



## **DEVELOPMENT CONSENT AUTHORITY**

### **DARWIN DIVISION**

### **MINUTES**

**MEETING No. 400 – FRIDAY 18 NOVEMBER 2022**

**BROLGA ROOM  
NOVOTEL DARWIN CBD  
100 THE ESPLANADE  
DARWIN CITY**

**MEMBERS PRESENT:** Suzanne Philip (Chair), Marion Guppy, Mark Blackburn, Mick Palmer and Morgan Rickard

**APOLOGIES:** Peter Pangquee

**LEAVE OF ABSENCE:** Nil

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), Ann-Marie Reynolds, Amit Magotra and Monica Pham (Item 2 only) (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Conneil Brown, Brian Sellers, Suzi Bee, Robert Taylor and Joan Tachado (item 2 only)

**Meeting opened at 10.15 am and closed at 3.00 pm**

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

**ITEM 2**

**PA2022/0163 MIXED-USE DEVELOPMENT COMPRISING DWELLINGS-MULTIPLE (8 X 1, 72 X 2 AND 2 X 3 BEDROOM), SERVICED APARTMENTS (108 X 1 BEDROOM/STUDIO), FOOD PREMISES AND BAR-SMALL (INCLUDING ROOF TOP DECK) IN 2 X 27 STOREY BUILDINGS IN TWO STAGES  
LOT 627 (85) MITCHELL STREET, DARWIN CITY, TOWN OF DARWIN**

**APPLICANT** Cunnington Rosse Town Planning and Consulting

Cunnington Rosse Town Planning and Consulting

Attendees: - Applicant: Brad Cunnington and Alex Deutrom (Cunnington Rosse Town Planning and Consulting), Lloyd Nair and Georgios Skyllas (landowners); and Desmond Robertson and Max Manohar (Rossi Architects)

Mr Cunnington tabled an amended plan – alternate balcony design for stage two

**RESOLVED  
78/22**

That, the Development Consent Authority vary the requirements of Clauses 5.2.3.2 (Volumetric Control in Central Darwin), 5.2.4.4 (Parking Layout), 5.2.5 (Loading Bays), 5.4.6 (Private Open Space and reduce the car parking requirements pursuant to Clause 5.2.4.3 (Reduction in Parking Requirements within Zone CB in Darwin) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 627 (85) Mitchell St, Darwin City, Town of Darwin for the purpose of mixed-use development comprising dwellings-multiple (8 x 1, 72 x 2 and 2 x 3 bedroom), serviced apartments (108 x 1 bedroom/studio), food premises and bar-small (including roof top deck) in 2 x 27 storey buildings in two stages, subject to the following conditions:

**CONDITIONS PRECEDENT**

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans submitted with the application but modified to show:
  - increased private open space for the serviced apartments proposed for Stage 2 as illustrated on drawing number SK121 Rev B tabled at the meeting dated 18 November 2022. Note: a complete set of plans and elevations should be submitted for assessment.
  - elevations and floor layout details for level 27 of Stage 1 to clarify the details of level 27;
  - a 6m access easement over Lots 626 and 627, including the removal of bollards and shade structures over the easement;

- car parking layout details (floor plans) for each level to clarify the number of car parking spaces;
  - an annotation that bicycle parking and lockers are designed to Australian Standard AS2890.3 – Bicycle Parking to ensure compliance with Clause 5.3.7 (End of Trip Facilities);
  - all proposed dwelling types to scale to illustrate the different apartment types proposed, specifically in relation type T01, T02, T03 and T09; and
  - further details of treatments to pre-cast concrete panels of different shades for graphic pattern to the blank walls to ensure the expanse of blank walls are minimised.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the applicant is to provide written confirmation from the Water Services division of the Power and Water Corporation that any intrusion over the sewer easement has been approved or removed, to the satisfaction of the consent authority.
  3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), approval is required for the provision of awnings to the street frontages to the requirements of the City of Darwin and Power and Water Corporation, to the satisfaction of the consent authority. The awnings shall not reduce the achievement of active frontages below 75% of the total length of the site boundary to the street.
  4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), approval is required by the City of Darwin for any element of the building (separate to awnings) that is designed to be constructed or installed over the City of Darwin road reserve, to the satisfaction of the consent authority.
  5. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the crossover and driveway to the site from the City of Darwin, to the satisfaction of the consent authority.
  6. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a comprehensive Traffic Impact Assessment report is to be prepared by a suitably qualified traffic engineer in accordance with the Austroads Document Guide to Traffic Management Part 12: Traffic Impacts of Developments, in the report structure provided as Appendix C of that document, to the requirement of the City of Darwin, to the satisfaction of the consent authority. The report should include development traffic generation, distribution and the road network performance analysis using the City of Darwin CBD traffic model, as well as: The internal traffic circulation, to demonstrate that the driveway dimensions shall be arrange in such a manner that NO queuing or traffic blockage occurs on Mitchell Street road pavement. Suitability of any proposed accesses off City of Darwin controlled road reserves shall be assessed in the TIA, for both operation and construction phase of the development. Swept paths for waste collection vehicles and tour buses ensuring that all vehicles can enter and exit the site

in a forward gear. The design/TIA shall also consider the safe access to the end trip facilities for cyclist and pedestrians. The report should identify any necessary upgrades to the surrounding street network as a result of the implications of the development. The developer will be required to institute all required upgrade measures resulting from the traffic assessment at no cost to City of Darwin.

7. Prior to the endorsement of plans and prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Darwin stormwater drainage system shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels and Council's stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council's system.
8. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.
9. Prior to the commencement of works (including site preparation), a waste management plan addressing the City of Darwin's Waste Management Guidelines must be prepared, to the requirements of the City of Darwin, to the satisfaction of the consent authority.
10. Prior to the commencement of works (including site preparation), the applicant is to prepare a Site Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP should specifically address the impact to Council owned public spaces and include a waste management plan for disposal of waste to Shoal Bay, traffic control for affected City of Darwin roads, haulage routes, storm water drainage & sediment control, use of City of Darwin land, and how this land will be managed during the construction phase.

#### **GENERAL CONDITIONS**

11. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
12. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, electricity and telecommunication networks to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

Please refer to notations 3 and 4 for further information.

13. 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.

14. 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.
15. If Council approval is obtained for in association with Condition 3, other intrusion into the City of Darwin Road Reserve building elements over City of Darwin road reserve, the applicant will be required to enter into appropriate agreements with the City of Darwin and the design specifications are to be to the requirements of City of Darwin to the satisfaction of the consent authority.
16. All works recommended by the traffic impact assessment are to be completed to the requirements of the City of Darwin, to the satisfaction of the consent authority.
17. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin, to the satisfaction of the consent authority.
18. Upon completion of any works within or impacting upon the Mitchell Street road reserve, the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin.
19. Before the use commences the owner must, in accordance with Part 6 of the *Planning Act 1999*, pay a monetary contribution to the City of Darwin for the upgrade of local infrastructure, in accordance with its Development Contribution Plan for Stormwater Drainage Works – Contributions Area Zone D.
20. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of City of Darwin, to the satisfaction of the consent authority.
21. Written confirmation from a qualified traffic engineer that the parking layout associated with the development is a suitable gradient for safe and convenient parking and comply with the relevant Australian Standards for car parking must be provided in instances where the car parking does not comply with the minimum requirements of Clause 5.2.4.4 (Parking Layout) of the Northern Territory Planning Scheme 2020, to the satisfaction of the consent authority.
22. The owner shall:
  - (a) remove disused vehicle and/ or pedestrian crossovers;
  - (b) provide footpaths/ cycleways;
  - (c) collect stormwater and discharge it to the drainage network; and
  - (d) undertake reinstatement works;all to the technical requirements of and at no cost to the City of Darwin, to the satisfaction of the consent authority.

23. Before the use or occupation of the development starts, the area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
- (a) constructed;
  - (b) properly formed to such levels that they can be used in accordance with the plans;
  - (c) surfaced with an all-weather-seal coat;
  - (d) drained;
  - (e) line marked to indicate each car space and all access lanes; and
  - (f) clearly marked to show the direction of traffic along access lanes and driveways to the satisfaction of the consent authority.
- Car parking spaces, access lanes and driveways must be kept available for these purposes at all times.
24. The car parking shown on the endorsed plan(s) must be available at all times for the exclusive use of the occupants of the development and their (visitors/clients).
25. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street, in accordance with the requirements of City of Darwin, to the satisfaction of the consent authority.
26. Storage for waste disposal bins is to be provided to the requirements of City of Darwin to the satisfaction of the consent authority.
27. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view and from view of neighbouring or nearby developments (or developments reasonably anticipated), located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority. The use of angled louvered slats for screening purposes is acceptable, however the slat screening must be designed with a panel to gap ratio, such that the condenser units are not readily visible from any angle.
28. All roof top plant equipment, equipment relating to the operation of the lift and any other equipment (such as any vents and ducting associated with requirements for stairwell pressurisation or other such ventilation purposes or similar) that will be placed on the rooftop of the development shall be appropriately screened, or designed to soften the visual impact of such equipment from view from neighbouring or nearby developments (or developments reasonably anticipated).
29. All substation, fire booster and water meter arrangements are to be appropriately screened to soften the visual impact of such infrastructure on the streetscape, to ensure that the infrastructure is sympathetic to and blends in with the design of the building. Details will need to be resolved to the satisfaction of the consent authority in consultation with the Power and Water Corporation, and NT Fire and Emergency Services.

30. Prior to the use/occupation of the development and connection of services (i.e. power and water), the owner of the land must apply for street addressing from the Surveyor-General of the Northern Territory. This will form the legal address and will be required to be placed on the meters within the development in accordance with the allocation. An Occupancy Permit will not be able to be granted until such time as addressing is obtained.”
31. All balconies are to be internally drained and discharge is to be disposed of at ground level and in a manner consistent with stormwater disposal arrangements for the site to the satisfaction of the consent authority.
32. All pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the consent authority.
33. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building.
34. The loading and unloading of goods from vehicles must only be carried out on the land (within the designated loading bays and must not disrupt the circulation and parking of vehicles on the land).
35. Before the *use/occupation of the development* starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
36. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.

## NOTES

1. This permit will expire if one of the following circumstances applies:
  - (a) the development and use is/are not started within two years of the date of this permit; or
  - (b) the development is not completed within four years of the date of this permit.The consent authority may extend the periods referred to if a request is made in writing before the permit expires.
2. This development as approved by the Development Consent Authority (DCA) achieves a level of active interface deemed by the authority to provide 75% of the length of the site boundary at ground level as active street frontage. Retaining this level of active frontage is considered by the DCA to be essential to this development achieving the purpose of clause 5.2.3.3 (Urban Design Requirements in Central Darwin). Any reduction in the percentage of active street frontage, and may require full consideration by the DCA at a meeting of the authority. Refer to “Design guidance to achieve active frontages and provide for services” for advice to active street frontages in relation to service authority requirements.

Notwithstanding the approved plans, the demonstrated awning in City of Darwin road reserve is subject to Council approval at no cost to Council.

3. The Power and Water Corporation advises that the Water and Sewer Services Development Section ([waterdevelopment@powerwater.com.au](mailto:waterdevelopment@powerwater.com.au)) and Power Network Engineering Section ([powerdevelopment@powerwater.com.au](mailto: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.
4. If you choose nbn to service your development, you will need to enter into a development agreement with nbn. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered nbn will be in contact to discuss the specific requirements for the development. Nbn requires you to apply at least 3 months before any civil works commence. All telecommunications infrastructure should be built to nbn guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/builders-designers.html>
5. Power and Water has essential water and sewer infrastructure within the road reserve adjacent to Lot 627 and in the sewer easement on Lot 627. The developer is advised to take all necessary precautions including seeking direction from geotechnical experts to ensure the surrounds and foundations of PWC's assets are not undermined during construction. The developer will be fully liable for any damages or undermining of any PWC assets during construction.
6. The developer must contact Power and Water regarding temporary installation of cranes in the road reserve prior to building construction. The developer must propose structural protection of existing PWC assets affected by cranes and crane foundations, then obtain approval from PWC (and other service providers) prior to tower installation of the cranes.
7. Darwin International Airport advises that separate requests for assessment and approval must be submitted to Darwin International Airport and the Department of Defence for any cranes used during construction that will infringe on either the Obstacle Limitation Surfaces (OLS) or Procedures for Air Navigation Services – Operations (PANS-OPS) surfaces for Darwin Airport.
8. The Department of Defence advises that separate requests for assessment and approval must be submitted for any cranes used during construction that will infringe on either the Obstacle Limitation Surfaces (OLS) or Procedures for Air Navigation Services – Operations (PANS-OPS) surfaces for Darwin Airport.
9. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5346 ([surveylandrecords@nt.gov.au](mailto:surveylandrecords@nt.gov.au)).



10. Any floodlighting or security lighting provided on site is to be shielded in a manner to prevent the lighting being noticeable or causing nuisance to Mitchell Street Road traffic.
11. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
12. A "Permit to Work Within a Road Reserve" may be required from City of Darwin before commencement of any work within the road reserve.
13. Any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin Policy 042 - Outdoor Advertising Signs Code.
14. City of Darwin has advised approval is required for any element of the building (separate to awnings) that is designed to be constructed or installed over the City of Darwin road reserve, to the satisfaction of the consent authority.
15. In accordance with City of Darwin By-Laws, prior to occupation, the applicant shall ensure that a building number is displayed in a position clearly visible from the street. The number must be visible against the background on which it is placed, to the satisfaction and at no cost to City of Darwin.
16. 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.
17. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email ([info@ntbuild.com.au](mailto:info@ntbuild.com.au)) or by phone on 08 8936 4070 to determine if the proposed works are subject to the Act.
18. A Compliance Certificate under the *Swimming Pool Safety Act 2004* issued by the Swimming Pool Safety Authority is required for the swimming pool/s prior to the commencement of the development.
19. The development and use hereby permitted must be in accordance with Northern Territory legislation including (but not limited to) the *Building Act 1993*, the *Public and Environmental Health Act 2011* and the *Food Act 2004*.

## REASONS FOR THE DECISION

1. 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 NT Planning Scheme 2020 applies to the land. Lot 627 is centrally located in Zone CB (Central Business) and is surrounded by a mix of land uses accommodating a range of retail, commercial and high-rise residential and tourist accommodation land uses.

The purpose of Zone CB (Central Business) is to provide for a diversity of activities with a commitment to the separation of incompatible activities, and building form and design is expected to be sensitive to the needs to pedestrian movement and facilitate the creation of safe and active street frontages and public places and a vibrant commercial precinct. The building aligns with the broader intent of Zone CB in providing development that is of high architectural quality and presents well to the street frontage in terms of pedestrian amenity and activation.

The mixed-use development comprising dwellings-multiple (8 x 1, 72 x 2 and 2 x 3 bedroom), serviced apartments (108 x 1 bedroom/studio), food premises and bar-small (including roof top deck) in 2 x 27 storey buildings in two stages) requires consent under Clause 1.8 (When development consent is required). It is identified as Merit Assessable under Clause 4.10 Zone CB (Central Business), therefore Clauses 5.2.3 (Building in Central Darwin), 5.2.4 (Vehicle Parking), 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 5.3.7 (End of Trip Facilities), 5.4.6 (Private Open Space), 5.4.7 (Communal Open Space), 5.4.8 (Building Design for Dwelling-Group, Dwelling-Multiple, Rooming Accommodation and Residential Care Facility), 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T), 5.5.6 (Al fresco Dining Areas in Zone CB within Central Darwin), 5.5.10 (Nightclub Entertainment Venue, Bar-Public and Bar-Small) and 5.5.11 (Food Premises), need to be considered.

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

The proposal has been found not to be in accordance with Clauses 5.2.3.2 (Volumetric Control in Central Darwin), 5.2.4.1 (Parking Requirements), 5.2.4.4 (Parking Layout), 5.2.5 (Loading Bays) and 5.4.6 (Private Open Space).

- (a) 5.2.3.2 (Volumetric Control in Central Darwin)

The purpose of this clause is to *ensure the siting and mass of buildings within Central Darwin promotes: (a) a built form that maximises the potential for view corridors to Darwin Harbour; (b) the penetration of daylight and breeze circulation between buildings; (c) privacy for residents*

*of adjoining properties; and (d) a built form that reasonably anticipates the future development of adjoining sites.*

Sub-clause 3 of Clause 5.2.3.2 states that *development in Central Darwin is to be designed in accordance with the diagram to this clause.*

The tier 1 podium is measured from the ground floor to Level 7. The podium level does not comply with the 6m setbacks from balconies to rooms designed for accommodation to site boundaries. The setbacks only apply to Stage 1 – Levels 5 to 7 as no accommodation/balconies are located on the other levels (for Stage 1 & 2).

The following setbacks are proposed, where the NTPS 2020 requires 6m:

Stage 1

- Side (north-western) boundary - 3m (Level 5) to 5m (Level 6);
- Rear (southwest) boundary – 0m (Level 5, 6 & 7 – all levels);

The tier 2 tower level is measured from level 8 to level 27. The tower level does not comply with the required 6m setback to all boundaries and the internal 12 setback between towers on the same site.

The following setbacks to site boundaries are proposed, where the NTPS 2020 requires 6m:

Stage 1

- Side (northwest) boundary - 5.2m (all levels)
- Side (southeast) boundary - 5.2m (all levels)
- Rear (southwest) boundary - 5.14m (all levels)

Stage 2

- Side (northwest) boundary - 5.2m (all levels)
- Side (southeast) boundary - 5.2m (all levels)
- Front (northeast) boundary - 5m (levels 8-24) to 4.2m (levels 25-27)

The setbacks between towers on the same site proposed ranges from 8.25m to 9m (from levels 8 to 27), where the NTPS 2020 requires 12m.

The relevant administration to this clause is listed in sub-clause 2 which states, *the consent authority may consent to a development that is not in accordance with sub-clause 3 only if it is satisfied it is consistent with the purpose of this clause, and it is appropriate to the site having regard to such matters as its location, nature, scale and impact on surrounding amenity.*

The Authority notes that; in relation to part (a), the clause ensures that the siting and mass of buildings promotes a built form that maximises the potential for view corridors to Darwin harbour. Regarding part (d), it can be reasonably anticipated that other CBD lots can be developed according to the volumetric controls, notwithstanding the views that may currently exist over undeveloped CBD lots. The main opportunity for views is from upper levels of buildings, along road corridors. The subject site is bounded by Mitchell Street on one side, and the setback

intrusion is minor in nature and will not impact the potential for view corridors to Darwin harbour.

In relation to parts (b), (c) and (d), the Authority notes that; the degree of impact to daylight and breeze penetration between the buildings, privacy, and built form of future development is unlikely to be affected as the intrusion of the buildings to all boundaries are minor (approximately 0.86m to 1.8m from boundaries and approximately 3m to 3.75m between the two buildings) and privacy screening of the balconies is demonstrated on the plans along the rear (southwest) boundary balconies. Openings along the along the northeast boundary of Stage 1 and southwest boundary of Stage 2 are limited to corner balconies corner of the Stage 1 building and air conditioner condensers. Screening is provided from balconies and air conditioner condensers along these boundaries. The non-compliance related to the street frontage is minimally impacted as the widths of the road reserve allow for adequate daylight and breeze penetration between buildings.

The floor plan for Level 27 of Stage 1 (Drawing SK127) shows a mechanical plant zone is located on this floor, however the elevations show that the Stage 1 building only goes up to Level 26. At the meeting, the applicant clarified that this is a discrepancy in the drawings. The Authority notes the applicant's response and a condition is included which requires amended plans be submitted to clarify the elevation and floor layout details of level 27 for Stage 1.

The Authority is satisfied that, despite the variation, the siting and mass of the building does not impact on existing or future view corridors to Darwin harbour, the penetration of daylight and breeze circulation between buildings, nor the privacy for residents of adjoining properties, beyond that which a complying design would. The design of the building is appropriate to the site having regard to such matters as its location, nature, scale and impact on surrounding amenity. The Authority found that the design of the building responds to microclimates, minimise privacy, maximises passive surveillance and reduces the appearance of building mass compared to a compliant building (Zone Outcome 8 – Zone CB).

#### 5.2.3.3 Urban Design Requirements in Central Darwin

The application has been assessed as compliant with the requirements of Clause 5.2.3.3.

Sub-clause 6(a) of Clause 5.2.3.3 states *(6) Buildings in Central Darwin are to: (a) provide awnings to streets for the full extent of the site frontage that allow for the planting and growth of mature trees within the road reserve.*

Drawing number SK155 includes two awning options. The applicant has indicated on the plans that option one is preferred which includes an awning for the full extent of the Mitchell Street site frontage and shade trees are proposed along the road reserve. Given consent is required from both the local authority and service authority, a condition is

included for the provision of awnings to the street frontages to the requirements of the City of Darwin and Power and Water Corporation prior to the endorsement of any plans.

#### 5.2.4.1 (Parking Requirements)

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

The car parking requirements in Zone CB in Darwin (listed in column 3) are provided below:

- *Bar-small* are required to provide 2 spaces for every 100m<sup>2</sup> of net floor area, excluding alfresco dining areas;
- *Food premises (all)* are required to provide 2 spaces for every 100m<sup>2</sup> of net floor area;
- *Dwelling-multiple* are required to provide 1 space per bed-sitter and one bedroom dwelling, 1.5 spaces per two bedroom dwelling, 1.7 spaces per three bedroom dwelling; and
- *Serviced apartment* are required to provide 1 space for every dwelling, plus 3 spaces for every 100m<sup>2</sup> of net floor area not within a dwelling.

For the purposes of assessment, net floor area in relation to a building, includes all the area between internal surfaces of external walls but does not include:

- (a) stairs, cleaners cupboards, ablution facilities, lift shafts, escalators or tea rooms where tea rooms are provided as a standard facility in the building;
- (b) lobbies between lifts facing other lifts servicing the same floor;
- (c) areas set aside as public space or thoroughfares;
- (d) areas set aside as plant and lift motor rooms;
- (e) areas set aside for use of service delivery vehicles; and
- (f) areas set aside for car parking or access;

The applicant's car parking schedule (drawing SK114), typical parking levels (drawing SK113), level 5A & 5B (drawing SK115) and level 6A (drawing SK116) indicates that:

- Stage 1 provides 109 car parking spaces on levels 1 to 5; and
- Stage 2 provides 92 car parking spaces on levels 1 to 6.  
Providing a total of 201 car parking spaces.

Whilst the car parking schedule lists the total car parking provided for each stage, the number of car parking spaces is not clearly shown on the floor plans for each level therefore a condition precedent is included that requires amended plans to be provided which detail the number of car parking spaces on each level.

The Authority notes the Development Assessment Services (DAS) assessment which found that 119.4 car parking spaces are required for Stage 1 and 123.99 spaces for Stage 2, equating to 243.39 (~244) car parking spaces in total.

244 car parking spaces are required and 201 spaces are provided in total, resulting in a shortfall of 43 car parking spaces. The applicant seeks a reduction to the required parking under Clause 5.2.4.3 (Reduction in Parking Requirements within Zone CB in Darwin).

5.2.4.3 Reduction in Parking Requirements within Zone CB in Darwin

The purpose of this clause is to *provide for a use or development with fewer car parking spaces than required by clause 5.2.4.1 (Parking Requirements) within Zone CB in Darwin.*

Sub-clause 1 provides the Authority with a discretion to determine that fewer car parking spaces are required for a development than those otherwise prescribed by the Scheme. The table to the Clause provides a variety of considerations and associated percentages which may be taken into account by the Authority in determining whether to reduce the parking requirement. Two different categories in that table may be applicable in this case.

Having regard to sub-clause 1, the Authority notes that DAS's assessment concludes that a 20% (48.8 ~ 49 spaces) reduction under categories 1(a), 2(c) of table to Clause 5.2.4.3 can be applied due to the following (reduction applied under each category):

- Category 1(a) - The proposal is within walking distance of a public bus stop. Bus stop 178 (corner of Mitchell and Brigg St) (15% reduction).
- Category 2(c) - The site is within 400m walking distance of the publicly accessible Dragonfly Car Park (5% reduction).

After considering the reductions sought, DAS calculates the total car parking requirement for the development is 49 spaces.

DAS concludes that the development provides 201 parking spaces across both stages, and a reduction of 20% would reduce the parking requirements from 244 car parking space to 195 spaces and no shortfall would occur as a result.

At the hearing, Mr Brad Cunnington outlined his approach to the car parking calculations and how he, similar to the DAS, applied the percentages to the car requirements as a whole. Mr Cunnington noted that in this instance whether applied cumulatively or otherwise, it would have a minor impact on the reduction sought.

The Authority has taken all comments into account and carefully considered the material provided with the application. The Authority noted that the reduction of car parking requirements under Clause 5.2.4.3 is at its discretion. It acknowledges the various calculations made by DAS and the Applicant in relation to the percentage reductions under the clause and while it supports a reduction in the car parking requirements it wishes to highlight that Clause 5.2.4.3, while providing a table with various possible reductions and suggested percentages, does not provide further guidance regarding its application, apart from



providing that only one reduction per category is permitted. The Applicant and DAS have chosen to apply the percentage reduction in each category to the whole parking requirement. It equally could be assessed so that, once a percentage reduction under a category is applied, the parking requirement is thereby reduced and the percentage reduction applied under the next category is calculated on the parking requirement so reduced. Such a method is presumably within the DCA's discretion, particularly in a case such as this where multiple categories for reduction are being relied upon, and would result in a substantially smaller reduction overall.

The Authority also notes that, in exercising its discretion, it is always open, under Clause 1.10.6, to impose a condition requiring a higher standard of development than is set out in a requirement of Parts 3, 5 or 6.

#### 5.2.4.4 (Parking Layout)

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

Sub-clauses 4(a) and (i) of Clause 5.2.4.4 states that *a car parking area is to be (a) of a suitable gradient for safe and convenient parking and (i) have driveways with a minimum width of 6m for two-way traffic flow or 3.5m for one-way traffic flow.*

The proposed development does not comply with Clause 5.2.4.4 as the car parking area has a slight gradient and the driveway width is less than 6m (5.6m, where the NTPS 2020 requires 6m) at the ground floor access ramp.

The relevant administration to this clause is listed in sub-clause 1, *the consent authority may consent to a car parking area that is not in accordance with sub-clause 4 if it is satisfied that the non-compliance will not: (a) result in adverse impacts on the local road network or internal functionality of the car parking area; and (b) unreasonably impact on the amenity of the surrounding locality.*"

Regarding sub-clause 4(a) the Authority notes the applicant's response to this clause in its Statement of Effect indicates that *"the proposed parking area has a slight gradient suitable for safe and convenient parking,"* however the traffic assessment provided does not address this aspect. A condition is included which requires written advice from a suitably qualified person which confirms that the parking layout is a suitable gradient for safe and convenient parking.

Regarding sub-clause 4(i), the driveway width is 5.6m at the ground floor access ramp, where the NTPS 2020 requires 6m. It is noted that the driveway width on all other car parking levels is compliant.

The traffic assessment provided states, *the vehicle access to each of the car parking areas exceeds the minimum requirement of 5.5m identified within AS2890.1.*

The Authority notes previous variations have been granted to the dimensional requirements of this clause based on written confirmation from a qualified traffic engineer that all car parking and accesses are compliant with the relevant standards. A variation is therefore considered appropriate as the proposal is unlikely to result in adverse impacts on the local road network or internal functionality of the car parking area or unreasonably impact on the amenity of the surrounding locality as the car parking layout complies with the relevant Australian Standard.

A reciprocal 3m access easement is registered over the site and the adjacent land at Lot 626 (87) Mitchell Street to ensure a 6m driveway is achieved overall with access to both developments. The existing bollards and sunshades located within the access easement as noted in City of Darwin's comments. The traffic assessment states, *it is noted that the existing building to the west currently has bollards within the access easement which would need to be removed.* The applicant in its deferral response state, *the subject sunshades and bollards are located within the access easement and will be removed from Lot 626 prior to the commencement of use of the site.* A condition has therefore been included which requires amended plans showing a 6m access easement over Lots 626 and 627, including the removal of bollards and shade structures.

The DAS report noted that while it doesn't impact on the car parking requirements, Stage 2 includes four lockable parking spaces on all levels.

At the hearing, Mr Cunnington advised that these secure spaces would or could be offered to staff to provide secure car parking. The Authority did not raise any concerns with the lockable parking spaces noting it would not have an impact on the car parking requirements.

The Authority notes the matters raised by DAS in its report in relation to the Central Darwin Area Plan, particularly in relation a perceived non-compliance with objective 2.2 of the mixed use theme which outlines that *floors constructed for car parking within mixed use buildings are to have level surfaces (excluding ramps) and ceiling heights that enable future conversion to commercial or residential use.*

Under Clause 1.10(3) of NTPS 2020, the consent authority must take into account (d) if an Area Plan in Part 2 applies to the land, any component relevant to a variation of requirements in Parts 5 or 6.

The Authority notes that the development is identified as Merit Assessable under Clause 4.10 Zone CB (Central Business), and therefore consideration of Clause 1.10(3)(d) is not required as no



variation is being sought. The condition recommended by DAS has therefore being removed.

#### 5.2.5 (Loading Bays)

The purpose of this clause is to *provide for the loading and unloading of vehicles associated with the use of land.*

Sub-clauses 2 and 3 of clause 5.2.5 requires a (2) *food premises (restaurant) use provide areas wholly within the site for loading and unloading of vehicles at the ratio of 1 loading bay for every 2000m<sup>2</sup> of the total net floor area and (3) A loading bay is to: (a) be at least 7.5m by 3.5m; (b) have a clearance of at least 4m; and (c) have access that is adequate for its purpose.*

Loading bays are not required for a bar-small, dwelling-multiple or serviced apartments. One loading bay is however required for the food premises (restaurant) which has a net floor area of 95m<sup>2</sup>. Two 7.5m by 3.5m loading bays are provided, one in Stage 1 and one in Stage 2. The application states *loading area in stage 1 to facilitate rubbish collection on site. The loading bay in stage 2 will service the food premises tenancy.* The loading bay clearance is shown as 3.325m, where the NTPS 2020 requires 4m.

The relevant administration to this clause is listed in sub-clause 1 which states, *the consent authority may consent to a use or development that is not in accordance with sub-clauses 2 and 3 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and that the non-compliance will not result in adverse impacts on the local road network nor the number or availability of car parking spaces.*

The Authority notes the traffic assessment prepared by Arccos Consulting states, *it is anticipated that the largest vehicle required to access the site on a regular basis would be a large van, garbage collections are proposed to be undertaken with a small truck.* The Authority considers a variation appropriate in this instance as the proposal provides areas for the loading and unloading of vehicles in excess of the requirements of the clause and the type of vehicles that will service the site (light vehicles) are unlikely to require larger clearance than what is proposed. The non-compliance with the height requirements is unlikely to result in any adverse impact on the local road network as demonstrated in the swept path diagrams provided in the traffic assessment. No car parking is proposed on the ground level and the second loading bay will also be used as dual function porte-cochere for the serviced apartment building in Stage 2.

#### 5.3.7 (End of Trip Facilities)

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.

Sub-clause 3 requires that *'all bicycle parking facilities and associated bicycle parking devices should be designed in accordance with Australian Standard AS2890.3 – Bicycle Parking.'*

The Authority notes that the application has been assessed as compliant with the requirements of Clause 5.3.7, through information provided in the Statement of Effect, Plans and deferral response.

Nevertheless, a condition is included which requires an annotation on amended plans that bicycle parking and lockers are designed to Australian Standard AS2890.3 – Bicycle Parking to ensure compliance with Clause 5.3.7 (End of Trip Facilities).

#### 5.4.6 (Private Open Space)

The purpose of this clause is to *extend the function of a dwelling and enhance the residential environment by ensuring that each dwelling has private open space that is:*

- (a) of an adequate size to provide for domestic purposes;*
- (b) appropriately sited to provide outlook for the dwelling;*
- (c) open to the sky and sufficiently permeable to allow stormwater infiltration and lessen runoff from the site; and*
- (d) inclusive of areas for landscaping and tree planting.*

Subclauses 4 of Clause 5.4.6 states that that *private open space for a dwelling-single, dwelling-group, dwelling-multiple or dwelling-independent should:*

- (a) satisfy the minimum area, dimensions and open to the sky requirements contained in the table to this clause;*
- (b) be directly accessible from the dwelling and enable an extension of the function of the dwelling; and*
- (c) be located to provide views from the dwelling to open space and natural features of the site or locality, and to reduce overlooking from neighbouring open space and dwellings;*
- (d) ensure that at least half of the private open space is permeable to allow stormwater infiltration and lessen stormwater runoff from the site;*
- (e) include at least one area of at least 5m<sup>2</sup>, with no dimension less than 1.5m, for the deep soil planting of trees and vegetation for shade or screening; and*
- (f) allow for landscaping at the property frontage to complement the visual amenity of the streetscape.*

The relevant Administration for this clause under sub-clauses 1 and 2 states,

- (1) The consent authority may consent to private open space that is not in accordance with sub-clauses 4 and 5 only if is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.*

- (2) *If a dwelling within a dwelling-multiple development has no direct access at ground level to private open space, and where on-site communal open space is provided, compliance with purpose provisions (c) and (d), and sub-clauses 4(d), (e) and (f) is not required.*

Stage 1 consists of dwellings-multiple and dwelling types - T02, T04, T09 and T10 do not comply with the private open space requirements, as they propose areas ranging from 8.91m<sup>2</sup> to 11.93m<sup>2</sup>, where the NTPS 2020 requires 12m<sup>2</sup> with no dimension less than 2.8m.

The private open space is oriented to the side and rear and front setbacks overlooking from neighbouring open space and dwellings is unlikely to occur.

Stage 2 consists of serviced apartments and dwelling types T05, T06, T07 and T08 do not comply with the private open space requirements, as they propose areas ranging from 3.19m<sup>2</sup> to 4.03m<sup>2</sup>, where the NTPS 2020 requires 12m<sup>2</sup> with no dimension less than 2.8m.

Service apartments are included within the definition of *dwelling-multiple* in the NTPS 2020 and *means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and which is regularly serviced or cleaned.* Service apartments differ from dwelling-multiple as they are not intended to be a primary place of residence. Service apartments differ from a hotel/motel as they are self-contained and the duration of stay for a service apartment isn't specified whereas a hotel /motel is primarily used for short-term accommodation.

The site area is 2030m<sup>2</sup>, therefore 15% communal open space is 304m<sup>2</sup> (for both Stages 1 & 2). For Stage 2 communal open space is provided on Level 7 with the swimming pool, gym and outdoor terrace area which is about 345m<sup>2</sup>. The quantity of the communal open space areas are provided at almost double to that ordinarily required.

The function of the serviced apartments is expected to be different to both a typical residential dwelling-multiple and also hotel/motel accommodation. Reduced private open space areas may lessen the overall amenity achieved within each apartment and the balcony size provided could limit the ability for a change of use in future.

At the meeting, Mr Cunnington advised that dwelling type TO2 runs across two levels and has access to a private terrace in addition to the patio area identified in the DAS report. Mr Cunnington noted that this is not illustrated in the detail on the drawings provided for assessment but assured the authority that TO2 type dwellings would have well in excess of the required 12m<sup>2</sup>.

Mr Cunnington advised the consent authority that the approach taken to the design was to consider the purpose of the clause as it relates to serviced apartments to ensure the private open space was an adequate

size to provide for domestic purposes. Mr Cunningham noted that serviced apartments have a clear definition which is to provide accommodation for visitors and tourists. Mr Cunningham noted that the serviced apartments proposed have some specific characteristics; being small single bedroom apartments, provided in a commercial complex with such facilities akin to a commercial complex – lobby, concierge, swimming pool, etc. Mr Cunningham also noted that this would be a Class 3 building which cannot be subdivided i.e. unit titled.

Mr Cunningham advised noted that a change in building classification to allow a different building classification would require planning consent therefore would need to come before the DCA for consideration. Mr Cunningham provided examples of two other major developments previously approved on the same site in 2014 and 2015 with variations to the balcony sizes measuring 1.6m<sup>2</sup> – 5.5m<sup>2</sup>. While approved under the NTPS 2007, Mr Cunningham noted the same 12m<sup>2</sup> requirement applied.

Mr Cunningham also highlighted that the communal open space proposed is more than double what's required by the scheme. More than 30% is provided where 15% is required.

While Mr Cunningham indicated it was not a preferred option, should the consent authority be of a mind to include a condition precedent which requires revised drawings for stage 4 or defer the application, he indicated that there was scope to increase the size of the purposed balconies which doesn't reduce the minimum setbacks. Mr Cunningham also advised that he was happy to table plans illustrating the revised balcony sizes.

The Authority notes that compliance with purpose provisions (c) and (d), and sub-clauses 4(d), (e) and (f) is not required as the proposed dwelling-multiple development has no direct access at ground level to private open space, and on-site communal open space is provided.

The Authority considers a variation to Clause 5.4.6 for Stage 1 is appropriate in this instance as the proposal is consistent with the purpose of the clause in that the private open space provided extends the function of the dwelling and is of an adequate size. The non-compliance with the requirement to provide 12m<sup>2</sup> is considered minor as most of the balconies are over 11m<sup>2</sup> and are only 1m<sup>2</sup> short of the private open space area requirement. The Authority notes the applicant explanation in relation to TO2 type dwellings which is situated on two levels and notes a condition has been included which requires amended plan showing details of all proposed dwelling types for clarification.

New apartment types are required for dwellings that include a landscaped terrace as part of the private open space as the current dwelling types do not differentiate. These are located on Levels 6 and 7 of Stage 1. Additionally, it is noted that the the scale on the Apartment Types Drawings lists that A3 scale is 1:200 which does not appear to

accurately reflect actual scale. A condition has been included requesting amended plans reflecting the correct scale.

In relation to the variation sought to the private open space requirements for Stage 2, the Authority notes the plan tabled by Mr Cunnington which illustrates larger balcony sizes measuring approximately 6m<sup>2</sup>. It considers a variation appropriate as the proposal is consistent with the purpose of the clause in that the private open space provided extends the function of the dwelling (serviced apartment) and is of an adequate size. The non-compliance with the requirement to provide 12m<sup>2</sup> is considered acceptable given the size and nature of the apartments which are all one bedroom apartments. The Authority notes that the proposal includes communal open space that is well in excess of the requirements of Clause 5.4.7 (Communal Open Space) which is considered to provide adequate compensation for reduced areas of private open space.

While Mr Cunnington indicated that the plan tabled at the hearing would increase the balconies to 6m<sup>2</sup> and not result in any further intrusions into the setbacks; a condition has been included which requires a full set of revised plans and elevations to be submitted for review.

#### 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T)

The purpose of the clause is to promote site-responsive designs of commercial, civic, community, recreational, tourist and mixed use developments which are attractive and pleasant and contribute to a safe environment.

While the DAS report has assessed the application as compliant with the requirements of Clause 5.5.3, the Authority notes that sub-clause 4 requires developments to *minimise expanses of blank walls*.

The application proposes pre-cast concrete panels of different shades for graphic pattern to the blank wall along the side of building to create a balanced, visually interesting geometric pattern. Further detail is required regarding the proposed treatments, and a condition has been included to reflect this requirement.

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

One public submission was received during the exhibition period under Section 49 of the *Planning Act 1999* with respect to the proposal.

The main issues raised in the submission relate to concerns a reduction in private open space for service apartments could set a bad precedent; concerns regarding the car parking calculation and car parking

reduction calculation; queried whether the Dragon Fly Car Park can be considered publicly accessible due to its hours of operation; and commented on the artificial landscaping details provided.

The non-compliances in relation to Clauses 5.2.4.1 (Parking Requirements), 5.2.4.3 (Reduction in Parking Requirements within Zone CB in Darwin) and 5.4.6 (Private Open Space) are provided above in recommendation 2 above. Regarding the artificial landscaping, it is noted that the applicant provided further information and revised plans regarding the proposed car parking screening, this information was circulated to the submitter for a period of 14 days.

No further submission was received on or before the hearing date.

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 overall height and scale of the development are largely consistent with that anticipated in the Darwin CBD with respect to the land's capability and the effect on surrounding properties. Comments from the City of Darwin, Power and Water Corporation, Department of Defence and Darwin International Airport have been sought in relation to the capability of the land, including the proposed access arrangements, easements, and building heights.

All requirements of service authorities are addressed through conditions and notes on the permit.

5. Pursuant to Section 51(1)(m) of the *Planning Act 1999*, the consent authority must consider the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

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

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

The impact on amenity should be considered in the context of the site and its surroundings. The development is consistent with the broader intent of Zone CB (Central Business) and applicable clauses, including

the overall height and scale of the building. The building is of high architectural quality and presents the Mitchell Street frontage with increased pedestrian amenity and activation. The building presents a high quality interface and limited service provision to the Mitchell Street frontage. Any adverse impacts on amenity have been addressed through the recommended conditions and notes for any permit that may be issued for the proposal.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Notice of Consent and Development Permit

**ITEM 3**

**PA2014/0745**

**EXTENSION OF TIME FOR 2 YEAR PERIOD TO DP14/0831**

**LOT 5182 (213) DICK WARD DRIVE, LUDMILLA, TOWN OF DARWIN**

**APPLICANT**

Sargeant Planning Pty Ltd

Applicant: Boyd Sargeant (Sargeant Planning Pty Ltd) attended.

**RESOLVED  
79/22**

That, pursuant to section 59(3) of the *Planning Act 1999*, the Development Consent Authority consent to the application to extend the base period of Development Permit DP14/0831 (subdivision to create six lots) for a period of two years.

**REASONS FOR THE DECISION**

Development Permit DP14/0831 was issued on 04 December 2014 for the purpose of a subdivision to create six lots. The period of DP14/0831 has been extended on three occasions: DP14/0831A, DP14/0831B and DP14/0831C were issued on 01 November 2016, 24 August 2018 and 17 April 2020, respectively. The permit is now due to expire on 04 December 2022. The Authority notes that while granting the last extension of time, it determines that any further request for an extension of time to the base period of the permit is unlikely to be given, and the applicant is encouraged to commence the development within the new base period of the permit. The Authority also notes that the Conditions Precedent of DP14/0831 are still being satisfied, and to date the plans have not been endorsed.

On 09 September 2022, Boyd Sargeant from Sargeant Planning Pty Ltd (applicant), on behalf of the landowner, lodged an application to extend the base period of DP14/0831 for an additional two years period.

In support of the application for an extension of time, the applicant has stated that the landowner that there have been delays in resolving the Conditions Precedents and necessary 'covenant' for staging road works that are in part beyond landowner's control. The majority of CPs have been resolved, and compliance with the remaining can be resolved on a staged basis. The applicant also states that the covenant (required under CP 7 of DP14/0831) is critical with respect to the development of the site and is instrumental in how other condition precedents and general conditions are complied.



Boyd Sargeant from Sargeant Planning Pty Ltd (applicant) attended the hearing and explained various circumstances that have occurred in the past resulting in the delay of the development. The applicant provided an overview of the actions taken by the landowner to resolve the conditions precedents and register the covenant document. The applicant also responded to questions raised by the Authority during the course of the hearing. The applicant explained that the delay in resolving the Condition Precedents has prevented any early site works and/or development of the site. The applicant added that an extensive contamination assessment across the site had been completed in regard to the suitability of the site for the development to the requirements of the NTEPA. This and other actions have been undertaken while waiting to accept the 'covenant'. The application further states that the covenant (required under condition precedent 7) was registered on 24 October 2022, which provides five weeks to enable all necessary, plans works to be approved, commenced and completed. This is unachievable and is the basis for the extension.

The Authority at the hearing questioned the applicant on whether an extension of one year to the base period of the permit is sufficient to comment on the site works. The applicant explained that while the majority of the conditions precedents have been met and the remaining can be resolved quickly, two years extension to the base period would be appropriate to undertake the development, precluding any other unforeseeable circumstance similar to that which has occurred in the previous two years period.

The Authority carefully considered the applicant's submission and considered all factors in making its decision. The Authority noted the advice contained within the Development Assessment Services (DAS) report and matters discussed in the 'Kantor test'. The Authority notes that the landowner has, as demonstrated in the submission and other actions, made efforts to resolve the conditions precedents since the issue of the latest extension of time. The Authority also noted the advice contained in the DAS report that stated that if a fresh application is lodged today, the recommendation is unlikely to be substantially different as the application would be assessed against the requirements of the NTPS 2007, and no additional issues and variations would occur then as previously approved.

The Authority determined to grant two years extension, which will extend the base period of the permit to December 2024. The Authority advised the applicant that if the site works are commenced with the extended base period, the permit will get an extension of a further two years, totalling four years to complete the development.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Extension of time permit

**ITEM 4**

**PA2014/0745**

**VARIATION TO CONDITION 9 OF DP14/0831D FOR THE PURPOSE OF CHANGES TO STAGING**

**LOT 5182 (213) DICK WARD DRIVE, LUDMILLA, TOWN OF DARWIN**

**APPLICANT**

Sargeant Planning Pty Ltd



Applicant: Boyd Sargeant (Sargeant Planning Pty Ltd) attended.

**RESOLVED  
80/22**

That, pursuant to section 57(3) of the *Planning Act 1999*, the Development Consent Authority consent to the application to vary Condition 9 of Development Permit DP14/0831E to sub-stage Stage 1 into three stages, subject to the following conditions.

#### **CONDITIONS PRECEDENT**

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and two copies must be provided. The plans must be generally in accordance with the plans submitted with the application but modified to show:
  - (a) A landscaping buffer (including fencing) within Area A in accordance with the Bagot Road Master Plan
  - (b) Plan notations identifying that the road alignment is subject to change pending the outcome of the detailed Traffic Impact Assessment.
2. Prior to the endorsement of plans and prior to the commencement of works, written correspondence from Power Water (Power Networks) is required confirming that the anticipated maximum demand information has been provided, to the satisfaction of the Power Water.
3. Prior to the endorsement of plans and prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Darwin and Department of Transport stormwater drainage system shall be submitted to and approved by the City of Darwin and Department of Transport, to the satisfaction of the consent authority. The plan shall include details of site levels and stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council and Department of Transport's system.
4. *Prior to the commencement of works, a Type 2 Erosion and Sediment Control Plan (ESCP) must be developed in accordance with the Department of Environment, Parks and Water Security ESCP Standard Requirements 2019 available at <https://nt.gov.au/environment/soil-land-vegetation>. The ESCP must be developed and/or certified by a Certified Professional in Erosion and Sediment Control (CPESC) to the satisfaction of the consent authority. The ESCP should be submitted for acceptance prior to the commencement of any earth disturbing activities (including clearing and early works) to Development Assessment Services via email: [das.ntg@nt.gov.au](mailto:das.ntg@nt.gov.au).*
5. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the applicant is to prepare an Environmental Construction Management Plan (ECMP), to the requirements of the City of Darwin, to the satisfaction of the consent authority. The ECMP is to address how construction will be managed on the site, and is to include details of the

haulage of excavated and new materials, traffic management for construction vehicles, management of stormwater during the construction phase, fencing and hours of construction.

6. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the applicant is to submit a Statement of Environmental Audit, from a suitably qualified person under section 68 of the Waste Management and Pollution Control Act, certifying that the site is suitable for its intended use, and that any contaminated soil has been appropriately remediated or disposed of, to the requirements of the NT Environment Protection Authority, to the satisfaction of the consent authority.
7. Prior to the endorsement of plans and prior to the commencement of subdivision works (including site preparation), a draft covenant shall be provided to the consent authority for review. The covenant shall require provision for a road reservation as required by Zone SD37, and restrict the construction of formal access points to individual lots until such time that a detailed Traffic Impact Assessment has been completed. Written confirmation is required from the Transport Infrastructure Planning Division, Department of Transport, and the City of Darwin, that the covenant is to their requirements.
8. Prior to the endorsement of plans and prior to the commencement of subdivision works (including site preparation), plans showing that all of the land within Areas A and B of SD37 will be filled to be above the Primary Storm Surge Area (PSSA) shall be provided to the authority for endorsement. The plans shall be to the satisfaction of the consent authority and be accompanied by a statement from a suitably qualified professional confirming that the placement of fill will create no adverse hydrological impacts on other properties in the area due to the displacement of water in a 1 in 100 year surge event.

## GENERAL CONDITIONS

9. Works carried out under this permit shall be in accordance with drawings endorsed as forming part of this permit.
10. Before issue of titles and pursuant to section 55 of the Planning Act 1999, a covenant shall be lodged with the Registrar General for notation on the titles of proposed lots 1, 2, and 3 shown on the endorsed drawings. The covenant shall require provision for a road reservation as required by Zone SD37, and restrict the construction of formal access points to individual lots until such time that a detailed Traffic Impact Assessment has been completed. Written confirmation is required from the Transport Infrastructure Planning Division, Department of Transport, and the City of Darwin, that the covenant is to their requirements.
11. *All works relating to this permit must be undertaken in accordance with the accepted Type 2 Erosion and Sediment Control Plan (ESCP) to the requirements of the consent authority. Should the endorsed Type 2 Erosion and Sediment*

*Control Plan (ESCP) need to be amended, the revised ESCP must be developed and certified by a Certified Professional in Erosion and Sediment Control (CPESC) to the satisfaction of the consent authority. The revised ESCP should be submitted for acceptance to Development Assessment Services via email: [das.ntg@nt.gov.au](mailto:das.ntg@nt.gov.au).*

12. *All reasonable and practicable measures must be undertaken to prevent: erosion occurring onsite, sediment leaving the site, and runoff from the site causing erosion offsite. Appropriate erosion and sediment control measures must be effectively implemented throughout the construction phase of the development (including clearing and early works) and all disturbed soil surfaces must be satisfactorily stabilised against erosion at completion of works, to the satisfaction of the consent authority. For further information refer to notes below. At completion of works, clearance must be provided by a CPESC regarding satisfactory implementation of temporary and permanent erosion and sediment control measures and the site stabilisation, and provided to the satisfaction of the consent authority.*
13. Part V clearance for subdivision will not be granted until the landscaping buffer works shown on the endorsed plans are carried out and completed to the satisfaction of the consent authority.
14. Notwithstanding that the exact location of the internal road that runs along the northern boundary of Area A is subject to change, Part V clearance for subdivision will not be granted until:
  - (a) The internal road that runs along the northern boundary of Area A and all required improvements to surrounding intersection and access arrangements are carried out and completed to the satisfaction of the City of Darwin, the Department of Transport and the Department of Lands, Planning and the Environment; or,
  - (b) Written confirmation is received from the above agencies that the proposed covenant discussed at condition 7 and condition 10 is sufficient to ensure that the internal road and all required improvements to surrounding intersection and access arrangements is completed at a later time and to their requirements and satisfaction.
15. All proposed roads to be created on the plan of subdivision submitted for approval by the Surveyor General must be dedicated to the relevant Northern Territory or local government authority.
16. Engineering design and specifications for the proposed and affected roads, street lighting, stormwater drainage, vehicular access, pedestrian/ cycle corridors and streetscaping are to be to the technical requirements of City of Darwin or Department of Transport as the case may be, to the satisfaction of the consent authority, and all approved works constructed at the developer's/owner's expense.
17. All proposed works impacting on Bagot Road, Fitzer Drive, Dick Ward Drive and Totem Road are to be designed, supervised and certified on completion by a practicing and registered civil engineer, and shall be in accordance with the standards and specifications of the City of Darwin or Department of

Transport, as the case may be. Drawings must be submitted to the City of Darwin or the Transport Infrastructure Planning Division for approval and no works are to commence prior to approval and receipt of a "Permit to Work Within a Road Reserve".

18. Any clearing and future use of the land shall not be detrimental to the drainage, flood immunity or safety of the Bagot Road road reserve through the blocking of off-let drains, natural drainage channels or overland flow. Any alteration of the existing stormwater drainage patterns shall be such that the stormwater run-off from the lots is away from Bagot Road and is able to be collected within the development area and local stormwater system.
19. Any clearing and future use of the land shall not be detrimental to the drainage, flood immunity or safety of the Bagot Road road reserve through the blocking of off-let drains, natural drainage channels or overland flow. Any alteration of the existing stormwater drainage patterns shall be such that the stormwater run-off from the lots is away from Bagot Road and is able to be collected within the development area and local stormwater system.
20. 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 on the plan of subdivision submitted for approval by the Surveyor General.
21. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage facilities, electricity supply and telecommunications to each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
22. 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.
23. Any planting or construction activity within any easement or within road reserves adjacent to assets of any public agency or authority shall conform to the requirements of the relevant agency or authority to the satisfaction of the consent authority.
24. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to the City of Darwin or the Department of Transport, to the satisfaction of the consent authority.
25. The developer is to ensure that all development work is undertaken in a manner that prevents the creation of a public health nuisance from dust or other particulate matter.
26. All works associated with the development are to comply with the conditions of any Authority Certificate issued by the Aboriginal Areas Protection Authority.

## NOTES

1. 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](http://www.austieca.com.au) and the Department of Environment, Parks and Water Security ESCP Standard Requirements 2019 and Land Management Factsheets available at <https://nt.gov.au/environment/soil-land-vegetation>. For further advice, contact the Land Development Coordination Branch: (08) 8999 4446.
2. Department of Environment, Parks and Water Security Erosion and Sediment Control Plan (ESCP) procedures as updated available at <https://depws.nt.gov.au/rangelands/technical-notes-and-fact-sheets/land-management-technical-notes-and-fact-sheets>.
3. There are statutory obligations under the *Waste Management and Pollution Control Act 1998* (the Act), that require all persons to take all measures that are reasonable and practicable to prevent or minimise pollution or environmental harm and reduce the amount of waste. The proponent is required to comply at all times with the Act, including the General Environmental Duty under Section 12 of the Act. There is also a requirement to obtain an authorisation prior to conducting any of the activities listed in Schedule 2 of the Act. Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority (NT EPA) website: <https://ntepa.nt.gov.au/publications-and-advice/environmental-management> To help satisfy the General Environmental Duty, the proponent is advised to take notice of the SCHEDULE OF ENVIRONMENTAL CONSIDERATIONS provided by DENR. The WMPC Act, administered by the NT EPA, is separate to and not reduced or affected in any way by other legislation administered by other departments or authorities. The NT EPA may take enforcement action or issue statutory instruments should there be non-compliance with the WMPC Act.
4. The developer shall have regard to the City of Darwin's Subdivision and Development guidelines. A "Permit to Work Within a Road Reserve" may be required from the City of Darwin or the Department of Transport before commencement of any work within the road reserve.
5. The Power and Water Corporation advises that the Water and Sewer Services Development Section ([landdevelopmentnorth@powerwater.com.au](mailto:landdevelopmentnorth@powerwater.com.au)) and Power Network Engineering Section ([powerconnections@powerwater.com.au](mailto:powerconnections@powerwater.com.au)) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
6. The finish of any Prime Identification sign, if erected, shall be such that, if illuminated, day and night readability is the same and is of constant display (i.e. not flashing or variable message). The sign shall be positioned: (a) so as not to create sun or headlight reflection to motorists; and (b) be located entirely (including foundations and aerially) within the subject lot.

7. The developer is required to contact 'Dial Before You Dig' on 1100 to obtain a location of the Telstra Network and arrange for any relocation if required. The Telstra contact for relocation work is the Network Integrity and Compliance Group on 1800 810 443. 6. You are advised to contact the relevant service provider prior to construction works commencing in order to determine the relevant telecommunication network servicing requirements for the development, including the potential requirement to provide fibre ready telecommunication facilities.
8. All new roads are required to be named under the Place Names Act. You should immediately make application to the Place Names Committee to commence the road naming process. Contact the Place Names Unit on 8995 5333 or [placenames.dpi@nt.gov.au](mailto:placenames.dpi@nt.gov.au). Further information can be found at <http://www.placenames.nt.gov.au>.
9. The Department of Lands, Planning and the Environment's 'Environment Protection Agency' advises that construction work should be conducted in accordance with the Department's Noise guidelines for development sites. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.
10. The permit holder is advised that it is an offence to disturb or destroy prescribed archaeological places without consent under the Heritage Act. Should any heritage or archaeological material be discovered during the clearing operation, cease operation and please phone Heritage Branch of the Department of Lands, Planning and the Environment.
11. There are statutory obligations under the Weeds Management Act to take all practical measures to manage weeds on the property. For advice on weed management please contact the Department of Land Resource Management.
12. The Aboriginal Areas Protection Authority recommends that the permit holder obtain an Authority Certificate to indemnify against prosecution under the Aboriginal Sacred Sites Act. For advice on how to obtain a certificate please contact the Aboriginal Areas Protection Authority.
13. The site is subject to "The Defence Areas Control Regulations" (DACR). Any structures (including temporary structures) higher than 15m above ground level including, but not limited to, additional buildings, light poles, cranes used during construction, vegetation etc. requires approval by the Department of Defence.

14. Any lighting installed as part of the development is to consider section 9.21 'Lighting in the Vicinity of Aerodromes' of the CASA Manual of Standards Part 139, available at: <http://www.casa.gov.au/wcmswr/assets/main/rules/1998casr/139/139mfull.pdf>. The site is to be kept clean of rubbish and any storage of waste is to be managed at all times in a manner so as to not attract birds or bats, to the satisfaction of the consent authority.

## REASONS FOR THE DECISION

Development Permit DP14/0831 was issued on 04 December 2014 for the purpose of a subdivision to create six lots. Subsequently, on 18 November 2021, Variation Permit DP14/0831D was issued for the purpose of staging the subdivision in two stages. Condition 9 of DP14/0831D requires that 'the works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit'.

*Under section 57(3) of the Act, the consent authority may, in writing, vary a condition of a development permit if:*

- (a) the proposed variation will not alter a measurable aspect of the development by a margin greater than 5% and, in the opinion of the consent authority, will not materially affect the amenity of adjoining or nearby land or premises; or*
- (b) in the opinion of the consent authority, the alteration resulting from the proposed variation is not conveniently measurable, and the proposed variation will not materially affect the amenity of adjoining or nearby land or premises.*

The power to vary granted by Section 57(3) is discretionary, provided that either of the conditions (a) or (b) are met. The only restriction placed upon the exercise of that discretion is a requirement in subsection (5) that, if refused, reasons must be provided.

The application proposed sub-staging of Stage 1 into three stages to enable greater flexibility in delivering the approved allotments within Stage 1 of the approval.

The Authority considers that test to a measurable aspect of the development, as a result of the variation, is to determine whether each stage can operate completely independently and is compliant with the performance criteria of the Northern Territory Planning Scheme 2007 (NTPS) if any of the remaining stages did not go ahead.



The Authority notes the assessment of the Development Assessment Services (DAS), which concludes that the proposed sub-staging is generally consistent with the performance criteria of the NTPS 2007 and Specific Use Zone Darwin No 37 (SD37) due to the following:

- Part 5 clearance for the stage will not be issued until the landscaping shown on the endorsed plan has been completed for the stage. Noting no landscaping buffer would be required in Stage 1(a) as the boundary of the lot does not front Fitzner Drive.
- The proposed sub-staging aligns with the road network design proposed in the master plan.

The Authority is satisfied that the proposed sub-staging staging will not frustrate achieving principles of the Bagot Road Master Plan.

The second threshold requirement provided by Section 57(3)(a), is that the Consent Authority must consider that the proposed variation “will not materially affect the amenity of adjoining or nearby land or premises.”

Boyd Sargeant from Sargeant Planning Pty Ltd (applicant) attended the hearing and provided an overview of the proposed staging. Mr Sargeant explained that the purpose of sub-staging is to allow staged delivery of road and other infrastructure. This will enable the titling of serviced lots in a staged manner to allow future development. Mr Sargeant stressed that the proposed sub-staging aligns with the covenant, which enables the construction of the road (along the northern boundary of Area A) to be staged, subject to the satisfaction of various governmental authorities.

The Authority carefully considered the submission from the applicant and considered the assessment of DAS in making its decision. The Authority is satisfied that the proposed sub-staging does not have any amenity impacts provided the conditions of the DP14/0831 are met for each stage. The Authority considers that the proposed sub-staging will facilitate the delivery of serviced lot once works directly associated with that lot are completed, prior to the completion of all civil works on the remainder of the subdivision site.

The Authority notes that no concerns are raised by the service authorities regarding proposed sub-staging. The Department of Environment, Parks and Water Security (DEPWS) commented on changes to the wording of the condition precedent and general condition relating to the erosion and sediment control plan as per their current requirements and also requested additional conditions relating to the weed management and environmental duty. The Authority notes that the applicant was amenable to the inclusion of new conditions suggested by the DEPWS.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Variation to Development Permit



**ITEM 6**

**PA2022/0361**

**SUBDIVISION TO CREATE FOUR LOTS**

**LOT 1103 (4) GARDENS ROAD, THE GARDENS, TOWN OF DARWIN**

**APPLICANT**

Earl James and Associates

Applicant:- Kevin Dodd (Earl James and Associates) attended.

**RESOLVED**

**80/22**

That, the Development Consent Authority vary the requirements of Clause 6.2.1 (Lot Size and Configuration in Residential Subdivisions) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 1103 (4) Gardens Road, Town of Darwin for the purpose of subdivision to create four lots for the following conditions:

**CONDITIONS PRECEDENT**

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a comprehensive traffic impact assessment report is to be prepared by a suitably qualified traffic engineer, with particular attention to vehicular, pedestrian, cyclist and public transport issues and opportunities, to the requirements of the City of Darwin to the satisfaction of the consent authority. The report should also identify any necessary upgrades to the surrounding street network as a result of the subdivision.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the crossover and driveway to the site from the City of Darwin road reserve, to the satisfaction of the consent authority.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.
4. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.

**GENERAL CONDITIONS**

5. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
6. All works recommended by the traffic impact assessment are to be completed to the requirements of the City of Darwin to the satisfaction of the consent authority.

7. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, electricity and telecommunication networks to each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

Please refer to notations 1 and 2 for further information.

8. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or site is to be created on the plan of subdivision submitted for approval by the Surveyor General.
9. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
10. The kerb crossovers and driveways to the site are to meet the technical standards of City of Darwin, to the satisfaction of the consent authority.
11. The owner shall:
  - (a) remove disused vehicle and/ or pedestrian crossovers;
  - (b) provide footpaths/cycleways;
  - (c) collect stormwater and discharge it to the drainage network; and
  - (d) undertake reinstatement works;all to the technical requirements of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
12. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street to the requirements of the City of Darwin, to the satisfaction of the consent authority.
13. Upon completion of any works within or impacting upon existing road reserves, the infrastructure within the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin and returned to the condition as documented in the dilapidation report.
14. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin, to the satisfaction of the consent authority.
15. Part V Clearance for subdivision under the *Planning Act 1999* will not be granted until a report from a building certifier within the meaning of the *Building Act 1993* is submitted demonstrating compliance with the *Building Act 1993* will be achieved following the subdivision, in relation to the existing building on Lot A.
16. Prior to the issue of the Part V clearance for the subdivision, a written confirmation from a building certifier confirming that the setback of the existing building (on Lot A) to the internal boundary of the subdivision that

created the lot complies with the requirements of Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structure), must be provided to the satisfaction of the consent authority.

## NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section ([waterdevelopment@powerwater.com.au](mailto:waterdevelopment@powerwater.com.au)) and Power Network Engineering Section ([powerdevelopment@powerwater.com.au](mailto: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. If you choose nbn to service your development, you will need to enter into a development agreement with nbn. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered nbn will be in contact to discuss the specific requirements for the development. Nbn requires you to apply at least 3 months before any civil works commence. All telecommunications infrastructure should be built to nbn guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/builders-designers.html>.
3. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
4. Designs and specifications for landscaping of the road verges adjacent to the property shall be submitted for approval by City of Darwin and all approved works shall be constructed at the applicant's expense, to the requirements of City of Darwin
5. Notwithstanding the approved plans, any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin Policy Number 42 – Outdoor Advertising Signs Code.
6. As part of any subdivision, the parcel numbers for addressing should comply with the Australian Standard (AS/NZS 4819:2011). For more information contact Survey and Land Records [surveylandrecords@nt.gov.au](mailto:surveylandrecords@nt.gov.au) 08 8995 5356. The numbers shown on the plans endorsed as forming part of this permit are indicative only and are not for addressing purposes.
7. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email ([info@ntbuild.com.au](mailto:info@ntbuild.com.au)) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.

8. 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.
9. The development must comply with the technical standards of the Northern Territory Subdivision Development Guidelines for the construction of public infrastructure as part of subdivision works to the requirements of the relevant local and service authorities. Prior to any works commencing, it is encouraged that you engage early with the relevant authorities to confirm their requirements, and any variations that may be sought to the Subdivision Development Guidelines, to ensure the works are completed to the relevant authorities' requirements. The Northern Territory Subdivision Development Guidelines can be found at: <https://www.ntlis.nt.gov.au/sdg-online/>

## REASONS FOR THE DECISION

1. 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 Northern Territory Planning Scheme 2020 applies to the land and subdivision to create two lots requires consent under Clause 1.8 (When development consent is required). It is identified as Impact Assessable under Clause 1.8(1)(c)(ii); therefore, the strategic framework (Part 2 of the Scheme, including the Darwin Inner Suburbs Area Plan 2016), zone purpose and outcomes of Clause 4.3 (Zone LMR – Low-Medium Density Residential), and Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR), 6.2.2 (Lots Less than 600m<sup>2</sup> for Dwellings-Single), 6.2.3 (Site Characteristics for Subdivision in Zones LR, LMR, MR and HR), and 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR), need to be considered.

### Part 2 – Strategic Framework, Part 3 (Overlays) and Part 4 (Zone - LMR)

The Darwin Inner Suburbs Area Plan (DISAP) provides the strategic framework for development in the Darwin Inner Suburbs region. The site is identified for low – medium density residential development. The proposed subdivision would allow for infill development of 4 x dwellings-single (including one existing) on the created lots. As such, the subdivision aligns with the strategic framework and Zone LMR requirements within the NTPS 2020. In relation to Part 3, no overlay applies to the site.

### Part 6 – Subdivision and Consolidation Requirements

In relation to Part 6 of the NTPS 2020, the assessment has found that the subdivision generally complies with Clause 6.2 (Subdivision in Zones LR, LMR, MR and HR), including subclauses 6.2.2 (Lots Less Than 600m<sup>2</sup> for Dwellings-Single) and 6.2.3 (Site Characteristics for Subdivision in Zones LR, LMR, MR and HR), 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR).

The proposal is found not in accordance with subclause (6) of 6.2.1 (Lot Size and Configuration for Subdivision in Zone LR, LMR, MR and HR) as Lot D being 330m<sup>2</sup>, cannot achieve a building envelope of 7m x 15m.

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

6.2.1 (Lot Size and Configuration for Subdivision in Zone LR, LMR, MR and HR)

Lot D being 330m<sup>2</sup>, requires to comply with a minimum building envelope requirement of 7m x 15m. The building envelope plan for Lot D shows that it can accommodate a building envelope of 12.5m x 11m (exclusive of side boundary setbacks of 1.5m). However, it is noticed that, and given Clause 5.4.3.3 (Reduced Setbacks for Dwelling-Single on Lots less than 600m<sup>2</sup> but not less than 300m<sup>2</sup>) allows for zero building setback to a side boundary internal to the subdivision boundary, the proposed Lot D can achieve a building envelope of 14.5m x 11m (7m x 15m required).

The relevant Administration for the clause is:

*The consent authority may consent to a subdivision that is not in accordance with sub-clauses 5-12, only if it is satisfied the subdivision is consistent with the purpose of this clause and the zone purpose and outcomes*

Notwithstanding, the proposed Lot D does not satisfy the minimum building envelope requirement of 7m x 15m; the illustrative building envelope exceeds the envelope area of 105m<sup>2</sup> (185m<sup>2</sup> proposed). Furthermore, the non-compliance is minor in nature (0.5m) and is unlikely to create any issues with achieving a compliant dwelling-single development noting the wedge shape of the lot can accommodate a larger building envelope.

The purpose of this clause is – *to ensure that the subdivision of land for urban residential purposes creates lots of sizes, configuration and orientation suitable for residential development at a density envisaged by the zone.* The assessment has found that the area and configuration of the lot is suitable to accommodate a dwelling-single that can achieve vehicle parking requirements, plus minimum setbacks and ancillary buildings.

Noting the above, and notwithstanding the irregular lot size narrowing towards the front, the lot is assessed as being sufficiently sized to accommodate the compliant development of future dwellings-single.

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.

One public submission was received during the exhibition period under Section 49 of the *Planning Act 1999* with respect to the proposal. The submitter commented that the proposed subdivision shows little thought about the tropical lifestyle. The submitter advises that a much better solution would be to subdivide into three lots, which will give each property the area and space to design a tropical-style property that can take full advantage of the climate and provide a comfortable home.

The Authority notes the assessment of the Development Assessment Services (DAS) which concludes that the lot size and subsequent housing outcome on proposed lots are consistent with Zone LMR. The building envelope plan demonstrates that each lot can satisfactorily achieve vehicle parking requirements, plus minimum setbacks and ancillary structures. The issue related to tropical design can be resolved through design elements such as sunshades, cavity walls, light shelves, overhangs, roofs and some shady trees at the front in future house designs on proposed lots.

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.

There were no issues identified with respect to the capability of the land to support the subdivision. The land is outside the defined flood area, and storm surge extent, slope, and soil are not identified as constraints.

The site has a slope from the east towards Gardens Road. The applicant has provided a site gradient plan showing the area intended for lots less than 600m<sup>2</sup> does not slope more than 2%.

Comments received from service authorities are addressed through recommended conditions and notes on any permit issued.

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 subdivision aligns with the densities anticipated for the site in Zone LMR. While any future dwellings are likely to create some additional noise, impact on breezes and create additional traffic in the locality, this can be expected in the development of a vacant site and would not be considered undue on local amenity. The Authority further notes that the impact would be far less as compared to the rooming accommodation (hostel) that existed previously on-site.

The most significant consideration of the potential impact on the area's amenity for the subdivision is the proposed lot sizes and configuration of proposed lots to accommodate a compliant future dwelling-single.

The subdivision was assessed as complying with the requirements of Clause 6.2.1 Lot Size and Configuration for Subdivision in Zone LMR. The smallest lot of 310m<sup>2</sup> is above the minimum in Zone LMR of 300m<sup>2</sup>. The Authority determined that the configuration of proposed lots is suitable to accommodate a compliant future dwelling-single on proposed having regard to vehicle access, parking and ancillary structures. The non-compliance identified related to the building envelope for proposed Lot D is minor and is unlikely to unduly affect the future amenity of the site, future dwellings and surrounding area.

6. Pursuant to section 50(1)(q) of the *Planning Act 1999* the consent authority must take into consideration for a proposed subdivision of land on which a building is, or will be, situated – whether the building complies, or will comply, with any requirements prescribed by regulation in relation to the building (including, for example, requirements about the structural integrity and fire safety of the building).

The Authority notes that the site is currently developed with a two storey dwelling-single, which will be accommodated within Lot A of the proposed subdivision. A statement from a registered building certifier provided with the application indicates that the subdivision will not cease to comply with the Building Act 1999 provided the stairs attached to the eastern side of the 2 storey dwelling are removed and a minimum 1.5m setback is maintained between the external walls and proposed internal boundary of Lot A.

Conditions 15 and 16 included on the permit require confirmation from the Building Certifier that the existing dwelling- single on Lot A will not cease to comply with the Building Act 1999 and that the building setback complies with Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) of the NTPS 2020 prior to titles being issued.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Notice of Consent and Development Permit

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

**SUZANNE PHILIP**

**Chair**

25 November 2022