



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 399 – FRIDAY 4 NOVEMBER 2022

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

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), Ann-Marie Reynolds and Emily Hardy (Development Assessment Services)

COUNCIL REPRESENTATIVE: Cindy Robson

Meeting opened at 10.30 am and closed at 11.40 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 TIMES DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.

ITEM 1

**PA2022/0339 DEMOUNTABLE STRUCTURES (3 X 20FT SHIPPING CONTAINERS)
LOT 4361 (95) WOODS STREET, DARWIN CITY, TOWN OF DARWIN**

APPLICANT Withnall Halliwell

Applicant – Eric Withnall (Withnall Halliwell) and Stephen McNamee (Director Norvest Projects – Landowner) attended.

**RESOLVED
75/22**

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent defer consideration of the application to develop Lot 4361 (95) Wood Street, Darwin City, Town of Darwin for the purpose of demountable structures (3x 20ft shipping containers) to require the applicant to provide the following additional information that the Authority considers necessary in order to enable the proper consideration of the application:

- Amended plans to show architectural embellishments (paint colour consistent with the surrounding area);
- Further information to address visual amenity and consistency of the demountable structures (shipping containers) with adjoining and nearby development. This includes consideration of the fence treatment on the existing fencing to the rear and its improvement/ replacement;
- Written confirmation from City of Darwin clarifying that the issues raised in its comments dated 7 October 2022 regarding the illegal vehicle access to the rear have been resolved; and
- Written confirmation from Power and Water (Water Services) that the issues raised in its comments dated 28 October 2022 regarding the encroachment of the demountable structures have been resolved and clarification as to whether the access to the rear of the site is an emergency access required by the service authority to access the sewerage easement.

REASONS FOR THE DECISION

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

The NT Planning Scheme 2020 (NTPS 2020) applies to the land. The retrospective development for demountable structures is identified as *Impact Assessable* under Clause 4.10 Zone CB (Central Business) and therefore, Part 2 (Strategic Framework - Central Darwin Area Plan), the zone purpose and outcomes of Clause 4.10 Zone CB (Central Business), Clause 5.2.1 (Buildings in Central Darwin), Clause 5.2.4 (Vehicle Parking), Clause 5.2.6 (Landscaping) and Clause 5.8.7 (Demountable Structures) need to be considered.

Further information is required for the reasons outlined below.

At the hearing, the applicant, Mr Eric Withnall, spoke to the purpose of the application. Mr Withnall candidly requested the application be deferred due to the comments received from Power and Water (Water Services) for the encroachment over the sewerage easement and comments received from City of Darwin regarding the illegal access to the rear of the site. The applicant noted his intent to resolve the concerns of the service authorities prior to the application being determined by the Development Consent Authority (the authority).

Notwithstanding the applicant's request, the authority deemed it necessary to consider the application in its entirety prior to considering Mr Withnall's request.

Accordingly, the authority queried whether the existing fence treatment (polymer wrap) could be improved or replaced and whether the demountable structures themselves could be painted or screened.

Neither Mr Withnall nor Mr Stephen McNamee (the landowner) raised any concerns with the authorities request to improve the appearance of the demountable structures or screening on the associated fence. Mr McNamee advised that the use was temporary and the subject site would likely be developed in the next five years and as a result the demountable structures would then be removed.

The Authority has taken all comments into account and carefully considered the applicant's request and response to the matters raised and it has determined to defer the application subject to amended plans being submitted to show architectural embellishments on the demountable structures as well as improvements to the fence itself. The plans are required to be show architectural embellishment (paint colour that is consistent with the area) and new polymer wrap/treatment on the existing fencing.

At the request of the applicant, the deferral is subject to discussions between the applicant and Power and Water for encroachment over the sewerage easement and whether or not the access to the rear of the lot is necessary to allow access to the easement. In addition, the deferral is subject to discussions between the applicant and City of Darwin to determine if the access to the rear can be retained.

Note: Given the temporary nature of use, and the landowners intention to development the site, the authority considers that if a development permit were to be issued, a condition would likely be included which limits the use to a period of five years, noting that should the circumstances change, the landowner could request this time period be altered or removed.

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

if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

Ms Cindy Robson (City of Darwin - Council) highlighted that Council had responded as a service authority and adjoining landowner (Wood Street Park) and landscaping along the road reserve had been recommended as part of council's response.

Mr McNamee stated that the access to the rear of the lot was required by Power and Water (Water Services) to access the easement. Ms Robson advised that seeking to retain the access would require Council approval and any development adjoining the road reserve would require a works permit from Council.

The authority has considered the above comments as part of the deferral and notes the applicant requested the application be deferred to enable further discussions with Council Power and Water (Water Services) to determine if there is an opportunity to retain the access which is situated at the rear of the lot.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Deferral

ITEM 2

PA2022/0275

UNIT TITLE SCHEMES SUBDIVISION TO CREATE SEVEN UNITS AND COMMON PROPERTY

LOT 1956 (11) WINSTON AVENUE, STUART PARK, TOWN OF DARWIN

APPLICANT

One Planning Consult

Applicant - Israel-Tshepo Kgosiemang (One Planning Consult) attended.

**RESOLVED
76/22**

That, pursuant to section 53(a) of the *Planning Act 1999*, the Development Consent Authority consent to the application to develop Lot 1956 (11) Winston Avenue, Stuart Park, Town of Darwin for the purpose of Unit title schemes subdivision to create seven units and common property, 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) Amended street elevation-south to remove the 'proposed carport'.
 - (b) Removal of reference to 'raised planter box', Unit 6 on the site plan.

2. 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.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the crossover and driveway to the site from the City of Darwin road reserve, to the satisfaction of the consent authority.
4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.

GENERAL CONDITIONS

5. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
6. All 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.
7. 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.
8. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage and electricity facilities 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.

9. 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.
10. The areas set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - (a) constructed;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather-seal coat;
 - (d) drained;
 - (e) line marked to indicate each car space and all access lanes; and
 - (f) clearly marked to show the direction of traffic along access lanes and 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.

11. 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.
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. The owner shall:
 - (a) remove disused vehicle and/ or pedestrian crossovers;
 - (b) collect stormwater and discharge it to the drainage network; and
 - (c) 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. 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.
15. 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.
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/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.
18. 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.
19. Prior to new titles being issued for the units shown on the endorsed drawings, a Scheme Statement meeting the requirements of the *Unit Title Scheme Act* (as confirmed by the Land Titles Office) shall be submitted for endorsement by the consent authority.
20. Prior to new titles being issued for the units shown on the endorsed drawings, confirmation shall be provided to Development Assessment Services (in the form of an email addressed to the Power and Water Corporation) from a suitable qualified professional-confirming that all new number labels have been correctly installed at the Customer's Metering Panel(s) and water meters (where applicable). Please provide a copy of an email addressed to both

landdevelopmentnorth@powerwater.com.au
powerconnections@powerwater.com.au

and

21. Prior to new titles being issued for the units shown on the endorsed drawings, confirmation shall be provided to Development Assessment Services (in the form of an email addressed to the Power and Water Corporation) from a suitable qualified professional confirming that all new number labels have been correctly installed at the Customer's Metering Panel(s) and water meters (where applicable). Please provide a copy of an email addressed to both landdevelopmentnorth@powerwater.com.au and powerconnections@powerwater.com.au.
22. Prior to new titles being issued, it shall be confirmed by the consent authority that all areas shown on the plan endorsed by the consent authority through this permit as service authority easements, communal open space, shared driveways, or areas set aside for the communal storage and collection of garbage or other solid waste, or other shared amenities are shown on the survey plan as Common Property.
23. Prior to new titles being issued for the units shown on the endorsed drawings written confirmation from a building certifier confirming that the rectification works referred to in the statement prepared by Mr Sam Nixon of Asset Services Pty Ltd dated 23 June 2022 have been completed, and that the buildings comply with any requirements prescribed by regulation in relation to the building (including, for example, requirements about the structural integrity and fire safety of the building), must be provided to the satisfaction of the consent authority.
24. Part V Clearance for subdivision into units under the *Unit Titles Scheme Act 2009* will not be granted until the site has been inspected by the consent authority and the development layout is generally in accordance with plans endorsed as forming part of this permit, including that all necessary upgrades have been completed.

NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (powerdevelopment@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. 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 08 89955354. The numbers shown on the plans endorsed as forming part of this permit are indicative only and are not for addressing purposes.

3. Land Surveys division has advised that there may be survey marks within the area. If any of these become disturbed please advise Survey Land Records at surveylandrecords@nt.gov.au.
4. This subdivision 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.

Section 51 of the *Planning Act 1999* provides that in considering a development application the Authority must take into account a range of matter including compliance with the planning scheme.

The NT Planning Scheme 2020 (NTPS 2020) applies to the land. Subdivision for the purpose of a unit title scheme for a development that has previously been granted consent is considered *Merit Assessable* under Clause 1.8(1)(b)(ii) of the NTPS 2020. Therefore the zone purpose and outcomes of Clause 4.3 Zone LMR (Low-Medium Density Residential) and Clause 6.6.1 (Subdivision for the Purposes of a Unit Title Scheme) apply. The existing dwellings-group (3+) are *Merit Assessable* under Zone LMR (Low-Medium Density Residential) and a summary of compliance of the existing development against general and specific development requirements relating has been provided below with full details provided in the DAS technical assessment.

Under Clause 1.10.3 (Exercise of Discretion by the Consent Authority) "*In considering an application for consent for a use or development identified as Merit Assessable the consent authority must take into account all of the following:*

- a) *the relevant requirements, including the purpose of the requirements, as set out in 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 relevant to a variation of requirements in Parts 5; and*
- d) *if an Area Plan in Part 2 applies to the land, any component relevant to a variation of requirements in Parts 5 or 6".*

There are no overlays within Part 3 relevant to this proposal. The *Darwin Inner Suburbs Plan (DISP) 2016* shows the site in an area designated for small lot/ multiple dwelling residential development. The existing development of dwellings-group is in keeping with the DISP and the zone purpose and outcomes of zone LMR (Low Medium Density Residential) with the zone purpose stating "*Provide a range of low rise housing options that contribute to the streetscape*".

Relevant requirements, including the purpose of the requirements, as set out in Part 6

A Technical Assessment of the subdivision proposal has been completed against the performance criteria of Part 6 of NTPS 2020.

Clause 6.6.1 (Subdivision for the Purposes of a Unit Title Scheme)

The purpose of the clause is to “Ensure that:

- (a) *the new ownership arrangements resulting from a subdivision to create a unit title scheme allow each element of the development to continue to be available to the occupants of the development and where appropriate to visitors;*
- (b) *older developments are upgraded; and*
- (c) *development will not have a detrimental environmental effect on the land or result in a loss of amenity within the locality.”*

The application seeks consent to subdivide an existing development into seven units for separate occupation. All car parking spaces and communal area are provided in the common property. As discussed previously, the six of the existing units were lawfully constructed pre-Cyclone Tracey (1956) and the seventh in 1979. The existing use and development of the site is protected by “existing use rights” under sections 33, 34 and 35 of the Act.

The application proposes to carry out upgrades to the existing development to meet the requirements of the *Building Act 1993* and Part 5 requirements of the NTPS 2020. This is discussed further below. The proposed subdivision will not have detrimental environmental effect as land is not subject to any ‘Overlays’ identified under Part 3 of the NTPS 2020. The impact on amenity within the locality is expected to be improved due to the upgrades proposed to meet the standards of Part 5 of the NTPS 2020.

Under Clause 6.6.1.1:

- *“a lawfully established development on a lot may be subdivided to create a unit title scheme only if the development has been upgraded to meet the development requirements within Part 5 of the planning scheme that apply to the development of the land; and*
- *if it is not possible to meet the requirements the consent authority must be satisfied that the proposed upgrading is the only practicable design solution.”*

Dwellings-group (3+) is considered *Merit Assessable* under Zone LMR (Low Medium Density Residential) and a summary of compliance is listed below, with non-compliances addressed below.

It is noted due to a number of revisions of plans, amended elevation plans are required. The southern elevation plan refers to a carport which has been removed since the original lodgement of the application

due a parking reconfiguration. The site plan also references planter boxes which have been removed in the latest version of the site plan.

Clause 5.2.4.4 (Parking Layout)

The purpose of the clause is to “Ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose”. Administratively, “1. The consent authority may consent to a car parking area that is not in accordance with sub-clause 4 if it is satisfied that the non-compliance will not: (a) result in adverse impacts on the local road network or internal functionality of the car parking area; and (b) unreasonably impact on the amenity of the surrounding locality...”. The only non-compliance that requires variation is for the width of car spaces 2 and 9 being 2.4m instead of 2.5m.

It is noted that the AS standard only requires a width of 2.4m. Based on the location of the car spaces not impacting the functionality of the parking area and compliance with the AS standard, the variation is considered appropriate.

A site inspection revealed the gate to the communal open space (swimming pool) is located in the middle, rather than to the side which may impact on car space 12. An amended site plan was provided to the authority to show the existing staircase and retaining wall locations. The plan also demonstrates the staircase will not impact on car parking arrangements, with appropriate dimensions provided to the car spaces and a 6m accessway provided.

Clause 5.4.1 (Residential Density Limitations)

The purpose of this clause is to ensure that residential development is of a density compatible with the existing and planned provision of reticulated services and community facilities which will service the area; and consistent with land capability having regard to relevant characteristics including but not limited to the drainage, slope, seasonal inundation, landforms or soil characteristics, heritage constraints or noise from aircraft operations.

The non-compliance occurs as a result of the total number of dwellings existing on the site. Based on the clause requirement of 300m² per dwelling in Zone LMR, 5 are allowed to be accommodated on the site (site area of 1550m²/300m²=5.16 dwellings). However, 7 dwellings currently exist on site at a dwelling density of one per 221.42m².

Despite the non-compliance with this clause, the development compliance with the building setbacks, car parking numbers, overall site landscaping and communal space requirements. In addition, the site is not identified as being within a projected storm surge area or on flood affected land, is not close to any high noise sources (highways, airports, etc.) and no other site constraints have been identified that would render the land incapable of accommodating the existing density.

Furthermore, the two storey design of 6 of the units enables more efficient use of the land and reduced building footprints compared to development of similar density limited to a single storey. The design and layout of the dwellings clearly restrict their use to one bedroom dwellings only for units 2-7 and are not functional or adaptable for more than one dwelling (i.e. there are no study rooms or 'nooks' able to adapt as bedrooms). Given that existing dwellings have been occupied for a long time and no changes are proposed to the existing arrangements, it is considered that the density is appropriate with regard to the purpose of the clause.

Comments have been received from the Power and Water Corporation, and no objections to the increased density were identified as discussed in Section 7(m) of this report. However, it was noted that the proponent would be responsible for the full cost of required service upgrades.

Clause 5.4.6 (Private Open Space)

Under clause 5.4.6, the purpose is "*Extend the function of a dwelling and enhance the residential environment by ensuring that each dwelling has private open space that is:*

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

Administratively, "*The consent authority may **consent** to private open space that is not in accordance with sub-clauses 4 and 5 only if is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and it is appropriate to the **site** having regard to such matters as its location, scale and impact on adjoining and nearby property*". The applicant has sort a variation to private open space provided to Units 3 to 6, with Areas A and B combined to provide an area of 24.81m².

As the site has been developed under pre-dated planning controls for private open space, no upgrades are proposed to achieve compliance with the requirements of this clause. The Authority needs to be satisfied that the existing scenario is the only practicable design solution.

It is noted the Units 3 to 6 comply with Part B requirements for private open space. It is considered that the area is of adequate size to provide for domestic purposes. The private open space area associated with each unit is mostly paved, however each unit has an area to the rear that allows for deep soil plantation and stormwater infiltration.

To compensate for reduced areas of private open space for Units 3 to 6, communal open space has been provided. Two areas of communal open space have been set aside and are located along the north-eastern boundary with an area of 41m² as well as an area of 120m² (which

includes a swimming pool) in the south-eastern boundary corner, adjoining Winston Avenue.

Overall the communal open space provided on site equates to 10.7% of the site area. These areas have been provided in addition to the private open space of each unit and is not required to be provided when each dwelling-group has direct and independent ground floor access to private open space. It is considered that the direct, ground floor private open space provided to Units 3 to 6 plus the communal open space is appropriate and a variation be granted.

2. 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 existing development on site, include the residential buildings and car parking. The unit title subdivision is in keeping with surrounding residential land uses and is unlikely to adversely impact the site and surrounding area, with no issues raised by service authorities.

The applicant addressed the authority noting there is a large slope within the site which without upgrades to the stormwater infrastructure would likely impact both the site and surrounding areas.

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

Ms Cindy Robson (City of Darwin) spoke at the meeting and requested a condition precedent for stormwater drainage. A condition precedent and general condition have been included by the authority.

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 surrounds. The development of dwellings-group is existing and in keeping with the residential character of the area.

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.

5. Pursuant to section 51(1)(t) of the *Planning Act 1999*, the consent authority must take into consideration other matters it thinks fit.

The authority raised with the applicant whether the use of the land has discontinued for more than 12 months, pursuant to Section 37(1) of the *Planning Act 1999*. The applicant has confirmed that the use has not discontinued for more than 12 months.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

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

SUZANNE PHILIP

Chair

08 November 2022