



# DEVELOPMENT CONSENT AUTHORITY

## DARWIN DIVISION

### MINUTES

**MEETING NO. 418-FRIDAY 5 APRIL 2024**

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

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

**APOLOGIES:** Nil

**LEAVE OF ABSENCE:** Nil

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), Sally Graetz, David Burrow, Monica Pham and Kaleb Thomas (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Apology

**Meeting opened at 10.45 am and closed at 11.45 am**

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

**ITEM 1**

**PA2023/0427**

**GROUND LEVEL CAR PARK (57 CAR PARKING SPACES)**

**LOT 2334 (27) CAVENAGH STREET, DARWIN CITY, TOWN OF DARWIN**

**APPLICANT**

Returned & Services League of Australia (South Australia Branch) Darwin Sub-Branch Inc

This application has been withdrawn from this meeting at the request of the applicant.

**ITEM 2**

**PA2024/0012**

**ROOMING ACCOMMODATION (COMPRISING 30 SINGLE ROOMS)**

**LOT 5750 (27) LINDSAY STREET, DARWIN CITY, TOWN OF DARWIN**

**APPLICANT**

Cunnington Rosse Town Planning and Consulting

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

Interested party: Josh Larder (Cunnington Rosse Town Planning and Consulting) attended.

**RESOLVED**

**27/24**

That, the Development Consent Authority vary the requirements of Clause 5.2.4.4 (Layout of car parking areas), 5.2.5 (Loading Bays), 5.5.16 (Active Street Frontage) and 5.9.2.2 (Volumetric Control), of the Northern Territory Planning Scheme, and pursuant to section 53(b) of the *Planning Act 1999*, alter the proposed development and consent to the proposed development as altered to develop Lot 5750 (27) Lindsay Street, Darwin City, Town of Darwin for the purpose of hotel/motel (30 guest suites) subject to the following conditions:

**CONDITIONS PRECEDENT**

1. Prior to the endorsement of plans and prior to the commencement of works, written confirmation from a qualified traffic engineer that the parking layout associated with the development is functional 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 (Layout of car parking areas) of the Northern Territory Planning Scheme 2020, to the satisfaction of the consent authority.
2. Prior to the endorsement of plans and prior to the commencement of works, approval is required for any encroachments over the sewerage easement located on the property to the requirements of Power and Water Corporation, to the satisfaction of the consent authority.
3. Prior to the commencement of works, 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 DCA Meeting No 418 – Friday 5 April 2024

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, a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Guidelines, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.
5. Prior to the commencement of works, 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, 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. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage and electricity to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.  
  
Please refer to notation 1 for further information.
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. 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.
11. 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.
12. 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;

## Darwin DCA Meeting No 418 – Friday 5 April 2024

- (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.
13. 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.
14. 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.
15. 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.
16. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
17. 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.
18. 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.
19. 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.
20. 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.

## Darwin DCA Meeting No 418 – Friday 5 April 2024

21. 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. 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. 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. 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.
4. Notwithstanding the approved plans, any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin's Policy 6310.100.E.R – Outdoor Advertising Signs Code.
5. 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*.
6. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email ([info@ntbuild.com.au](mailto:info@ntbuild.com.au)) or by phone on 08 8936 4070 to determine if the proposed works are subject to the Act.
7. 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.

NT Planning Scheme 2020 (NTPS 2020) applies to the land, and to determine the applicable provisions of that Scheme, the proposed use must be characterised according to the definitions contained in Schedule

## Darwin DCA Meeting No 418 – Friday 5 April 2024

2. Part 4 of the NTPS 2020 establishes the relevant zones and assessment tables. Clause 4 provides –

*To determine the assessment category and relevant requirements:*

*(a) establish which definition in Schedule 2 applies to the use or development*

Having considered the various definitions which could apply to the proposal and representations made by the applicant at the meeting, the Authority concluded that the correct characterisation of the use was as a hotel/motel. Such use requires consent under Clause 1.8 (When development consent is required). It is identified as Merit Assessable under Clause 1.8(1)(b)(i), therefore zone purpose and outcomes of Clause 4.10 (Zone CB – Central Business), Clauses 5.2.4.4 (Layout of car parking areas), 5.2.5 (Loading Bays), 5.2.6.2 (Landscaping in Zone CB), 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC), 5.5.15 (Design in Commercial and Mixed Use Areas), 5.5.16 (Active Street Frontage) and 5.9.2 (Darwin City Centre), need to be considered.

These clauses have been considered and it is found that the proposal complies with the relevant requirements of the Planning Scheme except for 5.2.4.4 (Layout of car parking areas), 5.2.5 (Loading Bays), 5.5.16 (Active Street Frontage) and 5.9.2.2 (Volumetric Control).

The Authority noted that the application, as originally presented, asserted that the proposal is for rooming accommodation with 30 single rooms and that the *“premises is intended to provide student accommodation for students attending nearby education establishments however will not be limited to this demographic”*. Following a request for further information from DAS, the applicant further stated that the *“proponent wishes to retain the flexibility for use under the rooming accommodation during periods of lower-demand for student accommodation in order to provide accommodation for workers”*. The NTPS 2020 contains a number of definitions which could potentially apply to the proposal. An applicant’s description of a proposed development as falling within a particular definition is not, of itself, decisive. It will always be a question of fact and degree to be determined objectively by the Authority as to whether a proposal meets the elements of a defined use.

At the hearing, Mr Gerard Rosse of Cunnington Rosse Town Planning and Consulting, presented on behalf of the application and provided an overview of the application for rooming accommodation. The site is developed with an existing building that was used as the Frogshollow Backpackers Hostel. The application proposes renovations of the existing dormitories to single occupancy rooms each equipped with an ensuite bathroom and kitchenette. Shared laundry and communal open space facilities would be provided on-site. The intended occupants are students, however the application does not limit the occupants to only students and seeks flexibility during periods of lower demand for student accommodation to also accommodate workers. The intended tenancy period is between 3 to 6 months and up to 12 months. Access to the site is existing and the application proposes upgrades to the existing car parking area through the addition of 4 car parking spaces.

## Darwin DCA Meeting No 418 – Friday 5 April 2024

The Authority noted previous decisions for rooming accommodation applications at 7 Shepherd Street, Darwin City and 3 Mansfield Street, Palmerston City and their similarities to this application. In both decisions, the Authority considered the meaning of “rooming accommodation” under the NTPS 2020, noting the considerable similarities and overlap between the Planning Scheme definitions of rooming accommodation, hotel/motel and serviced apartment and, that, characterisation of a use as falling within one or another has significant impact on the resultant scheme requirements for elements such as car parking and private open space. One of the key difference between the definitions considered by the Authority is the categories of people entitled to use the accommodation. Previous approvals for rooming accommodation limit the use to a particular group, either students or workers.

Elements of this proposal fitted just as easily within the definition of hotel/motel as it would for rooming accommodation. Hotel/motel is defined in Schedule 2 of the NTPS 2020 to mean *premises primarily used for the short term accommodation of travellers. The use can include where ancillary, meeting and function rooms, food premises-restaurant, a bar-small, and recreation facilities, but does not include a bar-public, club, or nightclub entertainment venue.*

Short term accommodation is not defined legislatively within the Northern Territory but may, in various contexts, include accommodation of up to 3 months or even 6 months. However, longer stays of up to 12 months may also be possible in the absence of a clear definition of short term. Furthermore, provided the primary use was for short term accommodation, a portion of the premise may still be used for longer term accommodation. Hotels often include communal facilities, such as guest laundries and communal eating spaces, but are not beholden to the provision of such communal amenities.

The definition of rooming accommodation on the other hand provides that *rooming accommodation means premises such as hostels, guest houses, student and worker accommodation used for the accommodation of unrelated persons which may include: (a) the provision of food or other services and facilities, and/or (b) on-site management or staff and associated accommodation, and where each guest/resident: (c) has a right to occupy one or more rooms; and (d) does not have a right to occupy the whole of the premises in which the rooms are situated; and (e) may have separate facilities for private use or share communal facilities or communal space with other residents The use can include where ancillary, bar-small, food premises-café/take away, office, and shop.*

Items (a) to (e) could equally apply to a hotel/motel. Therefore, the key difference lies in the introductory words - premises such as hostels, guest houses, student and worker accommodation. A hostel is typically a budget-

## Darwin DCA Meeting No 418 – Friday 5 April 2024

oriented overnight lodging place, with dormitory accommodation and shared facilities, and a guest house is a private house offering accommodation to paying guests. Student accommodation is limited to those undertaking a course of study and is a separate category to worker accommodation. Worker accommodation would normally encompass facilities intended for employees of a particular employer or project or industry. However, the application proposes accommodation for students, and also mentions accommodation for “workers”, as a generic term, at alternate times. The Authority queried Mr Rosse on whether the accommodation could be limited to students to which Mr Rosse advised that this would not be preferred by his client who sought flexibility in relation to the accommodation offering.

The Authority advised Mr Rosse that they were only supportive of the proposal for rooming accommodation if it was limited to students. The Authority queried Mr Rosse on whether he had any issue with the proposal being considered as a hotel/motel, rather than rooming accommodation who advised that he had no issues with the Authority considering the application as a hotel/motel.

The Development Assessment Services report detailed that the proposal for rooming accommodation would result in non-compliance with Clauses 5.4.7 (Communal Open Space), 5.4.17 (Building Articulation), 5.5.17 (Building Frontage in Commercial and Mixed Use Areas), however the Authority notes that these clauses do not apply to a hotel/motel.

Alternatively, were the proposal to be for a hotel/motel, it would result in non-compliance with Clauses 5.2.4.4 (Layout of car parking areas), 5.2.5 (Loading Bays), 5.5.16 (Active Street Frontage) and 5.9.2.2 (Volumetric Control).

The Authority noted the importance of consistency in applying the definitions contained in Schedule 2 and determined that the proposal could only be considered as rooming accommodation if it were certain of the intended guest/residence and management of the facility. In this instance the applicant clearly wanted flexibility in the accommodation offering and was unwilling to restrict the accommodation to students only, or provide any specific aspects that would determine the proposed development as only for student accommodation. Alternatively, as the proposal indicated that it was for students but not limited to that demographic, and for stays of up to 12 months, the definition of hotel/motel appeared to provide the flexibility in both guest/residence and duration of stay that the application was seeking.

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).



a) 5.2.4.4 (Layout of car parking areas)

The purpose of Clause 5.2.4.4 (Layout of car parking areas) is to ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose.

Sub-clause 9(a) of Clause 5.2.4.4 requires car parking areas are to have driveways with a minimum width of 6m for two-way traffic flow or 3.5m for one-way traffic flow.

The proposal has been found not to be in accordance with Clause 5.2.4.4 because the proposal will result in a driveway width of 5m, where 6m is required for two way traffic under sub-clause 9(a).

Administratively, under sub-clause 5 of Clause 5.2.4.4, the consent authority may consent to a car parking area that is not in accordance with sub-clause 9 if it is satisfied that the non-compliance will not result in adverse impacts on the local road network or internal functionality of the car parking area.

The application indicates that the width of the driveway is constrained by the location of the existing building, but given that the driveway provides access to just 12 car parking spaces a low traffic volume is anticipated. Subsequently, the reduction in driveway width is considered to be minor.

At the hearing, Mr Rosse requested the removal of condition precedent #2 requiring written confirmation from a qualified traffic engineer that the parking layout associated with the development complies with the relevant Australian Standards and recommended condition precedent #4 requiring in principle approval for the crossover and driveway from Council, which were recommended in the DAS report.

To ensure that the car parking area is appropriately designed and constructed for its intended purpose, a condition of development approval requiring provision of written advice from a suitably qualified person confirming that the parking layout is functional for car parking is included. This will enable demonstration that, despite the non-compliance, the design still satisfies the purpose of the clause and the tests required under the clause administration, that the design will not result in adverse impacts on the local road network or internal functionality of the car parking area.

The Authority accepts the removal of a condition precedent requiring in principle approval for the crossover and driveway from City of Darwin as the crossover and driveway from Lindsay Street are existing and a general condition is sufficient to ensure the kerb crossovers and driveways will meet the technical standards of City of Darwin.

b) 5.2.5 (Loading Bay)

The purpose of Clause 5.2.5 (Loading Bay) is to provide for the loading and unloading of vehicles associated with the use of land.

## Darwin DCA Meeting No 418 – Friday 5 April 2024

The proposal has been found not to be in accordance with Clause 5.2.5 (Loading Bay) as 1 loading bay is required for a hotel/motel however no loading bay is provided.

*Administratively, the consent authority may consent to a use or development that is not in accordance with sub-clauses 3 and 4 only if it is satisfied sufficient, safe and functional loading areas are available to meet the needs of the use with regard to: (a) the scale of the use and development on the site; (b) any potential adverse impacts on the local road network; and (c) any agreements for off-site loading and unloading of vehicles, such shared loading areas or approval to carry out loading activities in a laneway or secondary street.*

A variation to the requirements for loading bays under clause 5.2.5 is considered appropriate, noting the following circumstances which have been identified:

- The loading requirements of clause 5.2.5 may not consider the development of this type and scale.
- The expected delivery needs for the proposed use can be accommodated within the car parking area and is unlikely to impact of the road network.
- Any deliveries that may occur are likely to be short-term visits and may use the car park, noting the proposal provides a surplus of 4 car parking spaces. Furthermore, it is unlikely that the types of vehicles requiring access to the site will be larger trucks.

c) 5.5.16 (Active Street Frontage)

The purpose of Clause 5.5.16 (Active Street Frontage) is to *provide a site-responsive interface between commercial buildings and the public domain that: (a) is attractive, safe and functional for pedestrians; (b) encourages activity within the streetscape; and (c) encourages passive surveillance of the public domain.*

*Sub-clauses 6 of Clause 5.5.16 requires buildings are to provide a minimum of 60% of the length of each site boundary that fronts a primary or secondary street, or public open space, as active street frontage, made up of any combination of the following components, where the distance between individual components is no more than 1.5m: (a) windows that maintain clear views to and from the street, with openings that have dimensions not less than 0.9m wide and 1.2m high; (b) operational and legible entrances (excluding fire egress) that are directly accessible from the public domain; (c) areas within the site that are used for alfresco dining that provide visual interaction with the street/public open space; or (d) well-designed spaces that allow for pedestrian movement and/or seating.*

The proposal has been found not to be in accordance with Clause 5.5.16, as less than 60% of the length of Lindsay Street is provided as active frontage.

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

## Darwin DCA Meeting No 418 – Friday 5 April 2024

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

A variation is considered appropriate in this instance as:

- Landscaping is proposed along the street frontage that will enhance the streetscape.
- The building is existing, is of a similar design to the adjacent building and is unlikely to result in any implications of the established character of the area or the street. The proposal provides a legible entrance that allows for pedestrian movement to and from the site.
- The first floor shared balconies provide passive surveillance opportunities to the street frontage.

d) 5.9.2.2 (Volumetric Control)

The purpose of Clause 5.9.2.2 (Volumetric Control) is to *ensure the siting and mass of buildings within the Darwin city centre promotes urban form that is of a scale appropriate to the locality, and provides adequate separation to allow: (a) potential for view corridors to Darwin Harbour; (b) breeze circulation between buildings; (c) penetration of daylight into habitable rooms; and (d) reasonable privacy for residents.*

Sub-clauses 5(b) of Clause 5.9.2.2 requires *the podium of a development is to provide a minimum setback of 6m from any site boundary, for any verandah, balcony or room designed for accommodation with a window other than to a street or public open space.*

The proposal has a 1.57m setback to the side north-eastern boundary where a 6m setback is required to the balconies.

The relevant administration is provided in sub-clause 3 of Clause 5.9.2.2, *the consent authority may consent to a development, excluding development located within the Smith Street Character Area, that is not in accordance with sub-clauses 5 and 6 if it is satisfied the development: (a) is appropriate to the location considering the scale of the development and surrounding built form; and (b) will not unreasonably restrict the future development of adjoining sites.*

It can be reasonably anticipated that other CBD lots can be developed according to the volumetric controls. The front and rear balconies are oriented with openings facing Lindsay Street and the rear of the site. Where the balcony setbacks don't comply there is a solid wall along the non-compliant setback side which reduces potential for overlooking to the adjacent sites.

- e) The considerations listed under Clause 1.10(3) have been given regard to and it has been found that the proposal complies with all relevant requirements of the NT Planning Scheme 2020, except for 5.2.4.4 (Layout of car parking areas), 5.2.5 (Loading Bays), 5.5.16 (Active Street Frontage) and 5.9.2.2 (Volumetric Control), as identified above.

## Darwin DCA Meeting No 418 – Friday 5 April 2024

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 land is capable of supporting the proposed use. The proposal will utilise the existing building on site and includes upgrades to the building. The use of hotel/motel is in keeping with surrounding uses and is unlikely to result in adverse impacts on the surrounding area. Additionally, the comments from service authorities did not identify or raise any issues of concern in relation to land capability.

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 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. The use is located in an existing building that has been existing for some time. The building presents the Lindsay Street frontage with increased pedestrian amenity and activation.

Where the development does not comply with the relevant clauses of the NTPS 2020, 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: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:** Notice of Consent and Development Permit

**ITEM 3  
PA2022/0270**

**VARIATION TO CONDITION 8 OF DP22/0319 FOR THE PURPOSE OF  
STAGING THE DEVELOPMENT  
SECTION 4882 (25) BOWERLEE ROAD, BERRIMAH, HUNDRED OF BAGOT**  
Cunnington Rosse Town Planning and Consulting

**APPLICANT**

Applicant; Gerard Rosse (Cunnington Rosse Town Planning and Consulting) attended.

Interested party: Josh Larder (Cunnington Rosse Town Planning and Consulting) attended.

**RESOLVED  
28/24**

That, pursuant to section 57(3) of the *Planning Act 1999*, the Development Consent Authority consent to the application to vary Condition 8 of Development Permit DP22/0319, for the purpose of an Education Establishment at Section 4882 (25) Bowerlee Road, Hundred of Bagot allowing the development to occur in three stages subject to:

- further amendment of the conditions of DP22/0319 by inserting the following at Condition Precedent 1:

## Darwin DCA Meeting No 418 – Friday 5 April 2024

“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:

- a 2.1m high colorbond fence in ‘woodland grey’ along the boundary of Section 4280 (42) Bowerlee Road, Berrimah, Hundred of Bagot being delivered as part of Stage 1.”
- further amendment of the conditions of DP22/0319 by inserting the following at Condition 10:  
‘All works included in Stage 2, as per the endorsed ‘Staging Plan’ must be completed by 8 September 2024, to the satisfaction of the consent authority.’

and further 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:
  - a 2.1m high colorbond fence in ‘woodland grey’ along the boundary of Section 4280 (42) Bowerlee Road, Berrimah, Hundred of Bagot being delivered as part of Stage 1.
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, to the satisfaction of the consent authority.
3. 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, with particular attention to vehicular, pedestrian, cyclist and public transport issues and opportunities, to the requirements of City of Darwin and Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority. The Traffic Impact Assessment report is also to include turn-path diagrams demonstrating that the access/s are appropriately sized and designed so that a vehicle doesn’t encroach the opposite traffic lanes when entering Vaughan Street as well as swept paths for the maximum sized vehicles entering and exiting the site. An intersection performance analysis to understand the impact on Flight Path Road and Amy Johnson Avenue intersection until such time that the

## Darwin DCA Meeting No 418 – Friday 5 April 2024

signalised Flight Path Road/Secret Road and Vanderlin Drive intersection becomes available.

4. 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 and/or Land Development Unit of the Department of Infrastructure Planning and Logistics (as the case may be), 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 (if required) to Council's system. The Stormwater management plan needs to consider all catchments that discharge into the area including all external catchments and the full future residential development proposal.
5. 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 City of Darwin, to the satisfaction of the consent authority.
6. Prior to the commencement of works (including site preparation), a waste management plan addressing the City of Darwin's Waste Management Guidelines must be prepared, to the requirements of the City of Darwin, to the satisfaction of the consent authority.
7. Prior to the commencement of works (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 land and infrastructure, including 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

8. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
9. Within two months of the date of issue of development permit DP22/0319, the fence as detailed in the endorsed plans is to be completed, to the satisfaction of the consent authority.
10. Stage 2 works as detailed in the endorsed plans are to be completed by 8 September 2024, to the satisfaction of the consent authority.
11. The use of land for the purpose of an education establishment must cease five years from the date of issue of Development Permit DP21/0322 on 8 December 2026.

## Darwin DCA Meeting No 418 – Friday 5 April 2024

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. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, 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 2 and 3 for further information.
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 and/or Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics and/or Land Development Unit of the Department of Infrastructure Planning and Logistics (as the case may be), to the satisfaction of the consent authority.
15. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of City of Darwin, to the satisfaction of the consent authority.
16. All works recommended by the traffic impact assessment are to be completed to the requirements of the City of Darwin and the Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics to the satisfaction of the consent authority.
17. Upon completion of any works within or impacting upon the road reserve, the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin.
18. 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.
19. 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.

## Darwin DCA Meeting No 418 – Friday 5 April 2024

Car parking spaces, access lanes and driveways must be kept available for these purposes at all times.

20. 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.
21. Storage for waste disposal bins is to be provided to the requirements of City of Darwin to the satisfaction of the consent authority.
22. The development must be designed and constructed to comply with AS2021-2015 'Acoustics – Aircraft noise intrusion – Building siting and construction' (AS2021), and a statement from a suitably qualified acoustic engineer confirming compliance with AS2021- 2015 must be submitted prior to occupation of the development, to the satisfaction of the consent authority.
23. External lights must be designed, baffled and located to the satisfaction of the consent authority to prevent any adverse effect on adjoining land, roads, and on the operation of the RAAF Base Darwin and Darwin International Airport.
24. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view, located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority.
25. 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.
26. 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. 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



## Darwin DCA Meeting No 418 – Friday 5 April 2024

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.

3. 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>
4. A "Permit to Work Within a Road Reserve" may be required from City of Darwin before commencement of any work within the road reserve.
5. Approval by Council is required for the 230 metres of footpath proposed to be built as part of this application to the Vaughan Street road reserve.
6. Sediment control measures are to be established and maintained, to prevent silt and sediment escaping the site or causing erosion. Building rubbish or debris must not be placed, or be permitted to be placed, on any adjoining public reserve, footpath or road, without first obtaining approval from City of Darwin.
7. 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.
8. 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.
9. 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.
10. 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.

## Darwin DCA Meeting No 418 – Friday 5 April 2024

11. The Department of Defence recommends that the proposed development be constructed of non-reflective building materials.
12. Darwin International Airport advises that there must be no site activity which would attract birds that could create a hazard for aircraft operations.
13. 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.
14. Any new on-site wastewater management system is to be installed in accordance with the Code of Practice for Wastewater Management.
15. The Power and Water Corporation advises that full lot fire coverage cannot be achieved from existing hydrants. Internal firefighting arrangements must be made to the satisfaction of NT Fire and Rescue Service.
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 work.
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.

### REASONS FOR THE DECISION

1. Development Permit DP22/0319 was issued on 14 December 2022 for the purpose of changes to the development approved by DP21/0322 for the purpose of altering the location of the education establishment. Condition 8 of permit DP22/0319 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*

## Darwin DCA Meeting No 418 – Friday 5 April 2024

*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.

2. The application proposes to stage the development into three stages:
  - Stage 1 – Existing development as is current with 3 demountable classrooms and disability ablution block
  - Stage 2 – Entry and exit from Vaughan Street, 40 car parking spaces, drop off area, zebra crossing, internal one way road, pedestrian walkway access and associated landscaping
  - Stage 3 – Renovation works inside existing hall/warehouse.

Until Stage 2 works are completed access to the site is provided from Bowerlee Road which was the access location approved and proposed under the original development permit DP21/0322.

The applicant advises that in the interim, until stage 2 is completed, the school operates two buses for students and has a current sealed access and parking area on site. Staff and parents are using the existing sealed area and an unsealed area for overflow car parking adjacent to the existing buildings. The overflow car parking area is not used often, is irrigated, and to date no issues with dust have occurred. It is noted that this is a temporary measure until stage 2 can occur. The number of students at the school has not increased (30 students) because of the restricted operation at the moment. The operation is small given the number of students coming by school operated transport and, according to the applicant, is well managed. The applicant advises that the landowner is aiming to commence and complete stage 2 and 3 works this dry season and that a contractor has been engaged to commence stage 2 this dry season, once a building permit is issued.

Noting the anticipated timeframe identified in the application and that the permit is already time limited, an additional condition requiring stage 2 works to be completed by 8 September 2024 has been included.

The Authority notes that failure to complete stage 2 works either within this timeframe, or in accordance with the endorsed plans would require further consent and consideration by the consent authority.

The Authority notes that the proponent is in breach of the permit conditions in relation to providing the agreed to fence along the boundary of Section 4280 (42) Bowerlee Road, Berrimah and has included a condition precedent that the fence be provided as part of Stage 1 as assurance that the fence will be provided. As a result, a certificate of compliance will not be issued for Stage 1 until the fence is provided.

**Darwin DCA Meeting No 418 – Friday 5 April 2024**

3. The staging of the development is not conveniently measurable and, noting the above considerations, the proposal is not anticipated to materially affect the amenity of the adjoining land or premises with the inclusion of the recommended conditions.

The Authority carefully considered the submission from the applicant and considered the assessment of Development Assessment Services in making its decision. The Authority is satisfied that the proposed staging does not have any amenity impacts provided the conditions of the DP22/0319 are met for each stage.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:** Variation Permit

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

**SUZANNE PHILIP**  
Chair

16 April 2024