



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 316 – FRIDAY 8 JUNE 2018

**BILLABONG ROOM
NOVOTEL DARWIN ATRIUM
100 THE ESPLANADE
DARWIN**

MEMBERS PRESENT: Suzanne Philip (Chair), Doug Phillips, John Gleeson, Mick Palmer and Simon Niblock

APOLOGIES: Sherry Cullen

OFFICERS PRESENT: Margaret Macintyre (Secretary) and Dawn Parkes (Development Assessment Services)

COUNCIL REPRESENTATIVE: James Whyte and Cindy Robson

Meeting opened at 10.45 am and closed at 11.30 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 **CARPORT ADDITION TO AN EXISTING SINGLE DWELLING WITH REDUCED**
PA2018/0154 **FRONT AND SIDE SETBACKS**
 LOT 10288 (19) GARRKKAR STREET, TOWN OF NIGHTCLIFF
APPLICANT **NAC PTY LTD**

Mr Michael Kuhn (NAC Pty Ltd) attended.

Submitter in attendance: Lyons Development Corporation (LDC) represented by Mr Jeremy Clark (Development Manager - LDC) and Mr Frank Eynhoven (Elton).

RESOLVED That, pursuant to section 53(c) of the *Planning Act*, the Development Consent
95/18 Authority refuse to consent to the application to develop Lot 10288 (19) Garrkkar
 Street, Town of Nightcliff for the purpose of a carport addition to an existing single
 dwelling with reduced front and side setbacks for the following reasons:

REASONS FOR THE DECISION

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

The subject land is within zone SD17. The purpose of this zone is to facilitate the subdivision, use and development of the land as a residential estate. Development Permit DP09/0309 approved a setback plan for the subject land allowing a single dwelling to be developed with a reduced front setback (3m) in return for greater setbacks to the side (2.5m) and rear (3.5m). The following reasons were given for supporting a variation to the reduced front setback:

- *The proposed development is consistent with all other relevant provisions of the Scheme for single dwellings on individual lots and only street setbacks are reduced. Side and rear setbacks are simultaneously increased in order to improve the visual and acoustic privacy between adjoining properties in addition to minimising building mass.*
- *The proposed setbacks are consistent with approved setbacks for Stages 1 through 7 of the Lyons development and are unlikely to have an adverse impact on the streetscape or on the existing and future amenity of neighbouring properties, as the integrated varying street setbacks will facilitate the development of a cohesive streetscape unique to the Lyons development.*

The application proposes to further reduce the front setback to 0m (1.2m to the columns) and the side setback to 0.5m.

The Authority determined that the application is not only inconsistent with the requirements of Clause 7.3 (Building Setbacks of Residential Buildings...) but also the endorsed setback plan approved through DP09/0309.

The Authority noted that the existing development has taken advantage of the reduced front setback afforded to it through DP09/0309 and any further encroachment into the front setback would jeopardise the reasons for decision in endorsing a specific setback plan for the subject land.

2. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the NT Planning Scheme, the Authority may consent to the development of land that does not meet the standards set out in Parts 4 or 5 if it satisfied that special circumstances justify the giving of consent.

In addressing special circumstances the applicant stated that the construction of the proposed carport is providing the dwelling with something that has previously not been provided and that this form of structure is a necessary item in living in the tropics such as Darwin and the surrounding areas. The applicant also noted that the landowners have two teenage children with cars. The application identified that the subject land is setback further from the road reserve than the neighbouring properties due to its location on the cul-de-sac and therefore the visual effect of the proposed carport would be exactly the same.

The Authority noted the applicant's comments but were not satisfied that there were any special circumstances to justify the giving of consent to support the proposed front and side setback variations. The Authority noted that the current dwelling includes a double garage and that the design of the building has taken advantage of the reduced setback afforded to it through the endorsed setback plan for the subject land.

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

One submission was received under section 49 in relation to the development application. The submission was made by the Lyons Development Corporation (LDC) for and on behalf of the Lyons Joint Venture. The submission objected to the application on the following grounds:

- Non-compliance of the proposal with the owners original Contract of Sale.
- Non-compliance of the proposal with a legally binding perpetual Covenant imposed on the property's deed of transfer, requiring compliance with the Lyons Design Guidelines.
- Incompatibility with the intent of the Design Guidelines.
- Non-compliance with specific clauses of the Design Guidelines relating to building setbacks and further setbacks to carports.
- Non-compliance with the NT Planning Scheme.

The subject land is burdened by a Covenant (dealing 686889). Clause 5.2 of the Covenant states that *the Covenanter must not construct, commence to construct, or make application under the Building Act*

(NT) and/or Planning Act (NT) to Construct any building or landscaping in, on or over the property without first applying for, and obtaining, the prior written approval of the LDR to the construction of such building and landscaping. The development application did not include written approval of the LDR and the submitter advised that approval would not be granted.

4. Pursuant to section 51(n) of the *Planning Act*, 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 subject land is situated in the established suburb of Lyons. Lyons is a master planned suburb developed in accordance with the provisions of specific use zone SD17 and subject to site specific setback plans. As a result of the endorsed setback plans and the developer design guidelines, the suburb has uniformed streetscapes with a distinguishing feature being that carports do not protrude further forward than the main building line. While houses sit further forward than the traditional 6m setback, this is offset with wider side and rear setbacks resulting in wide spaces between houses and increased opportunity for landscaping. The application proposes to reduce both the front and side setback and would result in the carport sitting forward of the main building line which the Authority determined would alter the existing streetscape and have a negative impact on the existing and future amenity of the area.

ACTION: Notice of Refusal

ITEM 2 **EXTENSION OF TIME FOR TWO YEARS**
PA2012/0174 **SECTION 4574 (9) MEL ROAD, HUNDRED OF BAGOT**
APPLICANT **LINCOLN AGNEN**

Mr Lincoln and Mrs Debra Agnen attended.

RESOLVED That, pursuant to section 59(3)(a) of the *Planning Act*, the Development Consent
96/18 Authority consent to the application to extend the base period of Development
Permit DP12/0260 for the purpose of a warehouse, ancillary office and caretaker's
residence in a single storey building with a mezzanine floor at Section 4574 (9) Mel
Road, Hundred of Bagot for a period of two years.

ACTION Extension of Time

ITEM 3 **CLEARING OF NATIVE VEGETATION**
PA2018/0167 **LOTS 9198 (7) ELLENGOWAN DRIVE, 9260 (77) LAKESIDE DRIVE &**
APPLICANT **9375 (422) TROWER ROAD, TOWN OF NIGHTCLIFF**
CHARLES DARWIN UNIVERSITY

Mr Jeremy Chin (CDU) and Mr Anthony Schuman (CDU) attended.

RESOLVED That, pursuant to section 53(a) of the *Planning Act*, the Development Consent
97/18 Authority consent to the application to develop Lot 9198 (7 Ellengowan Drive), Lot
9260 (77 Lakeside Drive) and Lot 9375 (422 Trower Road), Town of Nightcliff for
the purpose of clearing of native vegetation, subject to the following conditions:

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GENERAL CONDITIONS

1. The works carried out under this permit shall be in accordance with the drawing numbered 2018/0167/01, endorsed as forming part of this permit.
2. The clearing of native vegetation is to be undertaken only in the areas identified on the endorsed drawing as "Permitted Clearing". All remaining native vegetation is to be maintained to the satisfaction of the consent authority.
3. The permit holder must ensure that the clearing operator has a copy of the permit, including the endorsed drawing, at all times during the clearing operation.
4. Appropriate erosion and sediment control measures are to be employed throughout the clearing and revegetation phases of the development to the satisfaction of the consent authority, including (but not limited to): retention of buffer zones where appropriate and measures to address seasonal timing of works, management of groundcover and minimisation of bare ground, maintenance of natural sheet flow patterns, and avoidance or removal of soil windrows or other surface modifications that create concentrated flow paths for runoff. Information regarding erosion and sediment control is available on the NTG website at <https://nt.gov.au/environment/soil-land-vegetation>.

NOTE:

1. The Aboriginal Areas Protection Authority recommends that the permit holder obtain an Authority Certificate to indemnify against prosecution under the *Aboriginal Sacred Sites Act*. For advice on how to obtain a certificate please contact the Aboriginal Areas Protection Authority.

REASONS FOR THE DECISION

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

The application has been assessed against the applicable clauses of the Planning Scheme and was found to be fully compliant.

The application proposes to clear an area of approximately 3ha within Zone CP. It should be noted that the main purpose of the clearing is for the removal of coffee bush and not native vegetation but it is inevitable that some native vegetation will be removed in the process of removing the coffee bush. The application stipulates that the clearing will assist the institution in carrying out its functions as a university by:

- Providing greater opportunities for research and studies into the endangered Black-footed Tree Rat.
- Allowing the universities ground maintenance staff to access and maintain the natural environment in the cleared areas.
- Providing practical teaching opportunities to the horticulture students during the replanting stage.

The application proposes approximately 6000m² of clearing within Zone CN. The clearing is in line with the Charles Darwin University's

Weed Management Plan which identifies coffee bush as a potential threat to the natural environment of the surrounding area. The proposed cleared area will be replanted with native vegetation through an agreement between the University and Greening Australia. As such, there is not expected to be any impact on the character of the area.

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

One (1) public submission was received from Mr Garry Wilson during the exhibition period under Section 49 of the *Planning Act* with respect to the proposal. Mr Wilson raised concerns in relation to the use of machinery to clear the coffee bush and recommended that alternative methods (such as chemical treatments) were used to minimise the loss of native vegetation. Mr Wilson also noted that the areas of clearing included sections that did not contain any observed coffee bush and that the removal of vegetation was so close to the coastal reserve paths and drainage lines and recommended that buffer areas are put in place to minimise impacts upon the amenity of the area. While Mr Wilson's concerns have been noted, the Department of Environment and Natural Resources (DENR) have provided advice that, as coffee bush is a weed and a staged and systematic removal process is proposed (as outlined in the Weed Management Plan included with the application), there will be no impact on listed species or sensitive habitat. The clearing of invasive stands of coffee bush will allow revegetation and the regeneration of native species, encouraging local biodiversity. DENR have advised that they support the planned revegetation of areas of weed removal with native vegetation.

3. Pursuant to section 51(h) of the *Planning Act*, the consent authority must take into consideration the merits of the proposed development as demonstrated in the application.

The application suggests that the merits of the clearing and the subsequent implementation of the Weed Management Plan include:

- Improved biodiversity through the regrowth of natural vegetation;
 - Allow native wildlife to move back into these areas and inhabit them;
 - Provide research and study areas for the university staff and students;
 - Allow access for university ground staff to maintain these areas and control/manage weeds; and
 - In the bigger picture the management of weeds would be particularly beneficial to the adjacent Parks and Wildlife nature reserves and Crown lands Rapid Creek catchment area. Generally improve the amenity for the residents of the surrounding suburbs.
4. Pursuant to section 51(j) of the *Planning Act*, 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 application includes a Weed Management Plan which identifies the areas to be cleared of coffee bush as dense regenerated savannah, mixed woodlands and lightly regenerated savannah. Characterised as mainly flat to gently sloping upland terrain. The infestations of coffee bush are described, ranging from individual isolated sites to densities of 5%, 10%, 25% and 50%-75%. The plan outlines a staged approach with areas of Coffee bush being eradicated systematically to ensure efforts can ultimately achieve effective weeds control.

Specifically the application identifies the re-establishment of the natural vegetation that will provide areas of ecological value that will be a resource and asset to the university as an education facility.

Both DENR and NT EPA have advised that they support the clearing proposed.

5. Pursuant to section 51(r) of the *Planning Act*, the consent authority must take into consideration any potential impact on natural, social, cultural or heritage values, including, for example, the heritage significance of a heritage place or object under the *Heritage Act*.

The application includes a letter from the Aboriginal Areas Protection Authority (AAPA) that identified a number of registered sacred sites within the Lots 9198, 9260 and 9375. A map provided by AAPA indicates that these sites are not located within the areas proposed for clearing. As sites may be undiscovered, the AAPA highly recommends that an Authority Certificate be applied for any proposed works on or near Charles Darwin University. This is included as a notation of approval.

ACTION: Notice of Determination

**ITEM 4
PA2018/0086**

**40 X 2 BEDROOM MULTIPLE DWELLINGS, 37 MOTEL ROOMS AND
GROUND LEVEL COMMERCIAL TENANCIES IN AN 18 STOREY BUILDING
INCLUDING 1 BASEMENT LEVEL AND 5 ABOVE-GROUND CAR PARKING
LEVELS**

APPLICANT

**LOT 2445 (9) DALY STREET, TOWN OF DARWIN
NORTHERN PLANNING CONSULTANTS PTY LTD**

Mr Brad Cunnington (Northern Planning Consultants Pty Ltd) and Mr Michael Kalidonis attended.

Mr Cunnington tabled an email from City of Darwin and a ground floor plan Option A.

**RESOLVED
98/18**

That, the Development Consent Authority vary the requirements of Clause 6.3.2 (Volumetric Controls in Central Darwin), Clause 6.3.3 (Urban Design Requirements in Central Darwin), Clause 6.5.3 (Parking Layout), and Clause 6.6 (Loading Bays) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act*, consent to the application to develop Lot 2445 (9) Daly Street, Town of Darwin for the purpose of 40 x 2 bedroom multiple dwellings, 37 motel rooms and ground level commercial tenancies in an 18 storey building including 1 basement level and 5 above-ground car parking levels, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principal approval is required for the location of the fire booster including opening doors to the requirements of the City of Darwin and Power and Water Corporation, to the satisfaction of the consent authority.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), approval is required for the provision of an awning to the Daly Street frontage to the requirements of the City of Darwin and Power and Water Corporation, to the satisfaction of the consent authority. The awnings shall not reduce the achievement of active frontages below 59.6% of the total length of the site boundary to the street.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), approval is required for the drop-off zone in the Daly Street road reserve to the requirements of the City of Darwin.
4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a landscape plan is required to be submitted and approved by the consent authority. The landscape plan must be generally in accordance with that submitted with the application, except that the plan must be updated to reflect the approved development layout.
5. 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 underground 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 connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected to the underground or an alternate approved connection.
6. Prior to the commencement of works (including site preparation), a qualified person experienced in the investigation and assessment of contaminated land, must provide clearance that the grounds of the site are free of contaminants. This clearance will form part of this permit and must be provided to the Environment Division of the Department of Environment and Natural Resources, to the satisfaction of the consent authority.
7. Prior to the commencement of works (including site preparation), the applicant is to prepare an environmental and construction management plan to the requirements of the City of Darwin, to the satisfaction of the consent authority. The plan is to address construction access, haulage routes, public access, waste management and the use of Council land during construction.
8. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.
9. Prior to the commencement of works (including site preparation), a waste management plan shall be submitted and approved by the City of Darwin to the satisfaction of the consent authority.

GENERAL CONDITIONS

10. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
11. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, electricity facilities and telecommunication networks to the development shown on the endorsed plan in accordance with the authorities requirements and relevant legislation at the time.
12. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
13. All 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.
14. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the City of Darwin, to the satisfaction of the consent authority.

The owner shall:

- (a) remove disused vehicle and/ or pedestrian crossovers;
 - (b) provide footpaths/ cycleways;
 - (c) collect stormwater and discharge it to the drainage network; and
 - (d) undertake reinstatement works;
all to the technical requirements of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
15. The area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - (a) constructed;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather-seal coat;
 - (d) drained;
 - (e) line marked to indicate each car space and all access lanes; and
 - (f) clearly marked to show the direction of traffic along access lanes and driveways
to the satisfaction of the consent authority. Car spaces, access lanes and driveways must be kept available for these purposes at all times.
 16. All substation, fire booster and water meter arrangements are to be appropriately screened to soften the visual impact of such infrastructure on the streetscape, to ensure that the infrastructure is sympathetic to and blends in with the design of the building. Details will need to be resolved to the satisfaction of the consent authority in consultation with the Power and Water Corporation, and NT Fire and Emergency Services.
 17. Storage for waste disposal bins is to be provided to the requirements of City of Darwin, to the satisfaction of the consent authority.
 18. Before the use commences the owner must, in accordance with Part 6 of the *Planning Act*, pay a monetary contribution to the City of Darwin for the

upgrade of local infrastructure, in accordance with its Development Contribution Plan.

19. A Compliance Certificate under the *Swimming Pool Safety Act* issued by the Swimming Pool Safety Authority is required for the swimming pool/s prior to the commencement of the use/development to the satisfaction of the consent authority.
20. Written confirmation from a qualified traffic engineer that the car parking spaces and access lanes associated with the development comply with the relevant Australian Standards for car parking must be provided in instances where the car parking does not comply with the minimum requirements of Clause 6.5.3 (Parking Layout) of the Northern Territory Planning Scheme, to the satisfaction of the consent authority.
21. 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 the use/occupation of the development and connection of services (i.e. power and water), the owner of the land must apply for street addressing from the Surveyor-General of the Northern Territory. This will form the legal address and will be required to be placed on the meters within the development in accordance with the allocation. An Occupancy Permit will not be able to be granted until such time as addressing is obtained.
23. 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.
24. All roof top plant equipment, equipment relating to the operation of the lift and any other equipment (such as any vents and ducting associated with requirements for stairwell pressurisation or other such ventilation purposes or similar) that will be placed on the rooftop of the development shall be appropriately screened, or designed to soften the visual impact of such equipment from view from neighbouring or nearby developments (or developments reasonably anticipated).
25. All balconies are to be internally drained and discharge is to be disposed of at ground level and in a manner consistent with stormwater disposal arrangements for the site to the satisfaction of the consent authority.
26. 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.

27. Any security boom, barrier or similar device controlling vehicular access to the premises must be located a minimum of six metres inside the property to allow vehicles to stand clear of the Daly Street pavement and footpath.
28. 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.
29. General building lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the consent authority.
30. Feature lighting to the building must be designed and located so as to prevent any adverse effect on adjoining land to the satisfaction of the consent authority.
31. The car parking shown on the endorsed plan(s) must be available at all times for the exclusive use of the occupants of the development and their visitors.
32. Appropriate soil erosion, sediment and dust control measures must be effectively implemented throughout the construction stage of the development and all disturbed soil surfaces must be suitably stabilised against erosion at completion of works, to the satisfaction of the consent authority.
33. Dust control measures must be employed throughout the construction stage of the development to the requirements of the Environment division of the Department of Environment and Natural Resources, to the satisfaction of the consent authority.
34. The loading and unloading of goods from vehicles must only be carried out on the land within the designated loading bay and must not disrupt the circulation and parking of vehicles on the land.
35. The landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
36. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.

NOTES:

1. Notwithstanding the approved plans, the demonstrated awning in the City of Darwin road reserve is subject to Council approval at no cost to Council.
2. Notwithstanding the approved plans, any proposed works (including landscaping and awnings) within the City of Darwin's road reserve is subject to approval and shall meet all requirements to the satisfaction of the City of Darwin, at no cost to Council.
3. Notwithstanding the approved plans, all signage is subject to City of Darwin approval, at no cost of Council.

4. The City of Darwin advises that all street trees shall be protected at all times during construction. Any tree on a footpath, which is damaged or removed during construction, shall be replaced, to the satisfaction of the General Manager Infrastructure, City of Darwin. A Tree Protection Zone (TPZ) shall be constructed for all existing trees to be retained within the development, in accordance with Australian Standards – AS 4970-2009 “Protection of Trees on Development Sites”.
5. A “Permit to Work Within a Road Reserve” will be required from the City of Darwin before commencement of any work within the road reserve.
6. The City of Darwin advises that the applicant shall ensure that a building number is displayed in position clearly visible from the street in accordance with Council’s by-laws.
7. The City of Darwin advises that the developer must protect and support adjacent properties and pedestrians during the basement excavation, and where necessary, underpin the adjoining premises to prevent any damage.
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. Water Services advice that essential infrastructure is located in the road reserve adjacent to the property and that a separate approval for the use of cranes during construction should be submitted.
10. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 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.
11. The Department of Defence requests that the developer provide Air Services Australia a copy of the ‘as constructed’ details of the development to assist with the reporting of tall structures.
12. The Environment division of the Department of Environment and Natural Resources advises that during the excavation, the basement may fill with turbid sediment laden stormwater. The proponent should ensure that any pit-water discharged from the development is in accordance with their document Guidelines to prevent pollution from building sites.
13. The Environment division of the Department of Environment and Natural Resources advises that construction work should be conducted in accordance with the Authority’s Noise Guidelines for Development Sites. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.

14. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5354 (surveylandrecords@nt.gov.au).
15. The development and use hereby permitted should be designed, constructed, registered and operate in accordance with the National Construction Code of Australia, the NT Public Health Act and Regulations, the NT Food Act and National Food Safety Standards.
16. Any proposed works which fall within the scope of the Construction Industry Long Service Leave and Benefits Act must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
17. 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/newdevelopments.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-withthe-nbn/new-developments/builders-designers.html>
18. The permit holder is advised that the proposal may have assessment implications under the Waste Management and Pollution Control Act. More information can be found on the Northern Territory Environment Protection Authority website at: <https://ntepa.nt.gov.au/waste-pollution>. The applicant is encouraged The applicant is encouraged to contact the NT EPA on (08) 8924 4218 or ntepa@nt.gov.au.

REASONS FOR THE DECISION

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

A mixed use development comprising a motel, commercial use and multiple dwellings is consistent with the primary purpose of Zone CB (Central Business), in providing for a diversity of activities including administrative, judicial, professional, office, entertainment, cultural, residential and retail and other business activities with a commitment to the separation of incompatible activities.

2. The application was initially deferred by the authority to enable the applicant to provide further information including amended plans demonstrating a drop-off zone to the Daly Street frontage to consider how vehicles servicing visitors to the motel can be accommodated as part of the development. The amended plans allowed the consent authority to seek comments from the City of Darwin in relation to this component prior to determining the application. In correspondence dated 7 June 2018, the City of Darwin confirmed acceptance of a drop-off zone "Option A" in the Daly Street road reserve. Condition

Precedents 2 and 3 on the Development Permit ensure that Council's requirements for the design are met prior to any construction occurring, including in meeting the applicable Australian Standards, the inclusion of street trees, sign-posting, and the awning design.

3. Clause 2.5 (Exercise of Discretion by the Consent Authority) requires that the Authority only vary requirements specified in Part 4 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent. The development varies the requirements of Clauses 6.3.2 (Volumetric Controls in Central Darwin), 6.3.3 (Urban Design Requirements in Central Darwin), 6.5.3 (Parking Layout), and 6.6 (Loading Bays) of the Planning Scheme.

The development is broadly consistent with the volumetric controls required by Clause 6.3.2 (Volumetric Controls in Central Darwin), including building heights, the maximum floor areas, and the maximum building dimensions at Tier 2, however varies the setbacks at Tiers 1 and Tier 2. At Tier 1, the balconies and motel room windows have reduced setbacks of 3.1m and 4.7m from the adjoining boundary when 6m is required. At Tier 2, the 'Podium' extends 0.8m above 25m at level 7, and the 'transfer slab' extends to a height of 2.1m near the Daly Street frontage resulting in an increased height of Tier 1. Also, at levels 8 – 18, window shades to the north-east and south-west boundaries are setback 5.7m, and protruding angular balcony edges to the north-west and south-east boundaries are setback 5.3m.

Despite the variations, the siting and mass of the building is still expected to achieve the objectives of Clause 6.3.2 equivalent to that of a compliant building, with the following identified as special circumstances:

- The built form maximises the potential for view corridors to the Darwin harbour. Although the Tier 1 podium level extends to a height of 0.9m, the height increase is unlikely to be noticeable from adjoining land, and as it is comparable to that approved for a 17 storey building on the adjoining land at 13 Daly Street, is unlikely to affect view corridors to the Darwin harbour. The location of a transfer slab which is 2.1m above Tier 1 is also unlikely to more broadly affect views because of the scale of non-compliance, and also due to an existing 12 storey building to the south-west at 108 Mitchell Street. The protruding balcony edges and window shades should not compromise views as the balcony edges are open and visually permeable, with all walled components meeting the 6m setback. The balconies also allow for the maximising of oblique views through permeable building corners, which is complemented by an increased setback of 6.7m to the solid components of the building at Tier 2 from Daly Street which allows some increased views beyond a compliant design.
- Reduced balcony and window shade setbacks at Tier 2 are not likely to affect the penetration of breeze circulation and daylight between this and any adjacent buildings, given these are permeable building features. The variations sought at Tier 1 do not affect the penetration of breeze circulation and daylight given there are no minimum setbacks or floor area requirements as part of Tier 1 for non-habitable building components.

- At Tier 1, privacy for residents of adjoining properties is ensured through podium walls and densely vegetated species to provide an effective privacy screen. Information submitted with the application confirms that the species have been deemed as suitable to allow for plant growth, and conditions have been included to ensure the health and management of plants over time given the reduced setbacks. This variation is noted as affecting the motel rooms only, as where the achievement of privacy depends on the management of landscaping, this is intended to occur more broadly through the overall building management rather than by individual unit owners. At Tier 2, as only an angled corner of each balcony encroaches within the setbacks to the north-west and south-east boundaries, and as the main private open space area is achieved without relying on this encroachment, the potential for overlooking of adjacent sites is comparable to a compliant design.
- The development is considered to reasonably anticipate the future development of adjoining sites, through the overall design response to the volumetric controls in achieving the view corridors, daylight and breeze circulation, and privacy for adjacent sites. The adjoining land to the north-east at 13 Daly Street is approved for the development of a 17 storey building and the determination above has considered the configuration of this built form.

The design of the car park largely accords with Clause 6.5.3 (Parking Layout), which ensures that a parking area is appropriately designed, constructed and maintained for its intended purpose. The design includes however a number of non-compliant bays at the end of each driveway where normally an extension of the driveway by an additional 1m is required. All but one of these spaces are located opposite access ramps and provide adequate space for reversing from the parking spaces. As space 17 on level 5 is not provided with the access ramp opposite, it is nominated as a 'small' parking bay, and the designation and signage of this space will ensure that only suitable vehicles attempt to use this bay. A condition requires a statement from a suitably qualified person that where the design varies from the Clause requirements, that the design accords with the relevant Australian Standards.

Clause 6.6 (Loading Bays) provides for the loading and unloading of vehicles associated with the use of the land. Only 1, rather than 2 loading bays is provided, however the loading bay provided meets the minimum dimension requirements. The loading bay is expected to be shared between the motel and commercial tenancy components given the relatively small size of each component, and given the relevant area thresholds that Clause 6.6 anticipates a single loading bay will service.

4. The development also varies Clause 6.3.3 (Urban Design Requirements in Central Darwin). The purpose of Clause 6.3.3 is to promote exemplary urban design in Central Darwin and the building complies with a number of requirements of this clause, including providing a full length awning, providing legible building entrances, and

providing an articulated podium and tower. However, the application varies the active frontage requirements with 59.6% achieved to Daly Street rather than the required 75%. Sub-clause 6.3.3(7) allows the consent authority to consent to an application that is not in accordance with the 75% active frontage requirement, if it is satisfied that compliance would be impractical. The consent authority determined that compliance is impractical as:

- a. The building services at street level are limited to the fire booster, fire access stairs, and a single driveway. These are the minimum required by the service agencies. The substation has been located on level 1, plus other services grouped to minimise the impact on the frontage.
- b. The reduced percentage is largely due to the minimal site frontage length of only 31.9m.
- c. Only 2 other lots on Daly Street have similar frontages, with all others having a wider frontage and often with 2 street frontages.

During assessment the applicant provided clarification of the intended upper level car park screening confirming that the powder coated aluminium perforated screens will have reduced visibility however still allow for ventilation. Amended plans were also provided which included feature art murals to the podium walls.

5. Pursuant to section 51(j) of the *Planning Act*, 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. Also, pursuant to section 51(m) of the *Planning Act*, the consent authority must take into account the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land, and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

The overall height and scale of the development is largely consistent with that anticipated in the Darwin CBD with respect to capability of the land and the effect on surrounding properties. Comments from the City of Darwin, Power and Water Corporation, Department of Defence and Darwin International Airport have been sought in relation to the capability of the land including the proposed access arrangements, treatment of the 3m sewer easement along the rear boundary, and building heights with no land capabilities issues identified. The Environment division of the Department of Environment and Natural Resources have identified that the historic use of the site suggests that the soils may contain contaminates and have requested a site investigation be prepared. All other service authority requirements have also been addressed through conditions.

6. Pursuant to section 51(n) of the *Planning Act*, 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 development is consistent with the broader intent of Zone CB (Central Business) and applicable clauses, including the overall height,


scale and setbacks proposed. Despite the variations sought to Clause 6.3.2 (Volumetric Controls in Central Darwin), including the setback to motel balconies and habitable rooms at Tier 1 to the north-west boundary, the design response proposed is expected to provide an effective privacy screen to ensure that an acceptable level of amenity is achieved for any developments on adjacent land. Tier 2 balconies slightly protrude within the setbacks also to the Daly Street and the south-east boundaries, however are unlikely to unduly affect amenity. No unreasonable amenity outcomes to the existing and future amenity of the area have been identified.

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

One public submission was received during exhibition from the Department of Tourism and Culture which is supportive of the development. One submission was also received following the close of the exhibition period from the body corporate of the adjacent building at 108 Mitchell Street. The submission raised concerns with light and ventilation to existing windows and balconies near to the shared boundary, plus privacy concerns and the potential for overlooking. The submission also raises concerns with the potential location of air conditioning servicing equipment, and also with the traffic impact. The authority determined that the development is consistent with the scale and form of that which can be expected, given the zoning and volumetric controls which apply to the land. Privacy for residents of 108 Mitchell Street is achieved through the podium walls at Tier 1, and at Tier 2, the setbacks to the building walls including habitable rooms and balconies, comply. The building has located air conditioning servicing equipment in internal areas of the building and the City of Darwin has not raised any concerns with traffic impacts.

ACTION: Notice of Consent and Development Permit

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


Suzanne
Philip
2018.06.14
16:00:45
+09'30'

SUZANNE PHILIP
Chair

14 June 2018