



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 372 – FRIDAY 23 APRIL 2021

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

MEMBERS PRESENT: Suzanne Philip (Chair), Marion Guppy, Mark Blackburn, Simon Niblock and Peter Pangquee

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Ann-Marie Reynolds, Richard Lloyd and Amit Magotra (Items 1 & 2 Only) (Development Assessment Services)

COUNCIL REPRESENTATIVE: Cindy Robson, Brian Sellers and Drosso Lelekis, Peter Heffernan (Item 3 only)

Meeting opened at 10.00 am and closed at 12.30 pm

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

ITEM 1

PA2021/0028 SHOP, SHOWROOM, WAREHOUSE, FOOD PREMISES-CAFE AND ANCILLARY OFFICE IN A TWO STOREY BUILDING

LOT 9255 (305) BAGOT ROAD, COCONUT GROVE, TOWN OF NIGHTCLIFF

APPLICANT Northern Planning Consultants Pty Ltd

Mr Brad Cunnington (Northern Planning Consultants Pty Ltd), Mr Randal Ashford (Ashford Group) and Mr Chris Lay (landowner) attended.

**RESOLVED
37/21**

That, the Development Consent Authority reduce the car parking requirements pursuant to Clause 5.2.4.2 (Reduction in Parking Requirements outside of Zone CB) and vary the requirements of Clause 5.2.4.1 (Parking Requirements), Clause 5.5.5 – Shops in Zones CV, CI, LI, GI, DV, OR and CN and Clause 5.6.1 (Setbacks and Building Design Requirements in Zone LI, GI and DV 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 9255 (305) Bagot Road Town of Nightcliff for the purpose of shop, showroom, warehouse, food premises-cafe and ancillary office in a two-storey building subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Darwin's 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 the Council's system or an alternate approved connection.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a Traffic Impact Assessment report is to be prepared by a suitably qualified traffic engineer in accordance with the Austroads Document Guide to Traffic Management Part 12: Traffic Impacts of Developments, in the report structure provided as Appendix C of that document with particular attention to vehicular, pedestrian, cyclist and public transport issues and opportunities .The Traffic Impact Assessment report shall also include swept paths for waste collection vehicles entering and existing the site.
3. 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 for any development works proposed within the sewer easement including associated with the waste area located on Lot 9256, to the satisfaction of the consent authority.

4. Prior to the commencement of works (including site preparation), the applicant is to prepare an Environmental and Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP is to address how construction will be managed on the site, and is to include details of waste management, traffic control and haulage routes, stormwater drainage, and the use of City of Darwin land during construction. The SCMP is also to address the protection of existing assets, the protection of public access, and include a risk assessment
5. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Policy 054, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.
6. Prior to commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority

GENERAL CONDITIONS

7. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
8. 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
9. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, electricity and telecommunication network services to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
10. 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.
11. Any proposed work (including the provision or connection of services) within, or impacting upon the Bagot Road reserve shall be in accordance with the standards and specifications of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics. Design documents must be submitted to the Director Corridor Management, Transport and Civil Services Division for Road Agency Approval and no works are to commence prior to approval and receipt of a "Permit to Work Within a Road Reserve".
12. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to the City of Darwin to the satisfaction of the consent authority.

13. 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.
14. 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.
15. Before the use or occupation of the development starts, the areas set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - (a) constructed;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather-seal coat;
 - (d) drained;
 - (e) line marked to indicate each car space and all access lanes; and
 - (f) clearly marked to show the direction of traffic along access lanes and drivewaysto the satisfaction of the consent authority.
Car spaces, access lanes and driveways must be kept available for these purposes at all times.
16. Before the use commences the owner must, in accordance with Part 6 of the *Planning Act 1999*, provide 34 car parking bays, a minimum of 21 spaces to be provided on Lot 9255 and 8 secured by registered easement on Lot 9256. In accordance with section 70(5) of the *Planning Act 1999*, any shortfall in the 34 required parking bays may be provided through a monetary contribution to the City of Darwin. The contribution is to be calculated in accordance with the requirements of section 70(6) of the *Planning Act 1999*.
17. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street to the requirements of the City of Darwin, to the satisfaction of the consent authority.
18. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
19. Any gate over an access to public road must be located a minimum of 4.5m inside from the face of the kerb line of the adjoining public road to the requirements of the City of Darwin, to the satisfaction of the consent authority.
20. Prior to the use/occupation of the development starts, a right of way easement in favour of Lot 9255 Town of Nightcliff is to be registered on Lot 9256 Town of Nightcliff to ensure access to the eight car parking spaces and bin enclosure identified on adjacent Lot 9256 is achieved.

21. 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.
22. 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.
23. The use as shown on the endorsed plans must not be altered without the further consent of the authority.

NOTES:

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (powerdevelopment@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure
2. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
3. 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.
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. 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.
6. This development permit does not grant building approval. You are advised to contact a NT registered private Building Certifier to ensure that you have attained all necessary approvals before commencing construction works.
7. 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 Bagot Road traffic.
8. 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.

9. Upon completion of any works within or impacting upon the Bagot Road road reserve, the road reserve shall be rehabilitated to the standards and requirements of the Department of Infrastructure, Planning and Logistics.
10. A "Permit to Work Within a Road Reserve" may be required from the Transport Civil Services Division of the Department of Infrastructure, Planning and Logistics before commencement of any work within the Bagot Road road reserve.
11. The Transport Civil Services Division of the Department of Infrastructure, Planning and Logistics advises that the Surface stormwater run-off from the development site onto the Bagot Road road reserve is not permitted. The developer shall ensure that the stormwater run-off from the development site is collected to prevent uncontrolled discharge to adjoining lands through the provision of kerbing, transverse grated drains and inlet pits, or alternatively the site is to be graded to collect the run-off internally
12. 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>.
13. Any proposed works which fall within the scope of the Construction Industry *Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
14. 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 (Scheme) applies to the land which is within Zone LI (Light Industry). The proposed uses 'warehouse' and 'showroom sales' are permitted in Zone LI (Light Industry), except where these uses do not comply with the relevant development requirements set out in Part 5 of the Scheme. As this proposal seeks a variation to Clauses 5.2.4 (Parking Requirements) and 5.6.1 (Setbacks and Building Design Requirements in Zone LI), it does not comply with Part 5, and therefore becomes 'Merit Assessable' under Clause 1.8(1)(b)(ii)(2) of the Scheme. The proposed 'office' is listed in

the zoning table to Zone LI as 'Impact Assessable'; however, it is described as ancillary to the Warehouse and Showroom sales proposed on site. Pursuant to Clause 1.9(1)(b) (Ancillary use and development), the ancillary office is also 'Merit Assessable'. The proposed 'shop' and 'food premises-café' uses require consent pursuant to Clause 1.8.1(b) of the Scheme as it is listed in the zoning table to Zone LI as 'Impact Assessable'. The site is not subject to any Overlays listed under Part 3 of the Scheme.

Part – 2 Strategic Framework (Darwin Mid Suburbs Area Plan - DMSAP)

The subject site is located within DMSAP and is identified in the plan as a light industrial area. The proposed development is a discretionary (merit/impact assessable) use in Zone LI. The subject land is situated between the ANEF (Aircraft Noise Exposure Forecast) contours 20 and 25, within which commercial activities are acceptable. As such, the proposed development does not constrain the operations of the airport. Assessment of the proposal against the zone provisions and outcomes found that the proposed development aligns with the intent of Zone LI.

Part 4.14 Zone LI (Light Industry)

Zone Purpose

Provide for low impact industrial and compatible non-industrial developments that will not by the nature of their operations, detrimentally affect adjoining or nearby land.

Zone Outcomes

1. *Land is primarily developed for low impact industry-light, motor body works, motor repair station, recycling depot, showroom sales, transport terminal, vehicle sales and hire, and warehouse, that are compatible with and are of such a kind that will not adversely affect the amenity of the light industrial function of the area.*
2. *Office and shops are limited to those that serve the needs of industrial uses on a site, or directly support and are compatible with the ongoing industrial use of the zone.*
3. *Non-Industrial uses such as food premises-cafe/takeaway, bar-public, leisure and recreation, education establishment and hotel/motel are limited to those that:*
 - a. *will not be adversely impacted by the operation of industrial activities in the locality;*
 - b. *will not compromise or constrain the operation or viability of existing or future industrial activities; or*
 - c. *provide a convenience, service or support role to industries and employees in the locality.*

The development provides combined storage (warehousing) of products for distribution, wholesale, showroom sales (for the sale of kitchen and catering equipment and appliances) and retail, with on-site sales to restaurateurs and caterers, food premises, distributors and the general public. The development comprises:

- Main internal area with wholesale, showroom sales and retail space, fridge and freezer areas, shelving and pallet storage / display.
- Complimentary food premises-café for staff, visitors and the general public.
- First-floor administration areas with individual offices, meeting rooms, ablutions and staff kitchen, with plant deck located towards the De Latour Street frontage.
- Ground-level ancillary areas including, packing room and ablutions.

The assessment notes that consideration of the application requires, firstly, to determine whether the components proposed in the development meets the zone purpose and outcomes, and secondly, appraisal of the non-industrial uses as *Impact Assessable*.

Turning to the first matter, the assessment notes that the proposed development will service a range of industries, including farmers, cafes and restaurants, market stalls, schools, canteens and catering companies, with a critical component being the ability for wholesale customers to browse and physically inspect products for ordering and distribution. The proposed warehouse component includes storage (pallet racking, on-ground pallet storage) and display of wholesale items, including bulk food and catering items. In this arrangement, the items are stored and displayed in the main area. Similarly, the showroom sales component will have display and sale of bulky items for both wholesale and retail customers, including kitchen equipment, containers, carton purchases (i.e. full carton purchases of products that, as individual items may comprise shop sales, but are displayed and often purchased in bulk, and are bulky goods that require a large area), oil tins and cleaning products (drums / buckets of powders, detergents etc.). The shop component provides an area for display and retail sales of smaller items and food products, many of which (i.e. non-perishable items) are bulk stored and available for wholesale or bulk-retail purchase from the warehouse or showroom areas. The Authority deems the retail shop is associated with and an integral component to the wholesale /showroom components and is consistent with the “Retail Area” identified in the DV2625 endorsed plans.

The assessment notes that the food premises-café component will be available to staff, visitors and the general public and is intended as a complementary component to the primary uses. The office component provides administrative space for the primary uses.

Turning to the second matter – appraisal of the non-industrial uses as *Impact Assessable*, the assessment notes that the non-industrial uses in the proposed development are intended as a complimentary component to the industrial uses on site. As such, they will not prejudice the integrity of the zone or generate an excessive demand for car parking (refer to the discussion provided under the Parking Requirements).

At the hearing, Mr Brad Cunnington (Northern Planning Consultants) gave an overview of the proposal. Mr Cunnington explained to the Authority that the proposal will provide an integrated facility for the retailing, wholesaling, and warehousing of food, appliances, homewares, and other cooking, kitchen and catering products. The building will include a subservient aspect, the café, as well as an ancillary office component.

Mr Cunnington stated that the proposed facility is a result of the evolving nature of the proponent's intended operations to continue to provide a wholesale, showroom and retail outlet for the provision of cooking, catering, kitchen and food products for wholesale distribution, wholesale purchase and retail purchase.

Mr Lay (landowner) also explained to the Authority that the facility will continue to service a range of industries, including cafes and restaurants in the locality. Mr Lay informed the Authority, the ability for wholesale customers to browse and physically inspect products for ordering and distribution from the subject site was a critical component of how the business operates.

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).

Part 5 - Development Requirements

Clauses 5.2.4.1 Parking Requirements and 5.2.4.2 Reduction in Parking Requirements outside of Zone CB in Darwin

The purpose of Clause 5.2.4.1 Parking Requirements 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 current proposal generates a total requirement of 41 car parking spaces based on the car parking rate for showroom, warehouse, office, shop, café and industry-light uses. The development proposes a total of 29 car parking spaces, of which 21 spaces are provided on-site along the southern boundary and 8 on the adjoining lot (Lot 9256). The proposed development includes a shortfall of 12 spaces.

A reduction in the parking by Clause 5.2.4.1 (Parking Requirements) through the provision of Clause 5.2.4.2 (Reduction in Parking Requirements outside of Zone CB) is granted in consideration of the following:

- The proposal includes a number of different but complementary showroom, office and warehouse/storage, shop and cafe uses that multipurpose trips to the site are anticipated.
- Many bus routes service the area, and the bus stops for these routes are located a short walk from the site, including the services running along Bagot Road.

- A condition is recommended for consideration by the consent authority for a monetary payment to the City of Darwin for 5 spaces shortfall.
- A condition is included which requires an easement to be registered over the adjoining lot (Lot 9256) to ensure access to 8 spaces designated for the proposed development on the adjoining lot will to be available.

The Authority considers a total of 34 car parking spaces appropriate for the intended use given that the proposal includes a range of uses within the development where multipurpose trips to the site are anticipated.

Clause 5.5.5 – Shops in Zone LI

The purpose of Clause 5.6.1 is – “Facilitate retailing of a nature and intensity servicing only the needs of the zones in which the shop is located.”

The relevant administration for the clause is:

1. *The consent authority may consent to a shop that is not in accordance with sub-clause 2 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and is appropriate to the site having regard to such matters as its scale and intensity, and that the development does not jeopardise the integrity of the zone.*

The extent of shop space is equivalent to approximately 312m², above the maximum 200m². The Authority considers the shop space proposed, including the extent and nature of retailing, is taken in context with the combined range of uses within the development and the lawfully existing use (including retail) within the pre-existing building. The building comprises a combined warehouse / showroom / shop as an integrated wholesale and retail facility. Furthermore, the pre-existing building included a retail function, and the proposal is consistent with the Zone LI requirements, appropriate in the zone given the scale and intensity of the proposed use and the main road frontage, and will not jeopardise other (industrial) activities in Zone LI.

Clause 5.6.1 - Setbacks and Building Design Requirements in Zone LI, GI and DV

The setback requirement under this clause require a street frontage setback to Bagot Road of 9m, to De Latour Street of 3m, and to the rear / at least one side boundary of 5m. The proposed building is situated Lot 9255 and is setback 0m to the northern (side) boundary, 12.95m to the southern (side) boundary, 5m to the De Latour Street frontage and 3m Bagot Service Road frontage.

Setbacks to sides and De Latour Street frontage is complaint; however, a setback of 3m to the Bagot Service Road frontage is proposed where a minimum setback of 9m is required. A non-compliance, therefore exists with the applicant requesting a variation to the clause.

A variation to the front setbacks is granted in consideration of the following:

- The front setback is consistent with the existing buildings immediately adjacent to the north and south of the site.
- The proposed development retains the setback of pre-existing building on site.
- The requirement of 9m setback to Bagot Road was imposed prior to the construction of the service road and the subdivision of the industrial estate.

The assessment notes that the proposed development complies with the other requirements of this clause. The building's front façade incorporates extensive glazing, clearly defined lower and upper levels, a feature pedestrian entrance and awning projections to avoid the proliferation of blank walls and provide visual interest to the street. The bin storage area is located on the adjacent lot (Lot 9256) towards the De Latour Street frontage and is screened from public view.

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

The Authority considers the overall height and scale of the development are largely consistent with that anticipated in the Zone LI with respect to the land's capability and the effect on surrounding properties. Service authority comments are addressed through the inclusion of appropriate conditions and/or notations on the development permit. No land capability issues have been identified.

4. 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 proposed building presents a modern and attractive outward appearance (compared to the pre-existing building) and subsequently the Authority considers it will not unreasonably impact amenity. The nature of the primary uses are, for the most part, consistent with that anticipated in Zone LI, taking into account the primary road frontage and pre-existing use of the site (also combined warehouse, showroom sales and shop). The Authority notes that the nature of the shop component is integrated within the development and will not jeopardise other (industrial) activities in Zone LI.

Where the development does not comply with the relevant clauses of the Scheme, the impact on existing and future amenity has been considered and a variation has only been supported in cases where this amenity will not unduly be impacted upon.

FOR: 4
ACTION:

AGAINST: 1
Notice of Consent and Development Permit

ABSTAIN: 0

ITEM 2

PA2021/0022

**ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING-SINGLE WITH A REDUCED FRONT SETBACK
LOT 4011 (14) HUDSON COURT, PARAP, TOWN OF DARWIN**

APPLICANT

One Planning Consult

Mr Israel Kgosiemang (One Planning Consult) and Mrs Irene Taktikos attended.

**RESOLVED
38/21**

That, the Development Consent Authority vary the requirements of Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) 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 4011 (14) Hudson Court, Town of Darwin for the purpose of alterations and additions to an existing dwelling-single with a reduced front setback subject to the following conditions:

GENERAL CONDITIONS

1. The works carried out under this permit shall be in accordance with drawings endorsed as forming part of this permit.
2. The owner of the land must enter into agreements with the relevant authorities for the provision of electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
3. 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.
4. The use of the land for the purpose of alterations and additions to an existing single dwelling as approved through this permit must cease five years from the date DP19/0100A expires (30 April 2022) and the structure must be immediately removed from the site.

NOTE:

1. This development permit is not an approval to undertake building work. You are advised to contact a Northern Territory registered building certifier to seek a building permit as required by the *Northern Territory Building Act 1993* before commencing any demolition or construction works.

REASONS FOR THE DECISION

1. 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 application seeks approval for the continued use of a bedroom, with attached toilet and shower, addition to an existing single dwelling within the primary street front setback. The bedroom addition is in the form of a transportable container, which is substantially prefabricated, to be used as an extension to an existing dwelling.

The NT Planning Scheme 2020 applies to the land, and alterations and additions to an existing dwelling-single with a reduced front setback requires consent under Clause 1.8 (When development consent is required), as it is identified as Merit Assessable under Clause 1.8(b)(ii)(2). In this instance, Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) of the Northern Territory Planning Scheme 2020 must be considered because of the reduced front setback.

The Authority notes that a Development Permit DP19/0100 was issued in April 2019 for the same development on the site for a temporary period of one (1) year. Subsequently, a variation to DP19/0100 was issued in June 2020, which granted two (2) years extension to the development due to expire on 30 April 2022. That permit and variation were determined under the previous Planning Scheme which required the finding of special circumstances to justify a variation to setbacks. The temporary nature of the use was fundamental to the finding of special circumstances and granting of the limited approval.

The Authority acknowledges that the present application has been brought under the provisions of the 2020 Planning Scheme which contains different criteria for a variation to setbacks. In applying the considerations as required by the present Scheme, it considers a further five year term over and above the current permit will enable the continued use of the structure beyond the initial temporary period to continue caring for an older adult who requires intensive family home care.

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 that 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 Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), as the proposal will result in a front setback of less than 6m (2.86m proposed).

The Authority noted the recommendation provided by Development Assessment Services (DAS) in which it considered that a variation to Clause 5.4.3 could be supported for the following reasons:

- The existing 1.8m - 2.1m high block wall fencing along the front boundary along with the landscaping will largely screen the structure from the street. This will also minimise the effect of building massing when viewed from the street.
- Hudson Court runs straight and joins with Bagot Road to the East. As the subject site is located close to the western turning alignment of Hudson Court, the impact of reduced setbacks on the streetscape will be minimum.

- The structure sits lower to the existing development and nearby development within the locality.
- The length of the front boundary along Hudson Court is approximately 30m, and the non-compliant aspect of the setback relates to 6m length of the front boundary (20% of the front boundary length). The remaining part of the dwelling setback complies with the setback requirements.
- Due to the small size and corner location of the block, design options for the proposed additions are constrained.

The Authority, however, also noted that paragraph (a) of Clause 5.4.3 requires that “*residential buildings and ancillary structures are located in a manner that:*

(a) is compatible with the streetscape and surrounding development including residential buildings on the same site.

The Report states that Hudson Court has a visually symmetrical streetscape as it runs straight with the majority of dwellings set back 6m from their boundaries and that the proposed addition will be a noticeable addition in the streetscape. It is further stated that the existing dwelling on site is a modern single-storey dwelling constructed of bricks with a corrugated metal sloping roof. The bedroom addition is a transportable building, substantially prefabricated and its built form is a complete miss-match with the existing dwelling-single. The Authority considers that the matters outlined in the Report as justifying variation to Clause 5.4.3 are only valid to the extent that the structure remains on a temporary basis. While the proposal is consistent with the purpose and zone outcomes of Zone LR (Low Density Residential), particularly in that it is low rise residential development the failure to comply with Clause 5.4.3 cannot be justified except to the extent that it is being provided as a temporary addition to the residence to deal with the personal circumstances of the current landowner and not as a permanent addition to the dwelling-single. The Authority notes the ameliorating effect of the landscaping on the streetscape and scale and character of surrounding development and a consent condition is consequently recommended to ensure that the existing landscaping is kept and maintained. The Authority considers this to be in keeping with the temporary nature of the approval.

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

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

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

Amenity under Section 3 of the Act and Clause 3 of the NTPS is defined as:

"amenity" in relation to a locality or building means any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable.

The application seeks to remove the time limit imposed through DP19/0100 and DP19/0100A to allow the structure to remain onsite indefinitely.

At the hearing, Mr Israel Kgosiemang (One Planning Consult) outlined his clients request for the structure to remain onsite on a permanent basis. Mr Kgosiemang noted the improvements made to the structure including the landscaping planted and the additional treatments to the structure itself to make it more presentable to the street and more compatible with the existing dwelling.

Ms Irene Tatikos (landowner), also addressed the Authority. Ms Tatikos detailed her Mother's existing medical condition and highlighted her requirements for intensive family home care. Ms Tatikos stated that the structure is purpose built to provide reasonable amenities for her mother. Ms Tatikos advised the Authority that the existing dwelling could not be modified, as there is insufficient room available within the existing dwelling and to undertake the necessary modifications would require a significant financial outlay.

Ms Tatikos also informed the Authority that her husband was diagnosed with severe emphysema and had undergone surgery as a result. Ms Tatikos informed the Authority that while her husband is currently still independent, his circumstances would like change and the modified structure may be required to provide care in the future.

Ms Tatikos advised the structure would be removed eventually but a definitive timeframe was not desirable at this time.

The Authority carefully considered the information provided by the applicant and the proponent in making its decision. The Authority noted that the reasons for the decisions for DP19/0100 and DP19/0100A were very clear that the imposed timeframes were critical to the approval of the proposal given that the siting of the structure created an unacceptable interference with the amenity of the area and was only prepared to exercise its discretion to allow the structure to continue in its present position on a temporary basis so as to minimise disruption to such amenity.

After careful deliberation on the matter, the Authority determined to exercise its power under section 53(b)
to alter the proposed development in the manner it thinks fit and consent, either conditionally or unconditionally, to the proposed development as altered

and approve the alterations and additions sought for a period on an additional five years from the date the current development permit DP19/0100A expires (30 April 2022)..

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

ITEM 3

PA2020/0397

SUBDIVISION TO CREATE 37 LOTS, INCLUDING ONE PUBLIC OPEN SPACE LOT

SECTION 4106 (1) BOULTER ROAD, BERRIMAH, HUNDRED OF BAGOT

APPLICANT

Tropics Consultancy Group

Mr Gerard Rosse (Tropics Consultancy Group) and Mr Paul Nicholls (Intrapac) attended.

Submitters who sent their apology:- Ms Fiona Douglas and Ms Kirsty Howey (Co-Director - ECNT)

Submitters in attendance:- Mr Peter & Mrs Rachel Hoschke, Mr Ian Redmond and Ms Gayle Laidlaw, Mr Peter O'Hagan (Public Officer/Secretary Rapid Creek Landcare Group), PPlan: The Planning Action Network inc represented by Deputy Convenor Ms Margaret Clinch.

Interested Parties in attendance: Mr Nick Hines (ABC).

**RESOLVED
39/21**

That, the Development Consent Authority pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Section 4106 (1) Boulter Road, Hundred of Bagot, for the purpose of subdivision to create 37 lots, including one public open space lot, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), an 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 and the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, 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.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a Traffic Impact Assessment Report is to be prepared by a suitably qualified traffic engineer in accordance with the Austroads Document Guide to Traffic Management Part 12: Traffic Impacts of Developments, in the report structure provided as Appendix C of that document, with particular attention to vehicular, pedestrian, cyclist and public transport issues and opportunities, and submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.

The report shall include and resolve:

- The access point to the development from Boulter Road, to assess whether channelised right and left-turn movements are required.
 - City of Darwin requires an interim turnaround point be provided at the end of Road 1, that can accommodate a typical service vehicle i.e. rubbish truck.
 - City of Darwin requires the access path from the end of Road 2, to Boulter Road, be provided to a shared path standard, being a minimum width of 2.5 metres. The shared path shall comply with City of Darwin's Shared Path and On-Road Bicycle Lanes Technical Notes.
3. Prior to the commencement of works (including site preparation), the applicant shall submit plans to the City of Darwin demonstrating that all road infrastructure is in accordance with the Northern Territory Subdivision Guidelines 2020 and City of Darwin's Schedule of Variations, to the requirements of the City of Darwin, to the satisfaction of the consent authority.
 4. Prior to the commencement of works (including site preparation), the applicant shall prepare a Public Open Space Master Plan in accordance with the Northern Territory Subdivision Guidelines 2020, to the requirements of the City of Darwin, to the satisfaction of the consent authority.
 5. Prior to the commencement of works (including site preparation), the applicant is to prepare a Site Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP should specifically address the impact to Council owned public spaces and include a waste management plan for disposal of waste to Shoal Bay, traffic control for affected City of Darwin roads, haulage routes, storm water drainage & sediment control, use of City of Darwin land, and how this land will be managed during the construction phase.
 6. Prior to the commencement of works (including site preparation), the applicant shall prepare a Construction Traffic Management Plan (detailing all appropriate site management measures, including construction access, proposed haulage routes, vehicle types, protection of existing assets, protection of public access and a risk assessment) shall be submitted to the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
 7. Prior to the commencement of works (including site preparation), a Type 2 Erosion and Sediment Control Plan (ESCP) must be developed in accordance with the Department of Environment and Natural Resources 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.
 8. Prior to the commencement of works (including site preparation), the developer is to prepare a weed management plan to address ongoing weed management, on the advice of Weed Management Branch, Department of

Environment, Parks and Water Security, to the satisfaction of the consent authority.

GENERAL CONDITIONS

9. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
10. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage facilities, electricity services and telecommunication services to each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
11. 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.
12. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
13. All 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.
14. 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 the City of Darwin to the satisfaction of the consent authority and all approved works constructed at the owner's expense.
15. Before the use commences the owner must, in accordance with Part 6 of the Planning Act, pay a monetary contribution to the City of Darwin for the upgrade of local infrastructure, in accordance with its Developer Contribution Plan For Roadwork and Stormwater Drainage - Berrimah North, to the satisfaction of the consent authority.
16. Stormwater is to be collected and discharged into the drainage network to the technical standards of the City of Darwin and Transport and Civil Services Division of the Department of Infrastructure Planning and Logistics, to the satisfaction of the consent authority.
17. Any proposed work (including the provision or connection of services) within, or impacting upon the Amy Johnson Avenue road reserve shall be in accordance with the standards and specifications of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics. Design documents must be submitted to the Director Corridor Management, Transport and Civil Services Division for Road Agency Approval and no works are to commence prior to approval and receipt of a "Permit to Work Within a Road Reserve".

18. The boundary of the lot with the Amy Johnson Avenue road reserve is to be appropriately protected to deter unauthorised vehicular and/or pedestrian movements, to the standards and requirements of the Transport and Civil Services Division of the Department of Infrastructure Planning and Logistics (DIPL), to the satisfaction of the consent authority.
19. The developer shall consider DIPL's policy "Road Traffic Noise on The Northern Territory Government Controlled Roads" and have carried out, in accordance with AS3671 Road Traffic Noise Intrusion - Building Siting and Construction, an assessment by a suitably qualified person of the development's present and predicted future exposure to road traffic noise levels, to the standards and requirements of the Transport and Civil Services Division of the Department of Infrastructure Planning and Logistics (DIPL), to the satisfaction of the consent authority.
20. The finish of any Prime Identification sign, if erected, shall be such that, if illuminated, day and night readability is the same and is of constant display (i.e. not flashing or of variable message). The sign shall be positioned: (i) so as not to create sun or headlight reflection to motorists; and (ii) be located entirely (including foundations and aerially) within the subject Lot, to the standards and requirements of the Transport and Civil Services Division of the Department of Infrastructure Planning and Logistics (DIPL), to the satisfaction of the consent authority.
21. 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 Amy Johnson Avenue traffic, to the standards and requirements of the Transport and Civil Services Division of the Department of Infrastructure Planning and Logistics (DIPL), to the satisfaction of the consent authority.
22. Upon completion of any works within or impacting upon the Amy Johnson Avenue road reserve, the road reserve shall be rehabilitated to the standards and requirements of the Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
23. All works relating to this permit must be undertaken in accordance with the endorsed 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/or certified by a Certified Professional in Erosion and Sediment Control (CEPSC), and must be subsequently reviewed and approved by the independent CPESC auditor; 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.
24. 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 Note 3 below. At completion of works, clearance should be sought

from the Department of Environment and Natural Resources regarding satisfactory implementation of permanent erosion and sediment control measures and site stabilisation. To arrange a clearance site inspection, email the Land Development Coordination Branch at: DevelopmentAssessment.DENR@nt.gov.au.

25. Before issue of titles and pursuant to section 34 of the *Land Title Act 2000*, a Caution Notice shall be lodged with the Registrar General on the parent parcel to include the following advice on proposed Lots 33 – 36, indicated on the endorsed drawings. The Caution Notice is to state that: *“Whilst routine mosquito control is not carried out in this area, mosquito control authorities may occasionally require access to the wetland and adjacent harbourage areas to carry out emergency mosquito surveys and fogging”* and *“The land is likely to be subject to seasonal mosquito problems, and the owner/occupier is responsible for managing mosquito problems that may occur on this land. This could be via the use of personal mosquito repellents, use of protective clothing, appropriate screening of dwellings, or avoidance of outdoor areas during periods of increased mosquito numbers”*. The Caution Notice for Lot 33 shall also state that: *The Zone CN (Conservation) area of this lot is part of the headwaters of Rapid Creek and will experience seasonal stormwater flooding”*. Evidence of lodgement on the parent parcel shall 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 (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au), should be contacted via email a minimum of one month prior to construction works commencing to determine the Corporation’s servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. The Aboriginal Areas Protection Authority recommends that the permit holder obtain an Authority Certificate to indemnify against prosecution under the *Northern Territory Aboriginal Sacred Sites Act 1989*. For advice on how to obtain a certificate please contact the Aboriginal Areas Protection Authority.
3. Information regarding erosion and sediment control can be obtained from the IECA Best Practice Erosion and Sediment Control 2008 books available at www.austieca.com.au and the Department of Environment and Natural Resources 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.
4. There are statutory obligations under the *Weeds Management Act 2001* to take all practical measures to manage weeds on the property. For advice on weed management please contact the Weed Management Branch, Department of Environment, Parks and Water Security.
5. There are statutory obligations under the *Waste Management and Pollution Control Act 1998* (the Act), that require all persons to take all measures that

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

The proponent is advised to take notice of the SCHEDULE OF ENVIRONMENTAL CONSIDERATIONS provided by DEPWS.

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

6. 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.
7. The site is subject to the 'Defence Areas Control Regulations (DACR)'. All 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., require approval from the Department of Defence.
8. The applicant is advised that the provision of lighting at the site is required to be consistent with the CASA Manual of Standards (MOS-139) Aerodromes to minimise the potential for conflict with aircraft operations. The design of lighting is a developer responsibility and if it is later found that lights or glare endangers the safety of aircraft operations, the Department of Defence or the Civil Aviation Safety Authority may require the lighting to be extinguished or suitably modified.
9. Darwin International Airport advises that there must be no site activity which would attract birds that could create a hazard for aircraft operations.
10. The Department of Defence has advised that organic waste and/ or storage of commercial waste bins associated with the proposed development might be attractive to vermin and/or birds and will potentially increase the risk of bird strike for aircraft, therefore organic waste should be managed appropriately.
11. The City of Darwin provides advice regarding the provision of street trees to be planted within Council's proposed road reserve, including the provision of a planting schedule, specification for quality tree stock, species selection,

and the maintenance and establishment periods. Please contact the City of Darwin for advice on street trees.

12. A "Permit to Work Within a Road Reserve" may be required from Transport Civil Services Division of the Department of Infrastructure, Planning and Logistics before commencement of any work within the road reserve.
13. Transport Civil Services Division of the Department of Infrastructure, Planning and Logistics advises that access shall not be permitted to the subject lot from the Amy Johnson Avenue road reserve.
14. Transport Civil Services Division of the Department of Infrastructure, Planning and Logistics advises that temporary advertising signage, e.g. 'A' frame, vehicle or trailer mounted shall not be erected or located within the Amy Johnson Avenue road reserve.
15. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
16. 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>
17. All new roads, including alterations and extensions to existing roads, are required to be named under the *Place Names Act 1967*. 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 place.names@nt.gov.au. Further information can be found at www.placenames.nt.gov.au.
18. Telstra advises that 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.

REASONS FOR THE DECISION

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

The NT Planning Scheme 2020 applies to the land and subdivision of land requires consent under Clause 1.8 (When development consent is required). It is identified as *Impact Assessable* under Clause

1.8(1)(c)(ii), and therefore the strategic framework (Part 2 of the Scheme, including the Darwin Regional Land Use Plan 2015 and Berrimah North Area Plan); Overlay Clause 3.2 (CNV – Clearing of Native Vegetation); the zone purpose and outcomes of Clause 4.2 – Zone LR (Low Density Residential), Clause 4.6 – Zone RR (Rural Residential), and Clause 4.23 - Zone CN (Conservation); Clause 6.2 (Subdivision in Zones LR...); and Clause 6.3 (Subdivision in Zones RR...), must be considered.

The Authority noted that the proposal complies with the relevant requirements of the NT Planning Scheme including Clause 3.2 (CNV – Clearing of Native Vegetation) and the zone purpose and outcomes of Clause 4.23 - Zone CN (Conservation), particularly as the Department of Environment, Parks and Water Security has determined that the proposal is unlikely to have a significant impact on the environment. This is largely as a result of part of the proposed stormwater mitigation batter being relocated outside the Zone CN land.

The proposal also complies with the zone purpose and outcomes of Clause 4.2 – Zone LR (Low Density Residential) and Clause 4.6 – Zone RR (Rural Residential), and also Clause 6.2 (Subdivision in Zones LR...), and Clause 6.3 (Subdivision in Zones RR...), particularly now that the lots sizes are fully compliant.

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

18 submissions were made under section 49 in relation to the application during the exhibition period. Further submissions were received from a number of the submitters following circulation of additional information provided by the applicant in February and March 2021. The petition tabled at the DCA meeting of 19 March 2021 by the Environment Centre NT was also considered. That petition contained over 600 signatures and the Authority noted that it was indicative of community concerns. The key issues raised in the submissions and petition principally relate to impacts from disturbance of land in Zone CN, water quality and quantity from the site, unlawful clearing on the site, biting insects, sacred sites and tenure of land.

These matters have been considered by the Authority as follows:

Disturbance of land in Zone CN

The Authority considers, in light of the expert evidence provided by the applicant and DEPAWS, that the disturbance of land within Zone CN will be negligible as no subdivision of Zone CN is now proposed and it will remain under one title. Part of the proposed stormwater mitigation batter is now relocated on land outside Zone CN, and the DEPWS submission states that the proposal is unlikely to have a significant impact on the environment. Additionally, the applicant will have to adhere to the consent conditions which requires it to carry out works in accordance with the endorsed plans, which will show part of the

stormwater control outside the perimeter of Zone CN, as per the revised plans provided to DEPWS.

Water quality and quantity from the site

This matter is particularly considered through the relevant clauses of the Berrimah North Area Plan and also the submissions received from DEPWS and CoD. There are no issues raised through these submissions which suggest water quality and quantity issues raised cannot be addressed through consent precedent and general conditions.

This includes City of Darwin (CoD) requiring updated stormwater plans that comply with the Berrimah North Area Plan stormwater management plan and an engineered plan demonstrating on-site collection of stormwater and its discharge into the local stormwater drainage system, with the plan to include gross pollutant traps, which should ensure water quality is acceptable post development. It is also noted that CoD requires easements to be provided over all stormwater infrastructure proposed to be handed to CoD. This includes, but is not limited to, the entire stormwater detention basin, underground infrastructure and includes the rights to discharge stormwater into private property. These requirements are included in the consent conditions.

The Authority noted that DEPWS considers (from the Water Resources Division), that the amended application reduces the impact on the Zone CN (Conservation) portion of the property. Further, the submission from DEPWS (Land Management Unit), recommends an Erosion and Sediment Control Plan be prepared by a Certified Professional in Erosion and Sediment Control which should ensure all reasonable and practicable measures are undertaken to prevent: erosion occurring onsite, sediment leaving the site, and runoff from the site causing erosion offsite. These requirements are included in the consent conditions.

It is considered that, with the consent conditions, the water quality and quantity flowing from the site should be of a level not to cause significant impacts downstream.

Consideration of proposal by DEPWS in relation to the *Environmental Protection Act 2019*

Several submitters considered that the proposal should be referred to the NT EPA under the *Environmental Protection Act 2019*. The Authority noted that DEPWS advised that the amended proposal is unlikely to have a significant impact on the environment and a referral under the *Environmental Protection Act 2019*, was not required. The Authority clarified that the decision whether a referral under the *Environment Protection Act 2019* is required was determined after consideration of all the materials and according to the expert advice of DEPWS.

Unlawful clearing on the site

The Authority acknowledged the comments made regarding the unlawful clearing of the site in the past. The Authority noted that this matter was raised with DAS in 2014, through a complaint advising that clearing had taken place on the property. No prosecution action was undertaken within the two year limit for commencement of prosecution pursuant to section 78A (Time for commencing prosecution) of the *Planning Act 1999*, and the complaint was consequently closed. It is noted that the ownership of the land has since changed. The Authority noted that there is no legal avenue available to it to pursue the historic unlawful clearing.

Biting insects

The Authority noted that the Berrimah North Area Plan 1 shows the site to be within the 400m buffer to biting insects where the average lot size per dwelling is to be 2000m². The development proposes 36 lots (36 dwellings) across the 7.44ha site which meets this requirement (average of 2,066m² per lot/dwelling). It also noted that Medical Entomology has advised that the owner/occupiers of the Zone RR blocks will be responsible for managing mosquito problems that may occur on the land but that emergency mosquito surveys and fogging may occasionally be undertaken by mosquito control authorities which will require access to the wetland and harbourage areas. Medical entomology recommended a Caution Notice to this effect be placed on the RR lot titles, and this is included in the recommended consent conditions.

Sacred sites

The submission to the proposal from the AAPA advised that records show there are no sacred sites or restricted work areas on the site, however the Authority recommends that the applicant obtain an Authority Certificate before they proceed with the proposed subdivision. This is included as a standard note to the consent conditions. The AAPA submission raised no issues regarding any potential off-site sacred sites.

Land tenure

The future tenure of the Zone CN land will be privately held (under one title), as it is currently, unless otherwise bought by a government entity. The public open space will come under the care and control of City of Darwin. It is noted that CoD requires the developer to submit a Public Open Space Master Plan and this is reflected in the consent conditions.

Submitters Mr Peter O'Hagan (RCLG), Ms Margaret Clinch (PLan), and Mr Ian Redmond addressed the Authority and stated that they remained concerned with the proposal, particularly the proposed and past clearing on the site, the location of the wetland, the quality and quantity of storm water flowing from the site, the land tenure of the land zoned CN, road layout, and compliance of the proposal with the NT Planning Scheme 2020.

Submitter Mr Peter Hoschke also addressed the Authority indicating his support for the application in its revised form.

The Authority noted the concerns raised and particularly noted that the site was subject to the Berrimah North Area Plan and the current zoning, which was approved in 2016 by the then Minister for Planning. The Authority is statutorily obliged to determine the application according to the terms of Plan and Zone. The Authority emphasised that planning scheme amendments to introduce area plans and rezone parcels of land are not part of its remit.

The Authority further noted that from the assessment of the proposal against the NT Planning Scheme 2020, the proposal was found to be compliant and that the consent conditions, particularly where they relate to stormwater and roads, would ensure that requirements of City of Darwin would be met. City of Darwin clarified that a turnaround area is required at the northern end of Road 1 and also that the lots zoned RR would be fully reticulated. It was also noted that the applicant would need to obtain clearance to all the consent conditions from the relevant authorities in order for the subdivision to occur.

The Authority additionally noted the submitters concerns about the previous clearing on the site in 2014, but reiterated that no prosecution action was undertaken within the two year limit for commencement of prosecution, and as such, the matter could no longer be acted upon.

3. Pursuant to Section 51(j) of the *Planning Act 1999*, the consent authority must consider 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.

It is considered that the capability of the land can support the development particularly as the Berrimah North Area Plan identifies the site for residential development and rural residential buffer and the land in Zone RR will be unconstrained through management measures (addition of fill material), which will be particularly subject to erosion and sediment control measures as required by the consent conditions. The stormwater drainage of the land will be subject to the stormwater management plan for the site, as also required by the consent conditions.

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

The application was circulated to the relevant authorities and comments received from these authorities are addressed by the inclusion of conditions and/or notations on the development permit. It is noted that all the authorities, particularly City of Darwin, consider that their issues can be addressed through consent conditions. It is also noted that DEPWS states that the proposal is unlikely to have a significant impact on the environment.

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

The Authority considers that the proposal is unlikely to have a significant impact on the existing and future amenity of the area as:

- a. the proposal is considered compliant with the NT Planning Scheme 2020, including the Berrimah North Area Plan;
- b. the disturbance to the land in Zone CN is considered low particularly with part of the proposed stormwater mitigation batter now relocated on land outside the zone, no subdivision of the CN zone is proposed, and DEPWS determining that the proposal is unlikely to have a significant impact on the environment;
- c. extensive conditions are applied to ensure stormwater is adequately managed, adequate erosion and sediment control measures are in place and a weed management plan is prepared.

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
2021.04.30
16:35:36
+09'30'

SUZANNE PHILIP
Chair

30 April 2021