tutty queried what measures the application takes to minimise the change in landform, in accordance with Zone CN outcome 6(d), and highlighted that the Authority must be satisfied that the application achieves this outcome. Mr Tutty also queried the volume estimations for the excavation and fill; that the memo states the hydrological flows will be maintained at the site; that if the friends of the Casuarina Coastal Reserve submission indicated that 2027 is the earliest opportunity works can start, then how will the site be made safe for the duration of the 2026-27 wet season; the applicant's response about conditions precedent in relation to the Lee Point residential development being dealt with; that the erosion and sediment control plan provided the application is only for the dry season. Mr Tutty further averred that the Authority must consider the stormwater detention basin design. Mr Tutty also queried the proposed revegetation of the gullies and noted that plans showing this have not been provided with the application, and that this was suitable grounds for deferring any determination of the application. Mr Cunningham responded that requirements for rehabilitation can be addressed through reference to any drawings endorsed with a development permit.

Mr Terrance Sirianni advised that many of his initial queries in relation to this application have been addressed. Notwithstanding, Mr Sirianni made the following queries:

1. Can the applicant confirm where the material will be sourced from, and clarify how will it be found suitable.
2. If contamination is found within the source material, what is the procedure. Mr Sirianni queried whether works will cease and whether the contaminated material be assessed.
3. Will any noise or dust monitoring be required, and if so, by whom and when? Mr Sirianni further queried if the community experience any issues, who can they contact, and whether a number be provided for the public.

In response, Mr Cunningham advised the following:

1. Spoil material will be virgin excavated material sourced from the adjacent development of a stormwater detention basis, and that previous contamination investigations have found that there is no reason to suspect contamination at that area.
2. There are obligations under relevant workplace health and safety and waste management legislation and regulations to manage unexpected finds.
3. Dust monitoring is dealt with under workplace health and safety and waste management legislation and regulations. Mr Cunningham further clarified that there are no specific details available at this time as this will be done by any future contractor engaged to undertake the works.

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Mr David Percival queried whether the fill will be taken from the 2CRU site, and advised that plenty of asbestos containing materials (ACM) have been encountered at the site. Mr Cunningham responded that previous investigations found that ACM was associated with asbestos in structures and contamination remediation works have removed these structures from site. Mr Cunningham further advised that an environmental consultant has been engaged in relation to the Lee Point residential development, and processes are in place to ensure this is being managed. In addition, the Chair advised that there are obligations in relation to this matter under other legislation, and, while noting the concern of Mr Percival, considers that the enforcement of external legislation is beyond the remit of the Authority and not the subject matter for a development permit issued under the *Planning Act 1999*. Mr Percival acknowledged this situation and reiterated his concern that this is an important matter for the Authority to consider. Mr Percival also queried if there had been consideration for a scenario in which revegetation of the gullies was not successful. Mr Percival noted the difficult climate and that ongoing irrigation would be required to ensure that revegetation was successful. In response, the Chair advised that works being undertaken in accordance with a permit are subject to the conditions of that permit, and as such, are an enforceable matter.

Ms Christine Cox stated her support for the comments and concerns that had been raised at the meeting. Ms Cox acknowledged that the remediation of the sites is important but stressed that there are situations where mistakes have been made, so wants to ensure this is done better. Ms Cox noted that everything should be adequately considered. Ms Cox advised that she has lived in the locality, worked with locals, and emphasised that any works at the site are worth doing well. Ms Cox summarised that there are still so many outstanding questions and considerations.

The submissions received and evidence heard at the meeting have been taken into account by the Authority and carefully considered in the context of this application. For the reasons discussed above, the Authority considers that matters raised in the submissions and at the meeting are adequately dealt with or are addressed by the inclusion of permit conditions.

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

The Authority notes that the proposed infilling of the identified gullies to natural ground level will improve site drainage and result in a topography that is sympathetic and consistent with the original landform of the development sites. Consideration of the development sites location in a modelled secondary storm surge areas and being affected by the CNV – clearing of native vegetation overlay is at section 3 of these reasons.

The application was also circulated to the local government council (City of Darwin) and relevant service authorities. No issues were identified or raised

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in relation to land capability with all matters able to be adequately addressed through the application of standard permit conditions and annotations relating to erosion and sediment controls, weed management and the preparation of a site construction management plan.

The City of Darwin also provided advice to the Authority within its comments. The Authority acknowledges this advice and highlights that the proposed development must be assessed against the relevant planning controls, in the context of the components of the development that triggered the requirements for consent under the planning scheme.

The Authority notes the proposed development is considered to comply with the requirements of Clause 5.8.9 (Excavation and fill) as detailed as section 3 of these reasons. Furthermore, there are no specific requirements in the NTPS2020 or the *Planning Act 1999* for the proposed development to consider ongoing irrigation during the initial establishment period, fill material suitability, potential impacts on groundwater availability to existing vegetation, or the preparation of an arboricultural impact assessment to protect trees proposed to be retained. Therefore, the Authority considers that these matters fall outside the remit of the current application.

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.

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.

While the works are likely to impact on visual amenity through the clearing of vegetation and temporarily effect the audible amenity through the use of machinery, the proposed works are considered acceptable as the rehabilitated gullies will likely provide a greater environmental outcome than being left in their current state. As such, these works will reasonably improve the amenity of the area.

7. Pursuant to section 51(1)(r) of the *Planning Act 1999*, the consent authority must take into consideration any potential impact on natural, social, cultural or heritage values, including, for example, the heritage significance of a heritage place or object under the *Heritage Act 2011*.

There are no known specific social, cultural or heritage values of note in proximity of development sites, nor were any identified as part of the public exhibition or assessment of this application.

The Authority notes that while the site contains recognised natural values, such as threatened species, the proposed works are specifically intended to address ongoing land degradation associated with active erosion gullies. In the absence of intervention, continued erosion is likely to result in further loss of soil stability, vegetation, habitat values and downstream environmental quality. The proposed infilling and stabilisation works are

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reasonably expected to arrest the degradation process and protect the long-term ecological function of the site. Any short-term disturbance associated with construction activities will be localised and temporary in nature and will be managed through the implementation of appropriate environmental controls and rehabilitation measures.

Importantly, the Authority notes that the proposal has been designed to facilitate the recovery and enhancement of natural values through landform stabilisation and revegetation. By restoring stable conditions, the works will reasonably reduce sediment loss, improve the capacity for native vegetation establishment, and promote the gradual re-establishment of habitat characteristics over time. As a result, the proposed works are expected to deliver a net environmental benefit, with the long-term ecological outcomes outweighing the limited and temporary impacts associated with undertaking the rehabilitation works. Consequently, the presence of natural values is not considered a constraint and, on balance, support the need for active rehabilitation of the development sites.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

**ITEM 3
PA2026/0196
SUBJECT SITE
APPLICANT**

HOTEL/MOTEL (108 SUITES) IN A 6 STOREY BUILDING

**LOT 7495 (39) STOKES HILL ROAD, DARWIN CITY, TOWN OF DARWIN
SHERIDAN PLANNING AND CONSULTING**

Pursuant to section 97 of the *Planning Act 1999*, Peter Pangquee, Community Member of the Darwin Division of the Development Consent Authority disclosed an interest and was not present during, contributed to or took part in the deliberation or decision of the Division in relation to Item 3.

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

Mr Sheridan tabled amended plans showing the provision of a short-term parking facility at the front of the development, widened waterside and southern footpath, and increased balcony screening and landscaping along the northern building line.

Submitters who sent their apology:- Anna Guillan, Gaurav Sareen, Michael Rotumah and Helen Secretary.

Submitter who attended via a Teams link Nick Kirlew (on behalf of PPlan: The Planning Action Network Inc.)

Submitters who attended in person
Brett Skinner (General Manager Adina Apartment Hotel and Vibe Hotel) representing the owners of Adina Vibe Waterfront), June D'Rozario, Rossi Kourounis, Christine Jenner and Mark Motlop (attended on behalf of Larrakia Development Corporation & Larrakia Cultural Centre),
Darren Lynch (attended on behalf of DLG Group and 00Seven Adventures),

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Victor Williams (attended on behalf of the Larrakia Nation Aboriginal Corporation), Nigel Garamanak Browne; and Olivia Freeman, Chlarisse Bala and Bill Risk (attended on behalf of Northern Land Council).

A gentleman attended the meeting after it had commenced.

RESOLVED 49/26

That pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority (the Authority) defer consideration of the application to develop Lot 7495 (39) Stokes Hill Road, Darwin City, Town of Darwin for the purpose of a hotel/motel (108 suites) in a 6 storey building to require the applicant to provide the following additional information that the Authority considers necessary in order to enable the proper consideration of the application:

1. Amended drawings that show:
 - a. A shelter over the northern bike racks to support compliance with clause 5.3.7 (End of trip facilities in Zones HR, CB, C, SC and TC).
 - b. A notation stating that the indoor bicycle parking facilities will be designed in accordance with Australian Standard AS2890.3 – Bicycle Parking to support compliance with clause 5.3.7 (End of trip facilities in Zones HR, CB, C, SC and TC).
 - c. Windows along the northern building line to be no less than 1.5 m above floor level, to reduce the degree of overlooking from the site to any adjacent developments, in support of section 51(1)(n) of the Act.
 - d. Awning of part of the on-site pedestrian footpath network, if feasible, to support compliance with clause 5.5.15 (Design in Commercial and Mixed Use Areas).
2. Detailed landscaping plan to ensure compliance with clause 5.2.6.2 (Landscaping in Zone CB).
3. Swept path diagrams which demonstrate that the car parking layout will be functional for its intended purpose in support of a variation to clause 5.2.4.4 (Layout of car parking areas).
4. Written statement that demonstrates the functionality of the on-site drop off space and detailing the impact on the operation of the surrounding road network to assess the impact on local amenity (section 51(1)(n) of the Act).
5. Written statement about the loading bay functionality in support of a variation to clause 5.2.5 (Loading Bays).

REASONS FOR THE DECISION

1. The application is for a hotel/motel comprising 54 one-bedroom and 54 two-bedroom (108) hotel suites in a 6-storey building at Lot 7495 (39) Stokes Hill Road, Darwin City, Town of Darwin. The 4080 m² lot (the site) is in Zone CB (Central Business) of the Northern Territory Planning Scheme 2020 (NTPS2020) and is contained within the area referred to as the Darwin

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Waterfront Precinct. The Darwin Waterfront Precinct is an extension of the CBD and provides key commercial and entertainment uses including, in proximity to the development site, the Darwin Convention Centre and associated publicly available car parking and the Wave Lagoon, Aqua Park, beach area & surrounding lawns. Notably, for the purposes of the current application, the site abuts the soon to be completed Larrakia Cultural Centre. Vehicle access to the site is via Stokes Hill Road while pedestrian & cycling access is by the existing footpath network including directly adjacent along Stokes Hill Road.

The area subject to this application (the development site) is located over the central and northern portions of the site and is presently used as a car parking area. The application proposes developing the on-site car parking area while retaining the existing building (offices and former The Jetty restaurant). The application indicates that the development is intended to provide a high-end short-stay accommodation option that complements the Darwin Waterfront Precinct's established role as a major tourism, hospitality and recreation destination. Hotel suites are located on levels 1 to 5, while the ground floor accommodates car parking, reception, administration areas, end-of-trip facilities, servicing areas and landscaping. Communal recreation facilities are proposed on the upper level, and comprise a swimming pool, gymnasium room, playground, barbecue area and landscaped terrace overlooking Darwin Harbour. The proposed development also incorporates landscaping, including a green façade facing Stokes Hill Road, landscaping of the external building line on levels 1 to 5, and rooftop planting as part of the communal area.

In addition, the proposed development comprises publicly accessible thoroughfares that will integrate the footpath being developed as part of the adjacent Larrakia Cultural Centre with the broader Darwin Waterfront pedestrian network. The application emphasises that the development has been designed to maintain public access to the waterfront, improve pedestrian and cycling connectivity, and contribute to the activation of the public realm through increased visitation, surveillance and tourism activity. The building has also been designed to respond to the site's waterfront location, with an average overall height of approximately 25.6 mAHD and car parking and ground level administration areas located above the modelled storm surge levels.

The meeting was attended by Mr Joseph Sheridan (Sheridan Planning and Development, the applicant) and Mr Randal Ashford (Ashford Architects, application beneficiary), who provided an overview of the application. Mr Sheridan tabled a set of amended plans which widened the waterside boardwalk to 3 m and the footpath between the hotel and existing development to 2 m, provided a dedicated off-street pick up and drop off space (short-term parking facility), provided additional landscaping along the northern building façade, and slightly increased the ground level to improve its functionality for car parking. Mr Sheridan advised that these were in response to submissions. Mr Sheridan also clarified that a viewshed analysis which was circulated to submitters made an erroneous reference to the Larrakia Cultural Centre. Mr Sheridan further advised that the proponent is

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aware of the risks relating to any interaction of the development with the *Northern Territory Sacred Sites Act 1989*.

Mr Ashford also spoke to the application's background and design philosophy. Mr Ashford stated that the application was unique for him as their corporate office is located within the existing development where they have operated from for 7 years, giving opportunity to understand the site, including elements such as sun movements across the site, breeze direction, and access to the site by people and vehicles. Mr Ashford noted that the proposed design is based on this lived experience, with the design intended to maximise the guest experience by providing 270 degrees of harbour views and seeking to ensure every room has a water view. Mr Ashford opined that generous amounts of roof top amenity are provided and that the hotel design pays respect to the locality. Mr Ashford noted that while the building is not subject to height controls, the proposed height is appropriate for the site. Further, no balconies are orientated towards the Larrakia Cultural Centre and the proposed high degree of landscaping being incorporated into the building will ensure it is visually attractive and blend in with the area. Mr Ashford emphasised that the timber-look screening will provide shade and privacy to the hotel suites, and that the building is broken into 2 distinct parts to reduce the visual bulk and allow internal breeze penetration. Mr Ashford noted that the ground level incorporates the hotel reception and office spaces which will improve passive surveillance in support of crime prevention through environmental design principles. Mr Ashford summarised that the design was 7 years in the making, and the application was not made in a rash manner.

In response to a question from the Chair to clarify aspects of the application, Mr Ashford advised that, rather than engaging a third party-hotel operator to manage the operation of the development, the intention was to operate the hotel themselves. With respect to the Darwin Waterfront Corporation's request that the public accessibility of the boardwalk and associated footpaths be safeguarded through a registered easement, Mr Sheridan advised that there were no concerns with this approach. Difficulties in accessing the site given the lack of nearby on-street parking and prevalence of no-stopping line marking in the vicinity, were addressed in the amended plans tabled at the meeting which provide for an on-site short-term parking facility. These concerns were also raised tangentially in the Darwin Waterfront Corporation through comments such as 'no disruption to amenity for traffic access'.

Noting the large number of variations being sought to the requirements of the NTPS2020, albeit common in nature, the Chair queried Mr Sheridan on the situation regarding the proposed loading bay, and proposed waste management. Mr Sheridan advised that it is more common for developments of this nature to engage private waste management contractors, than to rely upon a local government council. Mr Sheridan noted a variety of vehicles can perform this work and suggested that this can be confirmed through a traffic study Mr Sheridan indicated that proponent is confident that the proposed ground level layout will be functional for its intended purpose, and that the roller door/gate could be amended to provide 4 m clearance.

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The Authority has determined to seek confirmation that the proposed short-term parking facility will be functional for its intended purpose through deferral point 4, which will require the applicant to provide a written response detailing how this facility will operate in practice.

Ms Marion Guppy, a member of the Authority, sought details in relation to the additional landscaping shown on the amended tabled plans. Mr Sheridan advised that overlooking of the hotel suites towards the Larrakia Cultural Centre has been raised previously, and emphasised that developments need to consider and mitigate their visual massing. Mr Sheridan advised this was being achieved through the high degree of landscaping and proposed building orientation which will help reduce the degree of overlooking of adjacent properties. Mr Ashford further clarified that the inclusion of timber-look aluminium sun screening and landscaping along the northern façade, will completely prevent overlooking.

Mr Mick Palmer, a member of the Authority, queried whether there was potential for the loading bay facility to be better positioned on site. Mr Ashford noted that the short-term parking facility being proposed at the front of the development could provide space for some loading activities. Mr Sheridan advised that the proposed location of the loading bay facility is considered appropriate.

In response to a question from the Chair, Mr Sheridan confirmed that the amended plans tabled at the meeting maintain the same number of car parking spaces. Further, Mr Sheridan indicated there was no concern in providing swept path diagrams, to demonstrate that the car parking layout will be functional for its intended purpose.

With respect to variations to the NTPS2020 requirements for the building design, the Chair queried Mr Sheridan as to how the upper floor treatment responds to the requirement for clear distinctions between the lower, middle and top of a building. Mr Sheridan advised that the proposed building is well articulated and provides a high degree of landscaping which assist in achieving the purpose of that clause. Mr Ashford further supported the current design of the hotel and argued that the side and rear profile are visually distinct through the presentation of the top floor communal open space/amenities. In relation to the NTPS 2020 requirement for awnings, Mr Sheridan advised that the site frontage with Stokes Hill Road is part retaining wall and suggested that an awning would not be warranted in this situation. Notwithstanding, Mr Sheridan advised that the Darwin Waterfront Corporation has been engaged in relation to the boardwalk and pedestrian footpaths which would connect to existing pathways on Stokes Hill Road. Mr Sheridan further advised that an awning is proposed over the internal boardwalk.

The Chair queried Mr Sheridan on whether the northern bicycle parking will be made publicly accessible, and whether any form of shelter is able to be provided over this facility. Mr Sheridan confirmed that the northern bicycle parking area is intended to be publicly accessible. Mr Ashford then confirmed that shelter can be provided over this facility.

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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 application is *Impact Assessable* under clause 1.8(1)(c)(v) of the NTPS2020 as a provision of the NTPS2020 expressly requires assessment as *Impact Assessable*. In this situation, while a hotel/motel is usually *Merit Assessable* in Zone CB (Central Business), overlay 3.7 (LSSS – Land Subject to Storm Surge) applies to the development site. As such, pursuant to clause 3.1(4) of the Northern Territory Planning Scheme 2020 (NTPS2020), *Where an Overlay requires consent, the following level of assessment applies ... (b) if shown as Merit Assessable on the relevant assessment table in Part 4 it is Impact Assessable.*

Subsequently, the exercise of discretion by the consent authority that applies is clause 1.10(4), which states *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) *The relevant requirements, including the purpose of the requirements, as set out in Part 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.*

Therefore, the Central Darwin Area Plan (being the relevant strategic framework document), the zone purpose and outcomes of Zone CB (Central Business), and clauses 3.7 (LSSS – Land Subject to Storm Surge), 5.2.4 (Car Parking), 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 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), and 5.9.2 (Darwin City Centre) need to be considered.

These clauses have been considered and it is found that the proposal complies with the relevant requirements of the NTPS2020 except for the following:

- Clause 3.7 (Land Subject to Storm Surge) in relation to the establishment of a land use which will increase the number of people/infrastructure in an area identified as being subject to a primary and secondary storm surge.
- Clause 5.2.4.4 (Layout of car parking areas) in relation to setbacks to the car parking area, car parking space intrusions from support columns, and 2 instances of a lack of projections past a car parking space.
- Clause 5.2.5 (Loading Bays) in relation to a shortfall of loading bays and the proposed loading bay dimensions/accessibility.
- Clause 5.3.7 (End of Trip Facilities in Zones HR CB C SC and TC) in relation to the northern bicycle parking area not being protected from the weather.

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- Clause 5.5.15 (Design in Commercial and Mixed Use Areas) in relation to lack awnings and general protection of pedestrians from the weather, and lack of a dedicated parenting room.
- Clause 5.9.2.1 (Building Design in Darwin City Centre) in relation to lack of distinctive upper floor treatment from all perspectives, and poor integration of the northern bicycle parking area with the development.
- Clause 5.9.2.11 (Car parking spaces in Darwin City Centre) in relation to insufficient number of car parking spaces (7 car parking space shortfall) provided at the site.
- Clause 5.9.2.13 (Design of Car Parking Areas and Vehicle Access) in relation to the provision of ground floor car parking spaces where no commercial tenancies are proposed.

A summary of the relevant parts of the NTPS2020 is as follows:

Part 2 – Strategic framework

The Central Darwin Area Plan September 2019 (CDAP) specifies that acceptable responses serve as action-based policy statements to guide land use and development, however, do not prevent the use of land consistent with the current zoning of the site. Furthermore, the CDAP 2019 may specify additional requirements for a development consistent with an existing zone.

The Authority notes that the application is located within an area identified on the land use vision map for *Mixed use (Commercial, Civic, Residential, Education, Tourism, Recreation & Retail)* development. The area plan encourages diverse development and uses to ensure that mixed use environments are robust, flexible and responsive to economic and social change. The CDAP achieves this through a series of objectives that aim to support a dynamic mix of uses that contribute to safe, active, attractive, and diverse localities which have been largely captured under the NTPS2020 Part 5 location specific development requirements. The Authority considers that the proposal supports the relevant CDAP objectives.

In relation to the culture and heritage theme as shown in the CDAP, the Authority notes that the site is located approximately 60 m from the steam pump house declared heritage place, and 140 m from the remnant No. 6 oil tank and in the vicinity of a place of cultural interest. Of relevance, the acceptable response for objective 4.3 states *Places of historical and cultural value within the study area, including significant sites, buildings structures, trees, and landscape elements are recognised and connected through innovative forms of interpretation.* The Authority notes that the site itself is not identified as having any specific cultural or heritage values in the CDAP, with its location limited to being a thoroughfare between the Waterfront and future pedestrian pathway to Frances Bay.

In relation to the environment theme, the site is located within an area identified as being subject to primary and secondary storm surge events. The relevant acceptable response states *All development in a Primary or Secondary Storm Surge Area is to be developed in accordance with the provisions of the*

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Planning Scheme. As the modelled storm surge extents have been incorporated into the NTPS2020 as overlays, this matter is discussed further at clause 3.7 (LSSS – Land Subject to Storm Surge).

Part 3 – Overlays

Clause 3.7 (LSSS – Land Subject to Storm Surge)

The Authority notes that the purpose of this overlay is to *Identify areas with a known risk of inundation from primary or secondary storm surges and ensure that development in these areas demonstrates adequate measures to minimise the associated the risk to people, damage to property and costs to the general community caused by storm surge, with the site modelled as being located within the primary storm surge area (PSSA) and secondary storm surge area (SSSA).*

This clause requires that:

8. *Development in the PSSA should be limited to uses such as open space, recreation, non-essential public facilities (wastewater treatment works excepted) and short-stay tourist camping/ caravan areas.*
9. *Development within the SSSA should be confined to those uses permitted in the PSSA as well as industrial and commercial land uses.*
10. *Residential uses, strategic and community services (such as power generation, defence installations, schools, hospitals, public shelters and major transport links) should be avoided in the PSSA and the SSSA.*

The application proposes to locate a hotel/motel development (which is considered to be residential in nature) in land modelled as being subject to a PSSA and SSSA. Administratively, subclause 6 states *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.*

The Authority notes that the site's Flood Impact Property Report identified the modelled storm surge height during a PSSA event will be 5.41 mAHD, and that during a SSSA event will be 5.98 mAHD. A review of these modelled levels against the plans identified that the existing ground level will be 1.09 m above a primary storm surge event, and 0.52 m above a secondary storm surge event.

As such, infrastructure and non-residential uses at the site will be above the modelled PSSA and SSSA event levels, as will all hotel suites. The Authority considers that this development does not unreasonably increase risk to people or property at the site or in the immediate vicinity.

Part 4 – Zoning

The purpose of Zone CB 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.*

Built form and design in the Zone CB is expected to facilitate a vibrant commercial precinct along and the creation of safe, active street frontages and public places, while balancing competing demands with reference to the overall mixed-use nature of the zone. The proposed development is considered to support the broader intent of Zone CB, however, the Authority considers that zone outcome 10 warrants particular attention.

Zone outcome 10 states *Developments are designed and operated in a manner that avoids unreasonable loss of amenity for surrounding premises, having regard to the close proximity between residential and entertainment uses, and the overall mixed use nature of the zone.*

In this context, the primary consideration of this development is the proposed proximity of hotel/motel suites (a residential form of development) to the main outdoor area of the Larrakia Cultural Centre, which would be expected to host functions through the year. Notwithstanding, the Authority notes that the balconies are primarily orientated away from the Larrakia Cultural Centre outdoor space, and as such are considered acceptable and not likely to result in an unreasonable impact on future hotel/motel visitors than that expected for a development in Zone CB.

On balance, the Authority consider that this development is unlikely to have any other unreasonable adverse amenity impacts on the locality that would be unexpected in Zone CB.

Part 5 – Development requirements

The proposed development was found to comply with the relevant part 5 development requirements of the NTPS2020, except for clauses 5.2.4.4 (Layout of car parking areas), 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), 5.9.2.1 (Building Design in Darwin City Centre), 5.9.2.11 (Car parking spaces in Darwin City Centre), and 5.9.2.13 (Design of Car Parking Areas and Vehicle Access).

Pursuant to clause 1.10 (Exercise of Discretion by the Consent Authority), subclause (5), of the NTPS2020, *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).*

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In response to clause 1.10(5)(a), the Authority considers that variations to these clauses could generally be supported in this instance for the following reasons:

Clause 5.2.4.4 (Layout of car parking area)

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

Clause 5.2.4.4(6)(a) and (b) require that - *A car parking area is to: (a) be not less than 3m from any lot boundary abutting a road; and (b) provide landscaping to the setback area to a minimum depth of 3m immediately adjacent to any lot boundary abutting a road, using species designed to lessen the visual impact of the car parking area when viewed from the road.* In this case, 2 car parking spaces are located less than 3 m from the front property boundary (that located immediately along Stokes Hill Road), and 3 spaces are located within 3 m of the property boundary adjoining the access to the electrical substation (which is part of the road reserve).

Administratively, subclause 3 states *The consent authority may consent to a car parking area that is not in accordance with subclause 6 if it is satisfied that the non-compliance will not unreasonably impact on the amenity of the surrounding locality.*

In response to subclause 3, this application proposes the planting of lipstick palms, hibiscus and birds of paradise within the setbacks. The Authority considers that the planting will create a dense mid-level layer providing moderate screening to the car parking area (with the exception of 1 car parking space) from the public domain and, as such, the proposed car parking layout is unlikely to result in an unreasonable impact on local amenity.

In addition, clause 5.2.4.4(8) requires that *The layout of a car parking area is to: ... (c) be in accordance with the dimensions set out in the diagram to this clause; and (d) ensure parking spaces at the end of and perpendicular to a driveway are 3.5m wide or so that the driveway projects 1m beyond the last parking space,* where a review of the plans show there are 36 instances (of a total 56) where a building support column is partially located within a car parking space, and 2 instances where a car parking space is located perpendicular to the end of a driveway without 1 m+ projection being proposed.

Administratively, subclause 4 states *The consent authority may consent to a car parking area that is not in accordance with subclauses 7 and 8 if it is satisfied that the design and construction is safe and functional with regard to the location of the development.*

In response to subclause 4, the building support columns are located towards the front or rear of the car parking space and expected to project 15 cm into the affected car parking space on one side only and for a 1 m extent. As these are located outside of the zone in which vehicle doors will be opened, and is of a limited extent, the Authority considers that these intrusions will not

unreasonably affect the future operation of the affected car parking spaces. In relation to the lack of a projection past 2 car parking spaces, the Authority notes that the car parking area is small scale and will be a low-speed environment. These factors allow for vehicles accessing or exiting these car parking spaces to complete additional parking manoeuvres without an unreasonable impact on other vehicles/users of the car parking area.

The Authority considers that the proposed variation to clause 5.2.4.4 (Layout of car parking area) can be supported, as it is not likely that the car parking area will unreasonably impact on local amenity and will be functional for its intended purpose. However, the Authority has determined to seek confirmation of this assessment through deferral point 3, which will require the applicant to provide swept path diagrams that demonstrate vehicles are able to safely navigate the car parking area.

Clause 5.2.5 (Loading Bays)

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

Clause 5.2.5(3) requires that a *Use and development is to include provision of a minimum number of loading bays in accordance with the table to this clause (rounded up to the next whole number).* Given the hotel occupation, and the existing developments at the site, 2 bays are required but only 1 loading bay is proposed. Further, clause 5.2.5(4)(c) requires *a clearance of at least 4m.* The proposed loading bay facility does not provide the minimum vertical dimensions as access is through a gate with a minimum dimension of 3.4 m, and that the vertical clearance at the loading bay itself is 3.7 m.

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

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

In support of a variation the Authority considers that the small scale of the hotel/motel development and existing development mean that a single loading bay facility will reasonably be able to cater for all land uses at the site. It is likely that the reduced height of the loading bay facility and access thereto will still allow for light vehicle to medium trucks to access the loading bay facility. While no evidence was provided about agreements for shared loading facilities, no adverse comments were received from the Darwin Waterfront Corporation, who manage the local road network. However, the Authority has determined to seek confirmation of this assessment through deferral point 5, which will require the applicant to provide a written response which details how the loading bay facility will be allow for the any required loading and unloading activities, or servicing associated with the operation of the hotel or existing developments on-site.

Clause 5.3.7 (End of Trip Facilities in Zones HR CB C SC and TC)

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

Clause 5.3.7(3)(e) requires that *All bicycle parking facilities and associated bicycle parking devices should be designed in accordance with Australian Standard AS2890.3 – Bicycle Parking and must: ... (e) be protected from the weather, where the northern bicycle parking area will not be protected from the weather.*

The Authority may consent to a use or development with fewer bicycle parking spaces, lockers and/or showers and changing facilities than required by subclauses 2-6 if satisfied that either:

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

The Authority considers that a large number of secure and sheltered bicycle parking facilities are proposed in the vicinity of the hotel area to cater for future site staff and visitors. It considers that the proposed variation could be supported, as this development will still provide high quality end of trip facilities for site visitors and staff as intended by this clause. However, the Authority has determined to seek confirmation of this assessment through deferral points 1(a) and 1(b), which will require the applicant to provide amended plans that include a notation stating that the indoor bicycle parking facility will be designed in accordance with the Australian Standard AS2890.3 – Bicycle Parking and the provision of a shade structure over the northern bicycle parking area.

Clause 5.5.15 (Design in Commercial and Mixed Use Areas)

The purpose of this clause 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.*

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Clause 5.5.15(17) requires that *Unless advised otherwise by the relevant local government council or controlling agency for roads (whichever is applicable), development is to provide an awning or verandah to all street frontages that adjoin a footpath, which: (a) extends along the full length of the site boundary to provide continuous coverage for pedestrians ...*, where a full width awning is not provided over the existing footpath adjacent to development (north-western corner of the site adjacent to Stokes Hill Road).

Administratively, subclause 5 states *The consent authority may consent to a development that is not in accordance with sub-clause 17 if it is satisfied that:*
(a) the development provides a considered response to the established character of the streetscape; and
(b) the development provides an alternative response for shading.

The Authority considers that the following factors support a variation to this clause:

- This area of the Darwin Waterfront is not characterised by awnings over the public domain, with buildings often setback from the property boundary.
- The proposed building is not located adjacent to any existing footpaths located in the road reserve.
- The publicly accessible footpaths proposed as part of this application are located adjacent to the built form, and as such, will have intermittent shading through the day.

The Authority has determined to seek confirmation of this assessment through deferral point 1(d), which will require the applicant to provide amended plans that propose awnings over part of the on-site pedestrian network, where feasible.

In addition, clause 5.5.15(22) requires that *Development with a floor area of 3500m² or greater is to provide a dedicated parenting room (to allow for activities such as baby change and breastfeeding)*, where despite having a floor area of approximately 4296 m², no dedicated parenting room is provided.

Administratively, subclause 10 states *The consent authority may consent to a development that is not in accordance with subclause 22 if it is satisfied that the development provides appropriate provisions for parenting activities relative to the nature and scale of the development.*

The applicant has stated that *No dedicated parenting room is provided with guests able to use facilities in individual suites.* The Authority notes that although the floor area of the development is 4296 m², only 141 m² of it is considered to be net floor area, and space in which office staff will be regularly working and has determined that this development is not of a scale that would reasonably require a dedicated parenting room.

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Clause 5.9.2.1 (Building Design in Darwin City Centre)

The purpose of this clause is to *Promote buildings in the Darwin city centre that are designed to support a mix of land uses now and in the future, contribute to a high level of amenity in the public domain and enable convenient pedestrian and cyclist movement to and across the city centre.*

Clause 5.9.2.1(7) requires that *Building facades are to have a clearly distinguished base, middle and top.* The application does not propose an upper level treatment which clearly distinguishes the roof/level 5 from the western perspective (Stokes Hill Road/Darwin Waterfront area).

In addition, clause 5.9.2.1(8) requires that *Any communal facilities, such as bicycle parking and seating, located at the front of the building are to be integrated into the site layout and building design.* The northern bicycle parking area is not integrated as it is located immediately adjacent to an on-site driveway, and away from the building entrance.

Administratively subclause 7 states *The consent authority may consent to a use or development that is not in accordance with sub-clauses 7 and 8 if it is satisfied that the design contributes to the functionality and visual interest of the streetscape.*

The Authority considers variations to the clause can be supported in this instance because the application on balance will increase pedestrian connectivity in the area, and proposes a built form which is well articulated through a variety of setbacks with innovative use of perimeter landscaping along the external building line for levels 1 to 5. Further the northern bicycle parking area has been already considered at clause 5.3.7 (End of trip facilities in Zones HR, CB, C, SC and TC). The Authority supports the proposed variation to clause 5.9.2.1 (Building Design in Darwin City Centre), as the building is well articulated, and provides a high degree of visual interest when seen from the public domain.

Clause 5.9.2.11 (Car parking spaces in Darwin City Centre)

The purpose of this 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.*

Clause 5.9.2.11(5) requires that a *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),* calculated in this instance as 63 spaces, comprising 43.2 car parking spaces for the hotel suites, 1.2 for the bar-small (the permit of which extends to this site), and 15.6 for the existing food premises (noting though that this use is not indicated currently existing)/office on-site. Only 56 car parking spaces are proposed at the site, resulting in a car parking shortfall of 7 spaces.

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Administratively, subclause (2) states *The consent authority may consent to a use or development that is not in accordance with subclause 5 as set out in clause 5.9.2.12 (Reduction in car parking spaces in Darwin City Centre).*

Clause 5.9.2.12 (Reduction in car parking spaces in Darwin City Centre)

The purpose of this clause 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 site is calculated as requiring 63 car parking spaces on-site to cater for existing and proposed land uses, where only 56 are proposed.

Administratively, subclause 1 states *The consent authority may consent to: (a) a reduction of 1 car parking space for every 3 motorcycle parking spaces proposed for a use or development, but only to a maximum of 1 motorcycle parking space for every 25 (or more) car parking spaces required by Clause 5.9.2.11 (Car parking spaces in Darwin City Centre)*

In response to subclause 1(a), the application proposes 3 motorbike parking spaces resulting in a 1 car parking space reduction.

Subclause 2 states *The consent authority may also consent to a use or development with fewer car parking spaces than required by Clause 5.9.2.11 (Car parking spaces in Darwin City Centre), in accordance with the table to this clause.*

Pursuant to category 1(c), as the *development is located within 200m of a dedicated off-road bicycle path or on-road bicycle lane* [where the site is located within 200 m of an on-road bicycle path located along Kitchener Drive, the consent authority can consider a 5% reduction. This would result in a reduction of 3.14 car parking spaces.

Pursuant to category 2(b), as the *development is within 200m walking distance of an existing, publicly accessible car park with a combined total of 100 car parking spaces or more* where the publicly accessible, Darwin Waterfront Corporation managed Convention Centre off-street carpark is located less than 200 m walking distance of the site, the consent authority can consider a 10% reduction. This would result in a reduction of 6.28 car parking spaces.

The Authority considers that the application meets the relevant criteria to access a reduction of 10.42 car parking spaces, resulting in a revised requirement for the provision of 52.40 (53) car parking spaces at the site, where 56 car parking spaces are proposed. As such, this application would result in a surplus of 3 car parking spaces at the site.

Clause 5.9.2.13 (Design of Car Parking Areas and Vehicle Access)

The Authority notes that the purpose of this clause is to *Promote design of car parking, vehicle access points and onsite movement that:*

- (a) is easily adapted to meet changing demand;*
- (b) minimises visual impact to the street and other public areas; and*
- (c) minimises impacts to pedestrian and cyclist movement.*

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Clause 5.9.2.13(3) requires that *Ground level car parking areas in buildings are limited to the number of car parking spaces required for ground level commercial tenancies*. All car parking at the site is proposed at ground level, and this car parking is required for all land uses at the site (hotel/motel visitors, hotel/motel staff and the existing 2-storey development).

Administratively subclause 3 states *The consent authority may consent to a development that is not in accordance with sub-clauses 3-6 if it is satisfied the use or development is appropriate to the site having regard the potential impact on the surrounding road network and the amenity of the locality*.

The Authority considers that a variation to this clause is appropriate because location of all on-site car parking at ground level will not result in any unreasonable adverse impacts to the local road network, and that the usage of the pool-fencing style will provide an acceptable interface between the car parking area and adjacent publicly accessible areas, taking into account the awkward layout of the site, and difficulty of providing basement or above ground car parking to cater for this development. The Authority considers that the proposed variation to clause 5.9.2.13 (Design of Car Parking Areas and Vehicle Access) is appropriate, as on-site constraints limit the potential for basement or above ground level car parking to be feasible at the site, and that proposed ground level car parking will not reduce amenity beyond what currently exists.

Clause 5.9.2.4 (Development within the Darwin Waterfront)

The purpose of this clause to *Ensure that design and scale of development within the Darwin Waterfront responds to and respects the established role, character and constraints of the waterfront area and the surrounding escarpment*.

Clause 5.9.2.4(5) requires that *Development does not obstruct view lines identified in the Diagram to this clause*. The subject site is not located within or adjacent to an identified view line. Further, clause 5.9.2.4(6) requires that *Building height does not exceed the height identified on the Diagram to this clause*⁷. The subject site is not located within an area with a listed 'maximum overall building height' limit. However, the Authority notes that the application proposes an average height of 26.2 mAHD, with the lift overruns going to 26.7 mAHD. The adjacent Larrakia Cultural Centre has a maximum height of 19.405 mAHD. As such, this development will be approximately 6.75 m to 7.25 m taller than the Larrakia Cultural Centre.

The Authority notes that no other clauses of the NTPS2020 establish view lines or a maximum height in relation to this site.

Clause 5.9.2.7 (Development along the Priority Pedestrian Cycle Network)

The purpose of this clause is to *Encourage development along the Priority Pedestrian and Cycle Network that facilitates safe and convenient pedestrian and cyclist movement to and across the Darwin city centre*.

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Clause 5.9.2.7(5) requires that *Pedestrian and cycle links within a site are to be connected to the existing and future priority pedestrian/cycle network ...* The application proposes 3 distinct publicly accessible walkways:

- 3 m wide waterside pedestrian path, as shown in amended plans tabled at the meeting, located between the hotel/motel development and eastern seawall/rockwall
- 1.5 m wide northern pedestrian path between the proposed hotel/motel development and Larrakia Cultural Centre, that connects the waterside walk with a hardstand area associated with a nearby substation that connects to Stokes Hill Road
- 2 m wide southern pedestrian path, as shown in amended plans tabled at the meeting, between the proposed hotel/hotel motel and existing on-site development, that connects the waterside walk with Stokes Hill Road.

The Authority considers that the on-site pedestrian paths are adequately connected and integrated to the adjacent path to the Larrakia Cultural Centre, and, through the provision of 2 connections to Stokes Hill Road, are integrated with and support pedestrian movement at the site. While the connector pathways vary between 1.5 to 3 m wide, which may disadvantage future cyclists, this is considered acceptable in this situation due the irregular nature of the lot, constraints in relation to the existing development being retained, and the southern accessway providing a wider forecourt.

Clause 5.9.2.9 (Public Domain Contributions for Development on Large Sites)

The Authority notes that the purpose of this clause is to *Encourage development on large sites that supports the public domain by contributing to an integrated, high-quality network of public spaces, recreation facilities and places for wildlife.*

Clause 5.9.2.9(3) requires that - *A minimum of 10% of the site area [calculated as requiring 408 m²] is to be provided as publically [sic] accessible open space.* The Authority notes that 1100 m² (26%) is proposed/retained at the rear of the site including a 3 m wide waterside publicly accessible footpath; a 1.5 m wide northern footpath adjacent to the Larrakia Cultural Centre site; a 2 m wide southern footpath between the proposed hotel/motel and existing on-site development. Further, included in the calculation is the rockwall and harbour area components of the site which are permanently inundated, but meet the purpose of this clause on the basis that it allows members of the public access to recreational opportunities such as fishing and, further, provides places for marine wildlife. In this regard, the Authority notes that the NTPS2020 defines public open space (which is considered similar in intention) as *outdoor spaces that are generally accessible to the community and provide for a range of sport, recreation, cultural, entertainment or leisure pursuits.* There is nothing in the NTPS2020 that disallows the consideration of permanently inundated land as publicly accessible open space.

In addition, subclause 4 requires that the *open space provided under sub-clause 3 is to integrate and connect with: (a) existing and future cycle and pedestrian networks; (b) sites of significant natural, cultural or heritage value; and (c) habitats, wildlife corridors and public greenspaces from adjoining sites.* In response to subclause 4(a), the Authority notes that the proposed waterside footpath at the rear of the site is well integrated with an adjacent footpath to the Larrakia Cultural Centre. While the northern and southern footpath widths are 1.5 m to 2 m wide, respectively, they are well integrated with the existing pedestrian network along Stokes Hill Road, including the provision of a new pedestrian crossing, and will allow for good level of pedestrian permeability. The Authority notes that the site is located immediately adjacent to aspects mentioned under subclauses 4(b) or 4(c) and in particular, the rockwall and harbour area components of the site clearly connect with habitat from adjoining sites.

3. 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 2 week period between 12 and 26 June 2026. Twenty-six (26) public submissions were received under section 49(1) of the *Planning Act 1999*, with respect to this application.

Of the 26 submissions received, 11 submitters expressed an objection to the application, one expressed support for the proposal subject to comments and recommendations, 14 expressed support for the application.

The DAS Report identified the following main thematic comments and concerns:

1. Design quality and landscaping
2. Public realm, street activation and pedestrian safety
3. Impacts on the Larrakia Cultural Centre
4. Sacred site/viewshed impacts
5. Lack of consultation with Larrakia stakeholders
6. Excessive number of NTPS2020 variations
7. Storm surge and subsequent site suitability

The Authority has considered the primary adverse themes raised in the written public submissions as follows.

1. *Design quality and landscaping*

The Authority acknowledges that the proposed development will contribute to increased building massing from whichever direction it is viewed. However, the Authority considers that the proposed development is consistent with the character of the Darwin Waterfront area. Further, the Authority highlights the

proposed landscaping and variable setbacks to habitable rooms and hotel suite living spaces that limit blank walls and contributes to visual interest and that the building meets the Requirements for view lines and height in clause 5.9.2.4 (Development within the Darwin Waterfront). Noting the purpose of clause 5.9.2.1 (Building Design in Darwin City Centre) is to promote buildings in the Darwin CBD that are *designed to support a mix of land uses now and in the future, contribute to a high level of amenity in the public domain and enable convenient pedestrian and cyclist movement to and across the city centre*, the Authority considers that the proposal provides a significant contribution to the public domain, comprising publicly accessible walkways to the north and south of the development, and continuation of an integration with a 2 m waterside footpath. The Authority considers those elements contribute to the Darwin Waterfront Precinct and demonstrate compliance with the NTPS2020.

2. *Public realm, street activation and pedestrian safety*

These elements have been discussed previously, and the Authority confirms that it considers that the proposed design promotes physical connectivity through provision of pedestrian linkages to the north and south of the site, and connection of Stokes Hill Road to the future waterside footpath. The limited activation along the Stokes Hill frontage is acknowledged but, as discussed previously, the Authority considers that the irregular shape of the lot, and scale of the development make that outcome acceptable. The Authority considers that the application proposes an acceptable level of publicly accessible open space that is attractive, safe and functional for pedestrians.

3. *Impacts on the Larrakia Cultural Centre*

The Authority confirms that the proposed development will be approximately 6.7 m (~2 storeys) taller than the Larrakia Cultural Centre to the north but again notes that the proposed development is consistent with the height requirements of the NTPS2020 and, in particular clause 5.9.2.4 (Development within the Darwin Waterfront).

The Authority notes the concerns raised for potential reverse-amenity impacts on the Larrakia Cultural Centre in the form of noise complaints by future hotel operators/visitors. As noted in the DAS Report, the proposed layout of the hotel suites, locating bedrooms along the internal side of the building and living areas along the external façade, is an appropriate design response to the adjoining outdoor function space. It separates the primary sleeping areas and potential sources of external noise. The living rooms, which are generally occupied for shorter periods and are less sensitive to intermittent noise, will reasonably provide an effective buffer between the external environment and the bedrooms. The Report notes that the arrangement demonstrates a reasonable and proactive approach to internal acoustic amelioration, recognising the operational characteristics of the neighbouring function venue while ensuring an acceptable level of amenity for future guests. The Authority concurs that the design supports the continued operation of surrounding land uses and promotes compatible land

use outcomes within the Waterfront precinct and considers that the proposed built form and use of the land for a hotel/motel development is both consistent with the NTPS2020 and compatible with the use of the adjacent Larrakia Cultural Centre site.

Further concerns were raised in relation to adverse financial/business impacts on the Larrakia Cultural Centre arising from this development. The Authority notes that there are no requirements within the *Planning Act 1999* or NTPS2020 dealing with potential commercial impacts and the threat of potential commercial competition is not a relevant planning consideration.

4. *Sacred site/viewshed impacts*

In addition to the submissions, the Aboriginal Areas Protection Authority (AAPA) advised that the site is located in proximity to a registered sacred site, and Larrakia custodians have previously expressed that development in this vicinity should not exceed the height of the sacred site.

The Authority notes that there are no specific requirements within the *Planning Act 1999* in relation to the protection of sacred sites and the NTPS2020 does not prescribe a view line in this area or a maximum height at this site. Protection of sacred sites is dealt with by the *Northern Territory Aboriginal Sacred Sites Act 1989*. There is clear case law from courts and tribunals around Australia that conditions that seek to require compliance with a separate and distinct statutory regime are not imposed for a planning purpose. Further, it is generally inappropriate to convert non-compliance with an otherwise applicable legislative obligation into a breach of planning law. The Authority considers that this concern can be addressed through a permit note recommending that the permit holder obtain an Authority Certificate in relation to this development.

Further consideration of the proposed development's interaction with this sacred site is provided at paragraph 7 of below in respect of section 51(1)(r) of the *Planning Act 1999*.

5. *Lack of consultation with Larrakia stakeholders*

Neither the *Planning Act 1999* or NTPS2020 require consultation by applicant prior to lodging an application. Instead, the *Planning Act 1999*, in section 47, prescribes public notice of a development application. The applicant has complied with that requirement. Further, except for the local government council and any service authorities the consent authority considers relevant, there are no requirements within the *Planning Act 1999* or NTPS2020 in relation to whom an application must be circulated.

It is noted that the *Planning Act 1999* defines service authority as *the Territory, a minister, the Power and Water Corporation established by the Power and Water Corporation Act 1987 or a prescribed statutory corporation*.

6. *Excessive number of NTPS2020 variations*

There are no specific prohibitions within the *Planning Act 1999* or NTPS2020 which would prevent an application seeking a high number of variations to a planning scheme. As discussed earlier, the Authority must simply be satisfied that each variation is acceptable on its own merit.

7. *Storm surge and subsequent site suitability*

As detailed earlier, it is considered that the application has demonstrated that the proposed design mitigates the risk to people and infrastructure.

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

Mr Nicholas Kirlew (on behalf of PLaN: The Planning Action Network Inc) advised that, as he was not able to review the tabled plans, he could not discuss any changes and that the amended plans should have been made available prior to the meeting. Mr Kirlew opined that PLaN hopes for good outcomes and suggested that the harbour from Stokes Hill Road is a community asset. Mr Kirlew stressed the high number of variations being sought, with PLaN valuing compliance of the NTPS2020, especially in relation to setbacks. Mr Kirlew raised concerns in relation to the landscaping of the upper floors, and that there had been an opportunistic interpretation of the heights, stressing that the development still proposes a multi-storey hotel with 0 m setback to Stokes Hill Road. Mr Kirlew suggested that the problem is that the site will cost a fortune to develop. He noted that the NTPS2020 intends ground floors to be built with capacity to be adapted for new uses. Mr Kirlew highlighted that the NTPS2020 intends Darwin Waterfront to be pedestrian friendly. Stressing the prominence of the site, Mr Kirlew noted that there are significant concerns around traffic management at the site and queried how people will arrive to the site and queried bicycle safety. Mr Kirlew noted that PLaN would expect clear merits for a proposed development which will block the view between Stokes Hill Road and Darwin Harbour. Mr Kirlew also suggested that the proposed building scale compromises the amenity of the locality.

Ms June D'Rozario, representing the Larrakia Development Corporation and Larrakia Cultural Centre, noted that the LDC and LCC provided very comprehensive submissions, and she was expanding on these in relation technical matters. Ms D'Rozario identified that there were 3 primary issues relating to the current application.

Issue 1 – Clause 5.9.2.9 (Public domain contributions). Ms D'Rozario noted that the application needs to provide a minimum 10% of the site as public open space, and that this area be integrated with and support a local pedestrian network. Ms D'Rozario advised that the application does not comply with this requirement, and that this element was missed in the DAS report to the Authority, noting that the report states that as 1100 m² of

footpath is proposed, the application satisfies this clause. She also highlighted confusion in the Report relating to how much public domain contribution was being proposed. However, Ms D'Rozario noted that footpaths and open spaces are required to connect to the local network and that no open space is being proposed as part of this application. This provision of the NTPS2020 has not been dealt with appropriately and in support of this, Ms D'Rozario noted that the application sought a variation for this clause, supported by 4 reasons – the contribution of the boardwalk area to the public domain; that the gross footprint of the building is approximately 300 m² which limits the ability of the development to provide the minimum amount of public open space; any reduction to the building scale would erode its economic feasibility; and the abundance of public open space in the Darwin Waterfront area. Ms D'Rozario noted that the Authority's discretion to vary the requirement is limited by subclause 2 of clause 5.9.2.9 to either the provision of an alternative solution, or provision of public open space off-site. Ms D'Rozario emphasised that this has not been discussed in the DAS report and, consequently the Authority has no grounds for exercise of discretion under this clause at this time. Ms D'Rozario also emphasised that the applicant states that the locality has high amenity, but this is not the purpose of the clause. Ms D'Rozario summarised that the report has not dealt with this clause at all, and as such, this clause cannot be varied by the Authority with the material provided to date. Ms D'Rozario further advised that this matter relates to section 51(1)(k). Ms D'Rozario also noted that another estimate in the report suggested that 830 m² of publicly accessible thoroughfares were proposed, and therefore the assessment numbers used during the assessment do not match. Ms D'Rozario suggested that this development would then reduce the amount of public space in the locality. The Authority notes that the operation of clause 5.9.2.9 is discussed previously.

Issue 2 – landscaping and active street frontage. Ms D'Rozario noted that the DAS report to the Authority emphasises the landscaping as a critical element of the application, but little detail about the landscaping was provided with the application. She pointed out that the application proposes 2 yellow flametrees within the rooftop communal open space but fails to detail any soil depths or maintenance. This information should be provided with the application. Ms D'Rozario also noted that the perimeter landscaping is also not well detailed, lacking details about its accessibility or ongoing maintenance. Even low maintenance species require maintenance elements such as soil and plant replenishment. Ms D'Rozario also queried how this landscaping can be secured in the event of a cyclone. Ms D'Rozario stated that at minimum more detailed landscaping plans should be required. Ms D'Rozario also noted that the DAS report to the Authority did not recommend a condition precedent in relation to landscaping, with landscaping only addressed through general landscaping conditions.

The Authority has determined to seek confirmation that the proposed landscaping is feasible through deferral point 2, which will require the applicant to provide a detailed landscaping plan.

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Ms D'Rozario also raised a lack of discussion around active street frontage in the DAS report to the Authority, with none being shown on the application's elevation plans, despite 60% being required by the NTPS2020. She noted that if the ground level green wall was being counted towards this, further details are required. Ms D'Rozario emphasised that the DAS report to the Authority did not discuss any alternative solutions. Ms D'Rozario noted that the site is unique and very prominent in the locality, and as such should be providing active street frontage. While the site may have constraints, this does not absolve the proponent of needing to comply with these requirements.

Issue 3 – Plant screening/integration– Ms D'Rozario stated that the plant room is limited to a lift overrun, and that AC units will be provided for hotel suites. Ms D'Rozario queried where the AC condenser plant would be located and what screening would be provided, highlighting that the NTPS2020 requires these be screened and integrated with the development. Ms D'Rozario also queried the amended plans tabled by the applicant removing fenestration along the northern building frontage.

After Mr Sheridan clarified that the amended plans did not make any changes to the proposed fenestration, Ms D'Rozario queried the Authority as to whether windows can be removed along the northern building line, or alternatively raised higher, further noting the powers provided to the Authority by the *Planning Act 1999*. Ms D'Rozario noted that this change would help ameliorate the visual and overlooking impacts from hotel guests on the Larrakia Cultural Centre and reduce the potential for reverse amenity impacts. Ms D'Rozario emphasised that the Larrakia Cultural Centre was designed to host large events.

Mr Nigel Garamanak Browne advised that he would talk to his 2 submissions and Mr Browne noted that he was attending this meeting as a Larrakia and Wulna man, and former CEO of the Larrakia Development Corporation between 2013 and 2025. Mr Browne advised he was involved in the Larrakia Cultural Centre project, and that his opposition to this application has firmed. Mr Browne stated that the application should be refused, and that his opposition was based on the proposed scale and location of the hotel and that the application is incomplete, especially in relation to cultural matters. Mr Browne noted that the Larrakia Cultural Centre is the anchor of the area, and represents \$59 million in funding from the Aboriginal Benefits Fund, \$17 million in land cost, and will be priceless to the Larrakia. Mr Browne noted that the site is not suitable for a hotel and suggested that any development at that site should be subservient to the Larrakia Cultural Centre. Mr Browne reiterated that there was no meaningful consultation or proper engagement with any traditional owners and emphasised that asking traditional owners to comment on an application within a short exhibition period is not consultation. Mr Browne noted that there has been some discussion about AAPA, and subsequently, the Authority is aware of the significance of the Stokes Hill sacred site, and that these risks remained unresolved. Mr Browne emphasised that AAPA confirmed that the site is not covered by an Authority Certificate, and that AAPA advised they only learned of the application at its exhibition. Mr Browne noted that the applicant's claim

in regard to the proposed height has been debunked and reiterated that the applicant's viewshed study is not proper, noting it did not confirm a methodology. Mr Browne stated that the applicant's responses in relation to viewshed impacts are assertions and do not represent any genuine analysis. Mr Browne noted that the interface and visual primary of the applicant with the Larrakia Cultural Centre is still not addressed. Mr Browne noted the importance of culturally significant sightlines and referred to the Singapore hotel approved next to the Darwin Convention Centre, which took these into account. Mr Browne noted that the statutory tasks required by the Authority must be done correctly, and that approval of this application cannot be granted with the application as it currently stands. Mr Browne noted that any approval would be erroneous and emphasised that deferral would not be enough as the applicant has been afforded enough opportunity to address the submissions. Mr Browne further advised that he had investigated precedent situations in relation to planning applications interaction with sacred sites.

The Chair notes that future development applications in this locality or otherwise located in proximity to cultural heritage values 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.

Mr Browne noted that a development application relating to the Mercure Alice Springs was not determined until relevant sacred sites matters were dealt with. The Chair noted that there was a declared Restricted Works Area at that site. Mr Browne further identified an example of refusal of an application in Tennant Creek, and another relating to the Little Mindil development where sacred site issues had been raised. Mr Browne reiterated that his concerns with the application have firmed, and his the assessment of the application was blunt; that the application is inadequate and leaves the consequences of any development to the Larrakia. Mr Browne emphasised that the application makes many assertions with little evidence, and that this situation was worsened by the applicant's responses. Mr Browne noted that the Larrakia Cultural Centre does not exist to provide a backdrop to the hotel and deserves to be treated appropriately. In support of this, Mr Browne suggested the Larrakia Cultural Centre will gain international fame, and that to approve the application will set the wrong precedence. Mr Browne noted if more development is proposed around other sites of cultural significance, that there may be more appearances like this from other Larrakia custodians, noting there are other sacred sites around Darwin. Mr Browne emphasised that the fact that those sites have survived should be cherished, and that the significance of a sacred site extends past the site itself. Mr Browne noted that if the application is approved, then no-one can claim that cultural heritage matters were not raised. Mr Browne noted that these matters have been detailed by Larrakia custodians and that this application should be refused and not deferred.

The Chair advised that the planning scheme and *Planning Act 1999* do not require consultation, and while the Authority notes this concern does arise

from time to time, it is not matter that can be considered until such time as it is included in the Act. The Chair confirmed that applicant has met the strict legal requirements of the Act, and the Authority cannot consider the benefit of any additional consultation as it is beyond its legislative remit. Mr Browne acknowledged this situation but reiterated that it needs to be raised. Mr Browne also noted the applicant's indication that planning for this application has taken 7 years and emphasised that Larrakia history goes longer than that.

Ms Olivia Freeman (of the Northern Land Council) advised she will rely upon the original and subsequent submissions by the Northern Land Council and also raise additional matters for consideration. Ms Freeman acknowledged the constraints imposed upon the Authority by the *Planning Act 1999* but averred that sacred sites are a relevant consideration under section 51(1)(r) of the Act and is a mandatory consideration of the Authority. Ms Freeman also identified that there is no Authority Certificate for the site, and as this application is *Impact Assessable*, that a higher standard can be considered. Ms Freeman also advised that that the Stokes Hill restricted work area can be amended to include the site.

The Chair confirmed that if the site was identified as being subject to a restricted works area, then the proposed built form could be considered as contrary to the *Northern Territory Aboriginal Sacred Sites Act 1989*. However, the Chair emphasised that there has been no evidence provided that the site is within a restricted works area. Ms Freeman advised that it is not known how quickly any changes to the Authority Certificate associated with the nearby sacred site would come. Ms Freeman also noted that there is no formal requirement for consultation, however, emphasised that any assessment of the application would have been more efficient if prior consultation had taken place. Ms Freeman also stated that there are other sites where this development would have been more appropriate.

Mr Bill Risk advised that he is a senior custodian of the site and stated that he was not asked to put a submission to AAPA, noting the relevant regulations say that AAPA do not need to be engaged for a specific site. Mr Risk noted that this development will have an impact on the nearby sacred site and the Larrakia, who have a responsibility to take care of this sacred site. Mr Risk advised that he has the ability to extend the restricted works area associated with the nearby Authority Certificate to cover this site and advised he has done this on previous occasions. Mr Risk further clarified that an extension can extend a lot further than where this development is located. Mr Risk noted that as he was not notified by AAPA, he will contact them directly to ensure the cultural integrity of the nearby sacred site is maintained. Mr Risk advised that he was not aware of the development and its scale and suggested that neither were the Larrakia. Mr Risk advised that this type of development was not anticipated when the site of the Larrakia Cultural Centre was being negotiated and raised concerns with how the Larrakia Cultural Centre will be impacted by this development. Mr Risk stated he supports the other submissions in relation to this matter, as well as in relation to pedestrian and traffic movements. Mr Risk noted that the Larrakia

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Cultural Centre will have a lot of foot and bus traffic and raised concerns with how all these movements will be managed.

Mr Mark Motlop clarified that while changes to the *Northern Territory Aboriginal Sacred Sites Act 1989* now allows more parties to be added to an Authority Certificate, this approach undermines the purpose of the Authority Certificate and highlighted that the existing Authority Certificate did not envisage the building heights. Mr Motlop emphasised that this development will impede on intangible values.

The Chair confirmed that a development permit does not override any other legislation. The Chair clarified that it is neither the purview of the Authority to investigate sacred sites, nor does the Authority have the technical or cultural knowledge to do so.

Mr Darren Lynch advised that he is a director at several venues at the Darwin Waterfront and that he has at the Darwin Waterfront since 2009, having invested in buildings in the area. Mr Lynch indicated that his companies have about 300 employees, and that he considers that all good developments deserve an opportunity to proceed. Mr Lynch noted his support for the Larrakia Cultural Centre and stated he had provided support for that development to obtain a liquor licence. Mr Lynch advised that there is a lack of accommodation at the Darwin Waterfront precinct and emphasised the value of the additional accommodation being provided locally.

In response to specific matters raised during the meeting, Mr Sheridan advised that, while he cannot comment on all the specific mechanics of the *Planning Act 1999*, that the application was found to be compliant with the requirements of section 46 of the Act. In relation to the NTPS 2020 Mr Sheridan noted the very detailed submissions that were received, and in relation to public open space requirements, advised that approximately 25% of the site extends into the harbour. Mr Sheridan noted that this area is publicly accessible and further noted that there is no NTPS2020 definition for publicly accessible public open space. Mr Sheridan stated that the amended plans tabled at the meeting improved the proposed boardwalk but acknowledged that, given there are 2 sets of plans being discussed, numbers between the original application, assessment, and the DAS report to the Authority may have changed. In response to a question from the Chair, Mr Sheridan confirmed that permanently inundated areas were being counted towards the publicly accessible open space contribution and noted that this may explain the discrepancy in reporting as this arrangement was not included in the original application. The Chair confirmed that inclusion of the harbour area was acceptable for the purpose of the publicly accessible open space contribution.

Mr Sheridan also confirmed that higher windows can be provided along the northern building line, that a formal landscaping plan which details species composition can be provided, and that the AC plant will be screened.

In response to concerns raised at the meeting, the Authority confirms that the requirements of clause 5.5.16 (Active Street Frontage) do not apply to

this application, as subclause 1 states *This clause does not apply where: ... (b) the land is within the Darwin Waterfront identified on the diagram to Clause 5.9.2.4 (Darwin Waterfront Building Heights and View Lines).*

Mr Sheridan emphasised that it is not their intention to dismiss or minimise the intention or requirements of the NTPS2020 or *Planning Act 1999*, but advised that the application was written in accordance with the relevant requirements in mind.

The submissions received and evidence heard at the meeting have been taken into account by the Authority and carefully considered in the context of this application. The matters raised in the submissions and at the meeting 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 Authority in relation to the requirements of the NTPS2020 and the *Planning Act 1999*.

4. 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 connected to reticulated power, water and sewerage, and is reasonably considered capable of supporting the proposed development. In addition, it is noted that the site is generally flat, cleared of native vegetation, and located outside the Australian Noise Exposure Forecast 2042 20-unit contour. While the site is modelled as being subject to primary and secondary storms surge events, the Authority is satisfied that this element has been addressed, as detailed at section 2 of these reasons for deferral.

5. Pursuant to section 51(1)(k) of the *Planning Act 1999*, the consent authority must take into consideration the public facilities or public open space available in the area in which the land is situated and the requirement, if any, for the facilities, or land suitable for public recreation, to be provided by the developer.

The Authority notes that the application proposes 1100 m² (26%) of publicly accessible open space, comprised of a 3 m wide waterside publicly accessible footpath, a 1.5 m wide northern footpath adjacent to the Larrakia Cultural Centre site, a 2 m wide southern footpath between the proposed hotel/motel and existing on-site development, and the rock wall and harbour areas. While the harbour area will continue to be permanently inundated, it is considered acceptable for the purpose of this clause on the basis that it may still allow members of the public access to recreational opportunities such as fishing and provides places for marine wildlife.

In addition, the Authority notes that the NTPS2020 defines public open space (which is considered similar in intention) as *outdoor spaces that are generally accessible to the community and provide for a range of sport, recreation, cultural,*

entertainment or leisure pursuits, and that no other clauses of the NTPS2020 appear to disallow for the consideration of permanently inundated land to be considered as publicly accessible open space.

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.

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.

In relation to amenity, the first step is to establish, on an objective basis, the existing character of the area and then consider how the proposed development might affect that amenity, having regard to its impacts – for example, car parking and traffic, noise, noting that there is no right to a view. Further, amenity impact must be assessed relative to the context of the site and its surrounds, and with specific regard to the broader intention of the applicable zoning.

The Waterfront Precinct is a commercial and entertainment area characterised by a range of uses including the Darwin Convention Centre, the Charles Darwin Waterfront Campus, multi-storey residential towers and hotels, various commercial uses including offices, restaurants & shops and the Larrakia Cultural Centre (soon to be completed). The area and the subject site are zoned CB, the zone purpose being 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 development application proposes a type of development to be expected within the zone and is in keeping with the range of uses and development existing within the locality. Concerns relating to traffic and access to the site are addressed in a Traffic Impact Assessment provided with the application. Further, a deferral requirement for a written statement that demonstrates the functionality of the on-site drop off space and details the impact on the operation of the surrounding road network will allow the impact on local amenity to be assessed.

Views across adjacent land are generally considered as aesthetic enjoyment rather than legally enforceable property assets. Neither the *Planning Act 1999* or the NTPS2020 enshrine private view protection. Publicly significant or communal views—such as view lines toward Darwin Harbour—are actively managed through specific provisions embedded directly into Area Plans. As noted earlier, the proposed development does not affect any of the established view lines, the site being located outside of the identified view lines.

Taking into consideration site constraints and subject to traffic and access concerns referred to previously, the Authority generally considers that the proposed development is of a high architectural quality and unlikely to result

in unreasonable adverse amenity impacts within the locality and on nearby commercial/community land uses. The Authority concurs with the DAS Report, that the building will be well-articulated through building expression as well as a mix of building materials including balcony doors, timber cladding/slats, a high degree of landscaping along the external building line. The Authority notes that the development will contribute 2 publicly accessible thoroughfares to a waterside footpath that integrates with that being provided as part of the Larrakia Cultural Centre. Sufficient on-site car parking, safe access and appropriately designed accessways are provided.

7. Pursuant to section 51(1)(r) of the *Planning Act 1999*, the consent authority must take into consideration any potential impact on natural, social, cultural or heritage values, including, for example, the heritage significance of a heritage place or object under the *Heritage Act 2011*.

The Authority notes that there is only one registered heritage place located in proximity to this application (the Steam Pump House). The Authority has considered the comments of the Heritage Branch of the Department of Lands, Planning and Environment, public submissions and comments from the Aboriginal Areas Protection Authority (AAPA) in determining potential heritage and cultural values in relation to the historical railway to Stokes Hill Wharf, stone embankment across Stokes Hill Road, the abutment (land to sea) and the building and rebuilding of Stokes Hill Wharf (previously the Port Darwin Jetty or Railway Jetty), the potential for the Larrakia Cultural Centre to become a place of cultural significance, and of a sacred site at Stokes Hill.

A number of submitters raised questions and concerns relating to impacts on the sacred site associated with Stokes Hill. The Authority notes that AAPA advised that the site is not subject to an existing Authority Certificate, however that Larrakia custodians have previously expressed the view that development in proximity to Stokes Hill should not exceed the height of the site. As previously noted, protection of sacred sites is dealt with by the *Northern Territory Aboriginal Sacred Sites Act 1989* and the relevant authority is the Aboriginal Areas Protection Authority. The Authority notes that AAPA Certificates are not mandatory for planning purposes and that the risk of proceeding with the development without such a certificate lies on the applicant who has acknowledged that risk.

While these tangible and intangible heritage values are acknowledged within the broader locality, the Authority considers the proposed development acceptable having regard to the purpose and outcomes of the zone. Comments from the Heritage Branch can be addressed by including a condition precedent if a permit is granted, requiring amended plans detailing the location of heritage interpretation signage reflecting the heritage of the locality, and a permit note with respect to AAPA's recommendation. The scale of proposed development is anticipated within the planning framework and is consistent with the reasonable expectations of development in the zone. The proposal does not involve the demolition, alteration or physical impact of any recognised heritage asset, nor is it considered to unreasonably diminish the significance, setting or appreciation of other heritage values within the locality.

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In assessing the proposal, the Authority has given consideration to finding the balance between protecting local heritage values and facilitating the type of development envisaged by the NTPS2020. In this instance, requiring substantial redesign, additional studies or further mitigation measures would be unreasonable and disproportionate to the level of impacts identified, which in this situation relate to intangible values.

In summary, the Authority confirm that proposed development maintains an appropriate relationship with the surrounding area for development in Zone CB and is not expected to result in an unreasonable impact on the heritage character or cultural significance of nearby heritage places or cultural values. Accordingly, the proposed development is considered to appropriately respond to heritage considerations while still accord with the development outcomes intended by the zone provisions and strategic intent of the NTPS2020.

RESOLVED 50/26

That, pursuant to section 86(1) of the Planning Act 1999, the Development Consent Authority (the Authority) delegate to the Chair the power under section 53 of the *Planning Act 1999* to determine the application to develop Lot 7495 (39) Stokes Hill Road, Darwin City, Town of Darwin for the purpose of a hotel/motel (108 suites) in a 6 storey building subject to receipt of:

1. Amended drawings that show:
 - a. A shelter over the northern bike racks to support compliance with clause 5.3.7 (End of trip facilities in Zones HR, CB, C, SC and TC).
 - b. A notation stating that the indoor bicycle parking facilities will be designed in accordance with Australian Standard AS2890.3 – Bicycle Parking to support compliance with clause 5.3.7 (End of trip facilities in Zones HR, CB, C, SC and TC).
 - c. Windows along the northern building line to be no less than 1.5 m above floor level, to reduce the degree of overlooking from the site to any adjacent developments, in support of section 51(1)(n) of the Act.
 - d. Awning of part of the on-site pedestrian footpath network, if feasible, to support compliance with clause 5.5.15 (Design in Commercial and Mixed Use Areas).
2. Detailed landscaping plan to ensure compliance with clause 5.2.6.2 (Landscaping in Zone CB).
3. Swept path diagrams which demonstrate that the car parking layout will be functional for its intended purpose in support of a variation to clause 5.2.4.4 (Layout of car parking areas).
4. Written statement that demonstrates the functionality of the on-site drop off space and detailing the impact on the operation of the surrounding road network to assess the impact on local amenity (section 51(1)(n) of the Act).
5. Written statement about the loading bay functionality in support of a variation to clause 5.2.5 (Loading Bays).

FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Deferral

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

SUZANNE PHILIP

Chair

20 August 2026