



# **DEVELOPMENT CONSENT AUTHORITY**

## **DARWIN DIVISION**

### **MINUTES ITEM 3 ONLY**

**MEETING NO. 441 – FRIDAY 23 MAY 2025**

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

**MEMBERS PRESENT:** Suzanne Philip (Chair), Rod Applegate, Monica Baumgartner and Peter Pangquee

**APOLOGIES:** Mick Palmer and Jimmy Bouhoris

**LEAVE OF ABSENCE:** Marion Guppy

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), Amit Magotra and Madison Harvey (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Apology

**Meeting opened at 1.15 pm and closed at 2.00 pm**

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

The Chair, Development Consent Authority, under section 93(1) of the *Planning Act 1999*, appointed Monica Baumgartner who is a member in relation to the Batchelor Division, to act as a member for Marion Guppy in relation to the Darwin Division from 12 May 2025 to 27 May 2025 as Marion Guppy is prevented from performing her duties of office because of absence.

**ITEM 3**  
**PA2023/0327**  
**SUBJECT SITE**  
**APPLICANT**

**CONCURRENT APPLICATION: RECONSIDERATION**  
**REZONE FROM ZONE FD (FUTURE DEVELOPMENT), ZONE LR (LOW DENSITY RESIDENTIAL) AND ZONE LMR (LOW-MEDIUM DENSITY RESIDENTIAL) TO A SPECIFIC USE ZONE (SU); AND SUBDIVISION TO CREATE 18 LOTS**  
**PART LOT 5988 AND PART LOT, TOWN OF DARWIN (57 BAYVIEW BOULEVARD, BAYVIEW)**  
Earl James and Associates

Applicant: Kevin Dodd (Earl James and Associates) and Edgar Hung (Dover Investments – Landowner) attended.

Submitter Rosario Finocchiaro attended.

Interested Parties in attendance: Bob Chan and Dave Tollner.

**RESOLVED**  
**38/25**

That, the Development Consent Authority pursuant to section 30P(1)(a) decide that, if the Minister were to approve the amendment proposal to rezone Part Lot 7433 and Part Lot 5988 Town of Darwin (57 Bayview Boulevard, Bayview), that it would be likely to determine to consent to the development under section 30W(1)(a) conditionally for the purpose of a subdivision to create 18 lots, subject to the following conditions:

**CONDITIONS PRECEDENT**

1. Prior to the commencement of works (including site preparation), in principle approval is required for all road infrastructure including, but not limited to; the road reserve widths, road geometries pavement widths and a detailed landscaping plan for all proposed road reserves, with all works meeting the requirements of the Northern Territory Government's Subdivision Guidelines 2023, to the requirement of City of Darwin to the satisfaction of the consent authority.
2. Prior to commencement of works (including site preparation), in-principle approval for crossover design is to be obtained from City of Darwin, to the satisfaction of the consent authority.
3. Prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection points and connection details. The plan shall include details of the gross pollutant traps, site levels, Council's stormwater drain connection points and connection details.

4. 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.
5. Prior to the commencement of works, a Type 2 Erosion and Sediment Control Plan (ESCP) must be developed in accordance with the Department of Environment, Parks and Water Security 15 <https://www.waterquality.gov.au/issues/acid-sulfate-soils> Page 6 of 8 nt.gov.au Erosion and Sediment Control Plan (ESCP) procedures (see Note 1). The ESCP must be developed and certified by a Certified Professional in Erosion and Sediment Control (CPESC). The ESCP must be submitted for acceptance prior to the commencement of any earth disturbing activities (including clearing and early works) to Development Assessment Services via email: [das.ntg@nt.gov.au](mailto:das.ntg@nt.gov.au).
6. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.

#### **GENERAL CONDITIONS**

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, drainage, sewerage, electricity and telecommunication networks to each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

Please refer to notations 1, 2 and 3 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. 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.
11. All proposed roads to be created on the plan of subdivision submitted for approval by the Surveyor General must be dedicated to the City of Darwin.
12. 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.
13. Engineering design and specifications for the proposed and affected roads, including:
  - a. street lighting
  - b. stormwater drainage
  - c. vehicular access
  - d. pedestrian/cycle corridors, and

- e. street-scaping and landscaping of nature strips.  
Shall comply with the Northern Territory Subdivision Development Guidelines 2023. All approved works will be constructed at the applicant's expense, to the requirements of City of Darwin.
14. 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.
15. 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
16. All works relating to this permit must be undertaken in accordance with the endorsed Erosion and Sediment Control Plan (ESCP) to the satisfaction of the consent authority. Should the endorsed ESCP need to be amended, the revised ESCP must be developed and certified by a Certified Professional in Erosion and Sediment Control (CPESC). The revised ESCP must be submitted for acceptance to Development Assessment Services via email: [das.ntg@nt.gov.au](mailto:das.ntg@nt.gov.au).
17. 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 on written advice from the CPESC.
18. Before issue of titles and pursuant to section 34 of the *Land Title Act*, a Caution Notice should be lodged with the Registrar General on the parent parcel to include the following advice on all the proposed lots indicated on the endorsed drawings. The Caution Notice is to state that: *'The land is subject to high biting midge problems, and the owner/occupier is responsible for managing biting midge problems that occur on this land. This could be via the use of personal insect repellents, avoidance of outdoor areas during periods of pest biting insect problems, use of protective clothing, use of fine mesh insect screening on dwellings and outdoor patios and verandas, and the use of adult biting insect control insecticides around houses and in shrub and grass areas, applied by a qualified pest controller'*, to the requirements of Department of Health (Medical Entomology), to the satisfaction of the consent authority.
19. The developer should implement necessary measures to ensure mosquito breeding does not occur during the construction phase of the development, to the requirements of the Department of Health (Medical Entomology), to the satisfaction of the consent authority.
20. Prior to issue of Part 5 Clearance, written confirmation is to be provided, from a suitability qualified person, that site preparation earthworks and a seawall have been completed to enable the development of the lots for residential purposes, to the satisfaction of the consent authority.

NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section ([waterdevelopment@powerwater.com.au](mailto:waterdevelopment@powerwater.com.au)) and Power Network Engineering Section ([powerdevelopment@powerwater.com.au](mailto:powerdevelopment@powerwater.com.au)) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. All developers, including owner-builders, are required to comply with Commonwealth telecommunications requirements. Under Commonwealth law, developers are generally required to provide fibre-ready pit and pipe in their developments at their expense. Developers may be able to access an exemption from these arrangements in some circumstances. For more information visit [www.infrastructure.gov.au/tind](http://www.infrastructure.gov.au/tind)
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. The development must comply with the technical standards of the Northern Territory Subdivision Development Guidelines for the construction of public infrastructure as part of subdivision works to the requirements of the relevant local and service authorities. Prior to any works commencing, it is encouraged that you engage early with the relevant authorities to confirm their requirements, and any variations that may be sought to the Subdivision Development Guidelines, to ensure the works are completed to the relevant authorities' requirements. The Northern Territory Subdivision Development Guidelines can be found at: <https://www.ntlis.nt.gov.au/sdg-online/>
5. 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.
6. Street and public lighting shall be designed to achieve the minimum lighting levels required as per the AS/NZS 1158.3.1:2020 and the lighting design shall be certified by a member of the Illuminating Engineering Society (The IES). Street and public lighting designs for public spaces/road reserves/pathways within the subdivision shall be compatible with the City of Darwin's smart lighting control system.
7. 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.
8. The location, design and specifications for proposed and affected crossovers shall be provided at the applicant's expense, to the satisfaction of City of Darwin.

9. As part of any subdivision, the parcel numbers for addressing should comply with the Australian Standard (AS/NZS 4819:2011). For more information contact Survey and Land Records [surveylandrecords@nt.gov.au](mailto:surveylandrecords@nt.gov.au) 08 8995 5356. The numbers shown on the plans endorsed as forming part of this permit are indicative only and are not for addressing purposes.
10. The Department of Environment, Parks and Water Security Erosion and Sediment Control Plan (ESCP) procedures as updated available at: <https://depws.nt.gov.au/land-management>.
11. Information regarding erosion and sediment control can be obtained from the IECA Best Practice Erosion and Sediment Control 2008 books available at [www.austieca.com.au](http://www.austieca.com.au) and the Land Management Factsheets available at [www.nt.gov.au/environment/soil-land-vegetation](http://www.nt.gov.au/environment/soil-land-vegetation). For further advice, contact the Development Coordination Branch: (08) 8999 4446.
12. All land in the Northern Territory is subject to the Weeds Management Act 2001 (WM Act). The WM Act describes the legal requirements and responsibilities that apply to owners and occupiers of land regarding declared weeds. General duties described in Division 1 of the WM Act include the requirement to take all reasonable measures to prevent land being infested with a declared weed and to prevent a declared weed from spreading. There are additional duties including a prohibition on buying, selling, cultivating, moving or propagating any declared weed and the requirement to notify the Weed Management Branch of a declared weed not previously present on the land within 14 days of detection. Gamba grass is subject to a statutory weed management plan. Management obligations outlined in these plans are legally binding on all owners and occupiers. Management requirements and copies of the statutory weed management plans are available online at <https://nt.gov.au/environment/weeds/weed-management-planning>. Information regarding weed management is available online, <https://nt.gov.au/environment/weeds>, or alternatively contact the Weed Management Branch for further advice on (08) 8999 4567. Further information as to management requirements and the Weed Management Plan for gamba grass is available online (<https://nt.gov.au/environment/weeds>), or alternatively contact the Weed Management Branch for further advice on (08) 8973 8857.
13. The Transport and Civil Services Division (TCSD) of the Department of Infrastructure, Planning and Logistics (DIPL) advises:
  - a. All proposed work (including the provision or connection of services) within, or impacting upon the Tiger Brennan Drive road reserve shall be in accordance with the standards and specifications of the TCSD, DIPL.
  - b. Note that a development permit issued under the *Planning Act 1999* is not an approval for access upon a Northern Territory Government (NTG) road. Approval for the access to be taken from, or constructed within the NTG controlled road reserve rests solely with the TCSD, DIPL as the approving authority.
  - c. All new road reserves created within the subdivision shall be vested with the relevant local road authority and shall be noted on the survey plans as such.
14. 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.

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](mailto:info@ntbuild.com.au)) or by phone on 08 8936 4070 to determine if the proposed works are subject to the Act.
16. The development has the potential to create Acid Sulfate Soils (ASS) and consideration should be made to manage and mitigate acid sulfate soils during the development. Any proposed works should be undertaken in accordance with the National Acid Sulfate Soils Guidance and further information - <https://www.waterquality.gov.au/issues/acid-sulfate-soils>. Jurisdictional guidelines such as the Queensland Acid Sulfate Soil Technical Manual: Soil Management Guidelines v4.0 (Dear et al. 2014) and the Western Australian Acid Sulfate Soils Guidelines Series (DER 2015) may also be referenced. It should be noted that failure to ensure proper management of ASS could result in implications with your proposed development.

## **REASON FOR THE DECISION**

1. The original application submitted by the applicant (Earl James and Associates) comprises an amendment proposal to amend the NT Planning Scheme to rezone Part Lot 7433 and Part Lot 5988 (57 Bayview Boulevard, Bayview, Town of Darwin) from Zone FD (Future Development) to Zone LR (Low Density Residential) and Zone LMR (Low-Medium Density Residential), along with a development proposal seeking consent to subdivide Part Lots 7433 and 5988 to create 19 lots. The original application was accepted by the then Minister for Infrastructure, Planning and Logistics and placed on exhibition (online) for 28 days in accordance with the requirements of the *Planning Act 1999*. A total of 13 public submissions were received during the exhibition period and one submission was received after the exhibition period. The submissions are discussed under Reason (4) below. After the exhibition, the applicant clarified that the subdivision aims to create 18 lots and provided a revised layout showing these lots.
2. Pursuant to Section 30N of the *Planning Act 1999*, the original concurrent application was first heard by the Authority on 9 December 2024. At the hearing, the Authority noted the assessment of Development Assessment Services (DAS) which found that the proposed development complies with the relevant requirements of the Northern Territory Planning Scheme 2020 (NTPS 2020). However, the Authority queried if it has the power to consider the subdivision in its current form as it does not have discretion under Clause 6.2.1 to consent to lots in Zone LR with a minimum lot size of less than 760m<sup>2</sup> (800m<sup>2</sup> – 5% of 800m<sup>2</sup>), unless such lots are appropriately identified in Table A to the Clause. Subsequently, the application was deferred by the Authority to allow the applicant to provide further information on the following matters:
  - a) Provide further information on how the Authority has power to determine the subdivision application as greenfield areas under Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR) of the NTPS 2020.
  - b) Provide an amended statement of effect which identifies and justifies the proposed non-compliance with sub-clause 7 of Clause 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR) of the NTPS 2020
  - c) Any amendments to the application that arise as a result of the above information request.



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In April 2025, in response to the deferral request, the applicant updated the 'amendment component' of the application to a Specific Use Zone (i.e. a zone that is specific to the site) as an intermediate zone to facilitate subdivision as if the land were already in Zone LR (Low-Density Residential) in greenfield areas identified for compact urban growth in the strategic framework and Zone LMR (Low-Medium Density Residential). The updated amendment does not change the proposed development outcome, but rather uses a different mechanism to achieve it. If the application is approved, the land will need to undergo a separate rezoning process to standardised zones (i.e. Zone LR and LMR) to enable dwelling construction.

The revised amendment and development proposal was circulated to submitters who made a submission in relation to the original application. One additional submission was received and is discussed further below. The revised amendment and development proposal was also circulated to the service authorities and their submissions are discussed under Reason (5) below.

On that basis and given that the information required by the Notice of Deferral was addressed by the Applicant, reconsideration of the application took place at the 23 May 2025 Development Consent Authority meeting.

At the hearing, the Chair of the Authority clarified that the Authority has no role or decision-making in relation to the re-zoning. The Authority's role, pursuant to Section 30P of the Act, is to make a preliminary decision that, if the Minister were to approve the amendment proposal in the concurrent application, the authority would be likely to determine to:

- (a) consent to the development proposal under section 30W(1)(a) or (b); or
- (b) refuse to consent to the development proposal under section 30W(1)(c).

3. Pursuant to sections 30P(2)(a) and (b) of the *Planning Act 1999*, the consent authority must take into account any planning scheme that applies to the land to which the application relates and the amendment proposal contained within the application.

The NT Planning Scheme 2020 (NTPS 2020) applied to the land and the subdivision to create 18 lots requires consent under Clause 1.8 (When development consent is required). It is identified as Impact Assessable under Clause 1.8(1)(c)(ii), therefore the strategic framework (Part 2 of the Scheme, including Darwin Regional Land Use Plan 2015 and Darwin Inner Suburbs Area Plan 2016), overlay Clauses 3.4 (CR - Coastal Reclamation) and 3.7 (LSSS - Land Subject to Storm Surge) zone purpose and outcomes of Clauses 4.2 (Zone LR – Low Density Residential) and Clause 4.3 (Zone LMR – Low-Medium Density Residential) and Clauses 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR), 6.2.2 (Lots Less Than 600m<sup>2</sup> for Dwellings-Single), 6.2.3 (Site Characteristics for Subdivision in Zones LR, LMR, MR and HR) and 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR), need to be considered.

The Authority notes that for *Impact Assessable* developments the exercise of discretion by the consent authority that applies is Clause 1.10(4) (Exercise of Discretion by the Consent Authority) of the NTPS 2020.



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

- a) *any relevant requirements, including the purpose of the requirements, as set out in Parts 5 or 6;*
- b) *any Overlays and associated requirements in Part 3 that apply to the land;*
- c) *the guidance provided by the relevant zone purpose and outcomes in Part 4, or Schedule 4.1 Specific Use Zones; and*
- d) *any component of the Strategic Framework relevant to the land as set out in Part 2 An assessment of the relevant parts of the NTPS 2020 is as follows:*

Each of the above are discussed below.

### **Part 2 - Strategic Framework**

Clause 2.1 (Purpose of the Strategic Framework) requires that interpretation of the Planning Scheme and determinations of a consent authority have regard to the policies and planning concepts expressed in documents appearing in Part 2 or Schedule 5 and ensure that a use or development or proposed use or development is consistent with them.

#### **Darwin Regional Land Use Plan 2015 (DRLUP)**

The purpose of the Darwin Regional Land Use Plan 2015 (DRLUP) is to identify the essential characteristics and needs that will shape future development in the region and establish an overarching framework for that development.

The Authority noted that the location of the proposed development is in an area identified for Urban/Peri-Urban land use. These areas will accommodate a full range of land uses such as a variety of housing types, retail and commercial, community facilities and services, sport, recreation and urban open space, and natural and conservation areas.

The proposed subdivision aligns with the key Residential objectives of the DRLUP by providing residential lots that integrate new and existing residential development to maintain character and create a cohesive society that meets the diverse needs and aspirations of all sectors of the community.

#### **Darwin Inner Suburbs Area Plan 2016**

The Darwin Inner Suburbs Area Plan 2016 (DISAP) provides a framework to guide progressive growth and development within the Inner Suburbs of Darwin building on the broad regional strategic planning policies established by the Darwin Regional Land Use Plan 2015. The Land Use Plan identifies the subject land as future development. Land to the west of the site is shown in the DISAP as a mixture of low density and low-medium residential, which forms part of the existing Bayview Marina Estate.

### **Part 3 – Overlays**

#### **3.4 CR - Coastal Reclamation**

The DAS report identifies that the site is located within the level of the highest astronomical tide. The application includes site preparation earthworks and the construction of a sea wall to ensure that Areas A, C1, and C2 are suitable for residential development. Area B of the proposed subdivision does not require additional

earthworks, as it was previously filled and surcharged as part of an earlier stage of the Bayview development completed in 2004.

Sub-clause 3 of Clause 3.4 (CR - Coastal Reclamation) states, *the consent authority in considering an application for coastal landfill must have regard to the advice of the agency responsible for natural resources and the environment.*

The Authority notes that application was circulated to the Department of Lands, Planning and Environment, previously the Department of Environment, Parks and Water Resources (DEPWS) and that comments regarding acid sulfate soils and erosion and sediment control are addressed through conditions and notes on the approval for the subdivision. A condition of the approval requires confirmation from a suitably qualified person that the future lots have been filled to a sufficient height to support their intended development and to mitigate risks and potential damage from storm surge event.

### 3.7 LSSS - Land Subject to Storm Surge

*The purpose of Clause 3.7 (LSSS - Land Subject to Storm Surge) is to identify areas with a known risk of inundation from primary or secondary storm surges and ensure that development in these areas demonstrates adequate measures to minimise the associated the risk to people, damage to property and costs to the general community caused by storm surge.*

The relevant administration is provided below:

- a) *Land within the PSSA is to be used or developed only with consent.*
- b) *The consent authority may consent to a use or development within the PSSA that is not in accordance with sub-clauses 8-10 only if it is satisfied that the application demonstrates that there is no increased risk to people and property, including adjoining property.*

The site is located within the primary and secondary storm surge area (PSSA and SSSA). The application identifies bulk earthworks that will be undertaken to achieve the proposed road design and site levels for lots in preparation for residential development. A condition of the approval requires confirmation from a suitably qualified person that the future lots have been filled to a sufficient height to support their intended development and to mitigate risks and potential damage from storm surge event.

### Schedule 4 – Specific Use Zones

The Authority notes that the application proposes to re-zone the site to a Specific Use Zone which seeks to *'facilitate an intermediate zone for low and low-medium density residential subdivision in a manner consistent with the existing lot size and configuration established in the earlier stages of the Bayview development'*.

The proposed subdivision provides a range of lot sizes capable of accommodating a mix of dwelling-single, dwelling-group and dwelling-multiple development and reflects the existing lot sizes and configuration of the Bayview development, complying with the sub-clause 4 and 5 of the Specific Use Zone.

In addition, the site will be connected to reticulated services, integrates with the existing road network and has access to existing open space and community facilities in accordance with sub-clause 6 of the Specific use Zone.

As such, the Authority considers if the amendment proposal was to be approved the development proposal would be consistent with the purpose and outcomes of the Specific Use Zone.

Sub-clause 2 of the Specific Use Zone specifies that '*Clause 6.2 (Subdivision in Zones LR, LMR, MR and HR) applies to the subdivision of land subject to this specific use zone, to the extent of any inconsistencies*'. In addition, sub-clause 3, the consent authority must not consent to a development that is not in accordance with sub-clause 7.

Sub-clause 7 specifies that the proposed subdivision design must be in accordance with Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR) applied as follows

- c) Area A - Clause 6.2.1 applies as if the land were in Zone LR in a greenfield area identified for compact urban growth within the strategic framework.
- d) Area B - Clause 6.2.1 applies as if the land were in Zone LMR.
- e) Area C1 - Clause 6.2.1 applies to the area identified as Zone LR in the diagram to this Zone as if the land were a greenfield area identified for compact urban growth in the strategic framework.
- f) Area C2 - Clause 6.2.1 applies to the area identified as Zone LMR in the diagram in this Zone as if the land were in Zone LMR.

An assessment of the applicable Part 6 requirements, as required under the Specific Use Zone, is discussed below.

Part 6 – Subdivision Requirements

The Authority notes the assessment of DAS which assessed the development proposal against the requirements of the NTPS 2020, if the site were in the Specific Use Zone and found that a variation is required to Clause 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR).

Clause 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR)

The purpose of the Clause is to '*ensure that subdivision of land for residential purposes is appropriately integrated with infrastructure, community services and facilities*'.

Sub-clause 7 requires that a minimum of 10% of the subdivision area is public open space, the proposed subdivision does not provide any public open space. Administratively, sub-clause 1 specifies that '*the consent authority may consent to a subdivision that is not in accordance with sub-clauses 2-7, only if it is satisfied the subdivision is consistent with the purpose of this clause*'.

At the hearing, Mr Kevin Dodd (from Earl James and Associates) expressed to the Authority that there is extensive public open space that exists throughout the Bayview Marina Estate and all proposed lots are within 400 metres of existing public open space. Mr Dodd advised that all residents will be able to utilise existing open public space.

A variation to 6.2.4 (Infrastructure and Community Facilities for Subdivision in Zones LR, LMR, MR and HR) of the NTPS 2020 in relation to the provision of public open space could be supported as, while this subdivision does not include dedicated public open space, it has access to other public open space already provided as part of the existing Bayview development.

4. Pursuant to section 30P(f) of the *Planning Act 1999*, the consent authority must take into account any information received as a result of consultations carried out, submissions received, or evidence given at a hearing.

The original application accepted by the Minister was exhibited (online) for 28 days in accordance with the requirements of the Act. A total of 13 public submissions were received during the exhibition period.

The main concerns raised by the submitters in their submissions and expressed at the hearing held on the 9 December 2024 are:

- Existing and future traffic congestion and safety concerns.
- Removal of Mangroves.
- Impact on amenity
- Decrease in property value as a result of the proposed subdivision.
- Relocation of the seawall.
- Proposed building envelopes.
- The application involves harbour dredging however it's not included in the application and there should no risk to nature, people, community and property as result of the proposal.
- The Area Plan does not automatically rezone land and rezoning is to be considered by the Minister. The DISAP identifies the zone as Zone FD and does not indicate a potential change to the zoning.
- Concerns that some drawings and plans are not to scale.
- Concerns regarding the cost of the development and that it's not the answer to the current housing problem.

At the hearing held on 9<sup>th</sup> December 2024, Mr Ilias Nicolakis spoke to his written submission. Mr Nicolakis raised concerns regarding the proposed relocation of the seawall and if there will be any impacts on the existing properties. Mr Kevin Dodd explained that the seawall will not extend past the Crown Lease. It is also noted that the Authority asked the applicant for clarification regarding access between area A and area C for maintenance of the seawall and the City of Darwin comments. Mr Simon Bryne of Byrne Consultants advised that the subdivision was re-designed in consultation with the City of Darwin to ensure maintenance access for the seawall is provided. Mr Nicolakis raised concerns regarding the proposed building envelopes. The Authority advised the building envelopes are indicative and only to show how the lots can meet the subdivision development requirements. If future developments do not comply with the minimum setbacks required under the NTPS 2020 a development permit will be required. Mr Nicolakis noted that the application states no mature mangroves will be removed, however the mangroves have been there a long time. Mr Nicolakis also noted his concern that a 2 storey property can be built on the proposed lots and that this may result in overlooking of his property and impact on property values. The Authority advised that impacts on property values is not a planning consideration and cannot form part of their decision making. In addition, Mr Nicolakis advised that he is concerned about the traffic impacts on O'Ferrals Road and also questioned if the development is viable. Mr Dodd advised the traffic impact assessment has been reviewed and commented on by the City of Darwin who have carriage of all transport related matters.

Following deferral, the applicant's response to the points of deferral was circulated to all public submitters, for further review and comment and additional comments were received from one submitter who had previously made a submission. The key issue raised

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in the additional comments related to existing and future traffic congestion and safety concerns.

In addition to the written submissions, the Authority heard from submitters present at the hearing on 23 May 2025.

At the hearing, Mr Rosario Finocchiaro raised concerns that the development of Area B limits any future roads/access to the closed intersection along Tiger Brennan Drive, opposite Benison Road. Mr Finocchiaro expressed that it is his preference that Area B is not developed to allow for a future connection to this closed intersection. The Chair advised Mr Finocchiaro that the Authority has been advised that stage 2 of Bayview will not be proceeding and as far as the Authority is aware that there is no plans for any further access/roads. Mr Dodd clarified that for various reasons stage 2 of Bayview will not be going ahead.

The Authority has taken all comments into account and carefully considered the concerns of the submitters expressed at the both the hearing held on 9 December 2024 and the hearing held on 23 May 2025.

In relation to concerns regarding traffic impacts, the application was circulated to the relevant referral agencies including Crown Land Estate, Transport Planning and City of Darwin. City of Darwin request conditions relating to road design including pedestrian/cycle corridors, compliance with the NT Subdivision Guideline and a Site Construction Management Plan. These requirements will be addressed through conditions on the permit. No concerns were raised regarding access to the subdivision and it is noted that the roads within the subdivision are managed by City of Darwin.

In relation to decrease in property values, the Authority noted that fluctuations in property prices is not a relevant consideration in assessing an application under the provisions of the Act, or the NTPS 2020.

Regarding dredging concerns, the Authority noted that Clause 3.9 (Darwin Harbour Dredging) is listed over the site, however this overlay applies for dredging of the seabed. The proposal does not include dredging of the seabed and therefore this clause is not applicable.

The Authority noted that majority of submitters have raised concerns regarding the removal of Mangroves. The application was circulated to referral agency responsible for environmental matters, the Department of Lands, Planning and Environment (formerly the Department of Environment, Parks and Water Security), who in their original comments advised the applicant should consider whether the development has the potential for a significant environmental impact under the *Environment Protection Act 2019* by using the pre-referral screening tool. Further comments were provided recommending the application arrange a pre-referral meeting with the department. The additional information provided following the pre-referral meeting was circulated to the referral agency for review and further comments were provided raising matters to be addressed by the applicant in relation how matter regarding buffer zones for biting midges and disturbance of Potential Acid Sulfate Soils will be addressed. The matter raised in the comments from DEPWS can be addressed through conditions and notes on any development permit issued regarding managing and mitigating acid sulfate soils, as requested by DEPWS in their original comments and regarding biting midges, Medical Entomology recommends a warning on land titles advising of the biting midge problem.

as a condition. The applicant has submitted a pre-referral screening report as supporting documentation prepared by EcOz Environmental Consultants.

In relation to amenity impacts, concerns regarding relate to future dwelling development and will be addressed during the development of future dwellings. If future developments do not comply with the minimum setbacks required under the NTPS 2020 a development permit will be required.

5. Pursuant to section 30P(j) of the *Planning Act 1999*, the consent authority must take into account the capability of the land to support the development proposal and the effect of the proposal on the land, and on other land, the physical characteristics of which may be affected by the proposal. Pursuant to section 30P(l) of the *Planning Act 1999*, the consent authority must take into account the public utilities or infrastructure provided in the area in which the land is situated and any requirement for:
  - (i) public facilities and services to be connected to the land; and
  - (ii) facilities, infrastructure or land to be provided by the applicant;

The proposed subdivision is located within the established residential suburb of Bayview, where the existing amenity is well-defined. The Specific Use (SU) zoning, its provisions, and the application all aim to promote outcomes that are consistent with the established residential character, particularly in relation to land use and road layout.

Comments and services requirements of the service authorities are addressed through the inclusion of appropriate conditions and/or notations on the approval. This has included consideration of erosion and sediment control, service infrastructure requirements, site contamination and confirmation from a suitably qualified person that lots created are suitable for intended residential development.

6. Pursuant to section 30P(k) of the *Planning Act 1999*, the consent authority must take into account the potential impact on the existing and future amenity of the area in which the land is situated.

The proposal complies with the subdivision requirements applied for the Specific Use Zone and is generally consistent with the surrounding residential development. Furthermore, conditions of the approval require, ESCP measures, a Caution Notice to be registered against parent parcel specifying the land is subject to high biting midge problems and implement necessary measures to prevent mosquito breeding during the construction. Provided the development proceed in accordance with the permit conditions the proposed subdivision can achieve appropriate level of residential amenity.

7. Pursuant to sections 30P(r) of the *Planning Act 1999*, the consent authority must take into account other matters the consent authority considers relevant.

One public submission was received after the exhibition period had ended for the original application. While the submission was received outside the time limited for formal submissions under Section 30F of the *Planning Act 1999*, the Authority noted the late submission as a matter of public comment under Section 30(P)(r). The submitter raised concerns regarding traffic, infrastructure strain, ecological impact, property values, housing compatibility, and inadequate consultation and open space.



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While the late submitter did not attend the hearings held on 9 December 2024 and 23 May 2025, the Authority acknowledged the written submission and considered the matters raised. In relation to the concerns outlined, the Authority refers to Reason 4 of its decision, which addresses similar issues raised by other submitters.

### RESOLVED 39/25

That, pursuant to section 30Q of the *Planning Act 1999*, the consent authority report to the Minister for Lands, Planning and Environment advising of the likely decision in relation to the development proposal, issues raised in the submissions, issues raised at the hearing and any other matters it considers the Minister should take into account when considering the amendment proposal.

### RESOLVED 40/25

That, pursuant to section 86(1) of the *Planning Act 1999*, the Development Consent Authority delegates its powers to the Chair, or in the absence of the Chair, any member of the Darwin Division of the Authority to:

- a) determine pursuant to Section 30W(1)(a) to consent to the development proposal contained in the concurrent application and consent to the concurrent application after receipt of a notice under Section 30U(1) that the Minister has approved the amendment proposal contained in the application.
- b) issue a development permit under section 54(1) in relation to the development proposal to develop Lot 7433 and Part Lot 5988, Town of Darwin (57 Bayview Boulevard, Bayview) for the purpose of subdivision to create 18 lots; and
- c) issue the relevant notices under Section 30Y.

**FOR: 4**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:** Report to the Minister

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

**SUZANNE PHILIP**

Chair

04 June 2025