DEVELOPMENT CONSENT AUTHORITY
DARWIN DIVISION

NORTHERN TERRITORY PLANNING SCHEME

AGENDA ITEM: 2  MEETING DATE: 18/09/2020  FILE: PA2020/0109

APPLICATION: Unit title schemes subdivision to create two units and common property and a building envelope plan

APPLICANT/CONTACT: Earl James and Associates/ Kevin Dodd

LAND OWNER: Defence Housing Australia

LOCATION: Lot 12104 (5) Stanley Street, Town of Nightcliff (Bookmark A)

ZONE: Zone SD23 (Specific Use Zone)

AREA: 629m²

1. BACKGROUND

The application is for a unit title schemes subdivision to create two units and common property and a building envelope plan over Lot 12104 Town of Nightcliff within Muirhead.

A common property unit is identified on the subdivision plan comprising the water connection and meter, which is also identified as an electricity supply easement. There is no other common property or easements proposed.

At its meeting on 22 May 2020 the Development Consent Authority resolved, pursuant to section 46(4)(b) of the Planning Act 1999, to defer consideration of the application to require the applicant to provide the following additional information that the Authority considers necessary in order to enable proper consideration of the application:

- a written statement considering the application of Zone SD23 (Specific Use Zone Darwin No. 23) of the Northern Territory Planning Scheme to the present proposal specifically addressing paragraph 1, 2, 3(a)(ii) and 4(b);
- special circumstances that apply to consider the proposed reduced setback between buildings on the site from 3m to 1.8m, as required under Clause 7.3.2 (Distance between Residential Buildings on One Site) for the future development of dwellings; and
- amended plans generally in accordance with the plans submitted with the application but modified to show greater compliance with the minimum setback requirement along the street frontages required under setback plan endorsed under DP16/0052B. Further justification for any continued non-compliance should be provided and presented in the context of special circumstances which justify the giving of consent.

A copy of the Notice of Deferral is provided at Bookmark B. On 14 August 2020 the applicant submitted a written response to the points raised and an amended setback plan which is provided at Bookmark C. Noting that the overall substance of the application was not substantially altered; further public exhibition or circulation to service authorities was not considered warranted. A copy of the previous assessment report to the Authority is at Bookmark D, which includes all service authority comments received and the plans previously considered on 22 May 2020.
The revised plan and written statement seek to address the points of deferral. The revised building setback plan now demonstrates compliance with Clause 7.3.2 (Distance between Residential Buildings on One Site) and further information to address the requirements of Zone SD23 and the setback to the Stanley Street frontage has been provided for consideration.

2. **ASSESSMENT SYNOPSIS**

This report concludes that the Authority should approve the application subject to conditions on the development permit.

3. **THIRD PARTY APPEAL RIGHTS**

There is no right of appeal by a third party under section 117 of the *Planning Act 1999* in respect of this determination and the application relates to subdivision.

4. **CURRENT SITUATION**

The *Planning Act 1999* provides direction to the interpretation and application of Specific Use Zones in effect prior to the commencement of this Scheme. Section 215 (Specific use zone) states that a development application in relation to a specific use zone, must be determined:

(a) in accordance with this Act in force immediately before the commencement; and
(b) in relation to the elements of the planning scheme applicable immediately before the commencement.

Clause 2.4 (Specific Use Zones) of the NT Planning Scheme 2007 states that despite anything to the contrary in this Planning Scheme, land described in Schedule 1 (Specific Use Zones) may be used or developed as specified in the Schedule subject to any conditions specified in the Schedule and any further conditions imposed by the consent authority. The provisions of Parts 1, 2, 4, 5, 7 and 8 apply to development described in Schedule 1 except where they conflict with any conditions specified in that Schedule.

The matters of deferral state the applicant is to provide the following additional information:

- a written statement considering the application of Zone SD23 (Specific Use Zone Darwin No. 23) of the Northern Territory Planning Scheme to the present proposal specifically addressing paragraph 1, 2, 3(a)(ii) and 4(b);
- special circumstances that apply to consider the proposed reduced setback between buildings on the site from 3m to 1.8m, as required under Clause 7.3.2 (Distance between Residential Buildings on One Site) for the future development of dwellings; and
- amended plans generally in accordance with the plans submitted with the application but modified to show greater compliance with the minimum setback requirement along the street frontages required under setback plan endorsed under DP16/0052B. Further justification for any continued non-compliance should be provided and presented in the context of special circumstances which justify the giving of consent.

In relation to point one, paragraph 1, 2, 3(a)(ii) and 4(b) of Zone SD23 states the following:

1. *The purpose of this zone is to facilitate the subdivision, use and development of the land as a residential estate that provides for housing choice through a range of lot sizes and housing types.*

2. *Development Design Philosophy*
Any subdivision and future development is expected to be designed to respond to Darwin’s tropical climate and lifestyle attributes. This includes, but is not limited to, adherence to the following design principles:
(a) lot patterns which are best suited to catching prevailing breezes;
(b) local streets which include a single carriageway with footprints which enable groupings of large street trees in public space and smaller trees in front yards;
(c) lots and dwellings sited so as to have sufficient area to provide for the dwellings, vehicle access, parking and ancillary structures;
(d) the inclusion and adaptation of porches and decks as living spaces which are designed to encourage activation of and overlooking of streets and public spaces;
(e) a mix of heavy and lightweight elements in the front façade of the building;
(f) breezeway separations between buildings and the inclusion of side yard spaces; and
(g) housing which promotes cross ventilation through building orientation and layout, with extended roofs and overhangs for additional shade and weather protection.

3. With consent land within this zone may be developed for the purpose of a subdivision if:
(a) the development application to subdivide the land is accompanied by:
   ii. a setback plan indicating the minimum building setbacks for each lot, consistent with the Development Design Philosophy in paragraph 2; and the drawings form part of any development permit for subdivision.

4. The purpose of this paragraph is to ensure residential subdivisions contain lots of a size, configuration and orientation suitable for residential purposes.
   The overall subdivision design should:
   (b) not include any lot with an area of less than 450m²;

In relation to Clauses 1 and 2 of Zone SD23, there is no potential conflict with the proposed subdivisions and the overarching development design philosophy for Zone SD23. The proposals will further the range of available housing types, and will not compromise objectives relating to local streets. The response provided context for consideration of the purpose, design philosophy and requirements of the specific use zone, identifying the original purpose of the introduction of the specific use zone in 2009 and the subsequent variations to the zone through Amendment 170, 237 and 434.

In relation to the zone purpose, the Authority considered that the future development on the proposed unit lots will affect the range of housing types in Zone SD23 as there is a change from potential duplex dwellings developments to stand-alone detached single dwelling development on proposed unit lots. The response to this matter simply noted that a duplex is one possible configuration however the zone does not prevent two stand-alone buildings as a multiple dwelling on one lot.

In summary, the subdivision layout and setback plan achieves the design philosophy identified in clause 2 of Zone SD23 which requires breezeway separations between buildings and side yard spaces. The proposal will reduce the potential for a duplex style housing type however will provide for two small stand-alone buildings as a multiple dwelling under a unit title scheme.

As required by sub-clause 3(ii)(a) a setback plan forms part of the application to indicate the minimum building setbacks for each lot, consistent with the Development Design Philosophy in paragraph 2 and the drawing will form part of any development permit for subdivision. The setback plan is generally in accordance with the boundary setbacks that apply currently, however modified to show a minimum 3m between buildings and a reduced setback to Stanley Street, discussed further in relation to dot point 3.
In response to sub-clause 4, the Authority considered that the proposed arrangement may result in the creation of multiple vacant unit lots less than 450m$^2$ which conflicts with both the design philosophy of Zone SD23 and the specific requirement in paragraph 4(b) of that Zone.

In response to the minimum lot size the response considered that the designation of the minimum lot size of 450m$^2$ was consistent with Clause 11.1.2 (Lots intended for Zone SD in Greenfield Areas) which enabled the subdivision of greenfield areas intended for Zone SD to a minimum lot size of 450m$^2$ with similar average lot size requirements to SD23. It is noted that the endorsed masterplan identifies the land for the purpose of multiple dwellings and minimum lot size for subdivision within Zone MD (Multiple Dwelling Residential) was 800m$^2$ at the time the specific use zone was introduced however changed to 300m$^2$ in 2014.

The response noted that in the absence of a definition of a “lot” within the Scheme or the Planning Act 1999, that the definition in the Land Title Act 2000 includes “a unit and common property within the meaning of the Unit Title Schemes Act 2009”. However the interpretation guidance in the Scheme in relation Clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme) states that:

“The Land Title Act describes a “lot” as a separate, distinct parcel of land that may be a unit or common property. For the avoidance of confusion, the Surveyor General uses the term “unit” for a parcel of land or building unit or common property created under the Unit Title Schemes Act and described on a UTS plan and “lot” for a parcel of land created under the Land Title Act and described on an LTO plan as a “lot”.”

The applicant concluded that sub-clause 4(b) does not apply in relation to individual unit titles regardless of whether the land is vacant or not at the time the subdivision occurs.

DAS notes the applicants’ response in relation to minimum lot size. DAS considers that minimum lot size requirements for subdivision of vacant land for the purposes of a unit title scheme is determined by Clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme) which applies clause 11.1.1 (Minimum Lot Sizes and Requirements) and 11.1.2 (Lots intended for Zone SD in Greenfield areas). As there is no specific reference to minimum lot sizes applicable in this zone in clause 11.1.1 (Minimum Lot Sizes and Requirements), there is no limit on land area of individual units applicable under sub-clause 7 of Clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme).

In summary, DAS supports the applicants position that sub-clause 4(b) does not apply in the instance where subdivision is for the creation of units.

- special circumstances that apply to consider the proposed reduced setback between buildings on the site from 3m to 1.8m, as required under Clause 7.3.2 (Distance between Residential Buildings on One Site) for the future development of dwellings;

In relation to the second point of deferral an amended plan, 20/9052/604, has been submitted which increases the setback distance from 1.8m to 3m and therefore the minimum building separation distance required by Clause 7.3.2 (Distance between Residential Buildings on One Site) will be supported by the proposed setback plan.

- amended plans generally in accordance with the plans submitted with the application but modified to show greater compliance with the minimum setback requirement along the street frontages required under setback plan endorsed under DP16/0052B. Further justification for any continued non-compliance should be provided and presented in the context of special circumstances which justify the giving of consent.
In relation to the third point of deferral, the applicant did not submit an amended plan to show greater compliance with the building envelope setback of 7.5m from the Stanley Street boundary. Rather, in response to this point, the applicant provides context for consideration of the 6m setback.

The applicant notes that the original subdivision consent which created the subject lot had a 7.5m setback from the Stanley Street boundary and the reason for this is unclear given the inconsistency with the subdivision in Muirhead generally, and the minimum 6m front setback otherwise applicable in the NT Planning Scheme. Further, the applicant referred to the previous setback of 6m approved through DP19/0109 which granted approval for the purpose of subdivision and consolidation to create two lots (boundary realignment) and amendments to the setback plan approved through DP16/0052A lots.

In summary the change to the building setback to Stanley Street is supported for the same reason as provided in the granting of DP19/0109 which considered that it was appropriate as it is consistent with the primary street setbacks throughout the Muirhead subdivision, including other existing lots that front onto Stanley Street.

5. SERVICE AUTHORITY COMMENTS

The original application was circulated to the service authorities and comments received were discussed in the previous assessment report to the Authority (refer Bookmark D). Noting that the overall substance of the application was not substantially altered; further public exhibition or circulation to service authorities was not considered warranted. The previous comments provided on the original development proposal still applies to the proposed changes.

6. RECOMMENDATION

That, pursuant to section 53(a) of the Planning Act 1999, the Development Consent Authority consent to the application to develop Lot 12104 (5) Stanley Street, Town of Nightcliff for the purpose of a unit title schemes subdivision to create two units and common property and a building envelope plan, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), confirmation shall be provided to the satisfaction of the consent authority that the:
   a) design of electrical services to each unit satisfies the requirements of the Power and Water Corporation; and
   b) design of stormwater infrastructure satisfies the requirements of the City of Darwin.

2. 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. The plans must be generally in accordance with the plans submitted with the application but modified to show any changes required as a result of compliance with Condition Precedent 1.

CONDITIONS

3. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.

4. 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.
5. 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.

6. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage and electricity facilities and telecommunication networks to each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

7. Prior to new titles being issued for the units shown on the endorsed drawings, a Scheme Statement meeting the requirements of the *Unit Title Schemes Act 2009* (as confirmed by the Land Titles Office) shall be submitted for endorsement by the consent authority.

8. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage and electricity facilities and telecommunication networks to each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

9. 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.

10. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin, to the satisfaction of the consent authority.

11. 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) demonstrating that the Power and Water Corporation has been provided with a copy of the survey plan with the new lot numbers. This is for the purpose of ensuring the relevant Power and Water Information and Billing System is updated. Please provide a copy of an email addressed to both landdevelopmentnorth@powerwater.com.au & powerconnections@powerwater.com.au.

12. 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.

13. Prior to new titles being issued, it shall be confirmed by the consent authority that all areas shown on the plans 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 of the survey plan as Common Property.

**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 8995 5354. The numbers shown on the plans endorsed as forming part of this permit are indicative only and are not for addressing purposes.

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. 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.

5. Prior to new titles being issued, it shall be confirmed by the consent authority that all areas shown on the plans endorsed by the consent authority through this permit as service authority easements, communal open space, shared driveways, or areas set aside for communal storage and collection of garbage or solid waste, or other shared amenities are shown on the survey plan as common property.

6. The subdivision results in a unit title scheme subdivision resulting in two units and common property including a private driveway. Vendors are requested to inform future landowners of the nature of the development to ensure future landowners understand the entitlements and contributions associated with the unit title scheme subdivision.

7. **REASONS FOR THE RECOMMENDATION**

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

The application is for a unit title schemes subdivision to create two units and common property Lot 12104 Town of Nightcliff. The Northern Territory Planning Scheme (NTPS) applies to the land. The land is within Zone SD23 (Specific Use Zone Darwin No. 23) of the NTPS.

Section 44(b) of the NT Planning Act 1999 states that a development permit is required, ‘if the proposed development is the subdivision or consolidation of land.’ The application proposes a subdivision for the purpose of a unit title scheme with planning consent therefore required.

The application was considered against the applicable clauses of the NTPS including Clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme). The proposal generally satisfies the requirements of Clause 11.1.5 and consent is therefore considered appropriate. However, the determination of appropriate electricity and drainage easement locations is required to be addressed and a condition precedent is applied to ensure plans are endorsed which identify easements to be vested with the relevant authority.
Section 54A of the *Land Title Act 2000* provides that the plan of subdivision for the purpose of a unit title scheme cannot be registered unless the first scheme statement is also registered at the same time. A condition requiring endorsement of a scheme statement prior to the issue of titles is therefore included as part of this permit.

2. Pursuant to section 51(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 considered capable of supporting the proposed unit title schemes subdivision as it is generally consistent with the relevant requirements of Part 5 of the NTPS. The application was circulated to relevant service authorities for comment with no land capability concerns identified.

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

The unit title scheme subdivision is unlikely to impact the existing and future amenity of the area. The setback plan generally accords with the plan submitted and endorsed as part of the Muirhead subdivision but modified to show a breezeway between the two building envelopes on the site and a setback to Stanley Street of 6m rather than 7.5m.

The setback to the street boundary is consistent with the primary street setbacks throughout the Muirhead subdivision, including other existing lots that front onto Stanley Street. Future development of the land will be required to respond to the endorsed setback plan and Zone SD23 (Specific Use Zone Darwin No. 23) Development Design Philosophy including siting of dwellings.

4. Pursuant to section 51(m) of the *Planning Act 1999*, the consent authority must take into consideration 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.

Comment received from service authorities highlighted a number of development specific requirements that have been addressed through appropriate conditions and/or notations on the permit.

In particular, regarding electricity supply, Power and Water Corporation require electrical installations to be carried out to facilitate unit building constructions in future, as part of the subdivision works. City of Darwin require the proponent to address the stormwater drainage infrastructure requirements to service each of the units from the single connection point.

**AUTHORISED:**

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SENIOR PLANNER
DEVELOPMENT ASSESSMENT SERVICES
Mr Kevin Dodd  
Earl James and Associates  
GPO Box 884  
Darwin NT 0801  

Dear Mr Dodd  

LOT 12104 (5) STANLEY STREET, MUIRHEAD, TOWN OF NIGHTCLIFF

You are hereby advised that the Development Consent Authority, at its meeting on 22 May 2020 resolved, pursuant to section 46(4)(b) of the Planning Act 1999, to defer consideration of the application to develop the above land for the purpose of a unit title schemes subdivision to create two units and common property and a building envelope plan, to require the applicant to provide the following additional information that the Authority considers necessary in order to enable proper consideration of the application:

- a written statement considering the application of Zone SD23 (Specific Use Zone Darwin No. 23) of the Northern Territory Planning Scheme to the present proposal specifically addressing paragraph 1, 2, 3(a)(ii) and 4(b); and

- special circumstances that apply to consider the proposed reduced setback between buildings on the site from 3m to 1.8m, as required under Clause 7.3.2 (Distance between Residential Buildings on One Site) for the future development of dwellings.

- amended plans generally in accordance with the plans submitted with the application but modified to show greater compliance with the minimum setback requirement along the street frontages required under setback plan endorsed under DP16/0052B. Further justification for any continued non-compliance should be provided and presented in the context of special circumstances which justify the giving of consent.

REASONS FOR THE DECISION

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

   The Northern Territory Planning Scheme (NTPS) applies to the land. The land is within Zone SD23 (Specific Use Zone Darwin No. 23) of the NTPS. The purpose of Zone SD23 is to facilitate the subdivision, use and development of the land as a residential estate that provides for housing choice through a range of lot sizes and housing types.

   The subject lot was created through grant of DP16/0052 and variation permit DP16/0052B issued in December 2016 which endorses the current building setback plan and land use plan. The land use plan identifies the subject lot for multiple dwellings and the setback plan identifies specific building setback requirement for the future development on this lot.
The application proposes a subdivision of Lot 12139 Town of Nightcliff for the purpose of a Unit Title Scheme (UTS) subdivision to create two units and minimal common property. The proposed UTS subdivision will facilitate new ownership arrangements by means of the sale of an existing vacant block of land in two units. The application also proposes a setback plan which establishes a setback distance between the two future dwellings of 1.8m (0.9m setback from the building to the unit title boundary, as amended by the applicant).

As per Section 44(b) of the Planning Act 1999, a development permit is required, 'if the proposed development is the subdivision or consolidation of land,' therefore planning consent is required for the proposed subdivision.

Of particular relevance to this application is paragraph 4(b) of Zone SD23, which requires that the subdivision design should not include any lot with an area less than 450m$^2$. There is no definition of “lot” in either the Planning Act 1999 or NTPS. Under the Land Titles Act 2000, the definition of a “lot” includes a unit and common property within the meaning of the Unit Title Schemes Act 2009. Therefore, the Authority considers that determination of the present application requires, firstly, the consideration of the meaning of “lot” as used in paragraph 4(b) of Zone SD23 in light of the definition of “lot” under the Land Titles Act 2000 and, secondly, if unit title subdivision as proposed meets the requirements of SD23 for lot size, appraisal of whether there are special circumstances which allow the Authority to exercise its discretion to vary compliance with Clause 7.3.2 (Distance between Residential Buildings on One Site).

Turning to the first matter, as the application proposes a UTS subdivision of the lot to create two units and common property, the Authority considered that the threshold question is to determine the meaning of “lot” as used in SD23 in order to decide whether the proposed UTS subdivision can meet both the design philosophy and specific requirements of Zone SD23. The Authority notes that the NTCAT decision in Bradley v Development Consent Authority & Kalhmera Pty Ltd [2017] NTCAT 922 found that clause 2.5(4) of the NTPS does not expressly or impliedly empower a consent authority to give consent to a use or development of land that does not comply with a requirement of a specific use zone.

The Authority also considers that the future development on the proposed unit lots will affect the range of housing types in Zone SD23 as there is a change from potential duplex dwellings developments to stand-alone detached single dwelling development on proposed unit lots and requires the applicant to address that issue.

Mr Kevin Dodd (Earl James and Associates), Mr Chris Grimm (Senior Development Manager, DHA Australia) and Mr Darron Lyons (The Red Shed) attended the meeting and spoke further to the application. Mr Dodd gave an overview and noted the merits of the proposed UTS subdivision. Mr Dodd explained that the proposed UTS subdivision would allow creation an affordable product which suits the existing market conditions. Mr Dodd further explained that each of the potential unit lots would have servicing arrangements similar to a duplex development on any vacant lot.

The Authority; however, notes the design philosophy of Zone SD23 and requires clarification from the applicant as to how the proposed UTS subdivision does not undermine that philosophy by creating lots, within the range of 300m$^2$ – 400m$^2$ and why minimum lot size of 450m$^2$ should not be applied in this UTS subdivision. In response to the question Mr Grimm explained that the provision of affordable housing in Zone SD23 is met by the lots allocated for multiple dwelling development in the subdivision. Mr Grimm further added that once the duplexes are built on these lots they are unit titled under the Unit Title Schemes Act 2009 to create unit lots less than 450m$^2$. The Authority, while acknowledging the response of Mr Grimm, considered that the subdivision proposed in the current application is different as it involves unit subdivision to create vacant unit lots which could potentially be developed to create single dwelling type development similar to a land and house package. The Applicant confirmed that the intention was to market these unit-titled lots as “house and land packages”.


In response to a question raised by the Authority on variation to Clause 7.3.2 (Distance between Residential Buildings on One Site), Mr Lyons explained that the existing setbacks to the boundary of the lot are proposed to remain as per the setback plan endorsed under DP16/0052B, and the setback distance between the two dwellings meet the requirement of the Building Act 1994. Mr Lyons further added that the proposed building envelope could accommodate a 3-bedroom dwelling and a garage with two car parking spaces on each lot.

The Authority notes the abovementioned comments; however, is not satisfied with the applicant’s response regarding that the proposed UTS subdivision to create two vacant unit lots in the range of 300m² - 400m². The Authority, while acknowledging that the application is for UTS subdivision (under Clause 11.1.5 of the NTPS), which will create two units, a nominal amount of common property and a Body Corporate (formed by registering a scheme statement), the proposed UTS subdivision, being of vacant land, is effectively a broad acre subdivision and is intrinsically linked to the paragraph 4(b) of Zone SD23. The applicant in its statement of merits for the UTS states that “the division of the subject land as a conventional subdivision, as opposed to unit titling, would create conventional lots with areas that conflict with the SD23 zone”. Nevertheless, the applicant acknowledged to the Authority that the vacant unit lots, upon subdivision through a UTS, will be marketed and sold as house and land packages.

The Authority considers that the proposed arrangement may result in the creation of multiple vacant unit lots less than 450m² which conflicts with both the design philosophy of Zone SD23 and the specific requirement in paragraph 4(b) of that Zone and seeks clarification from the applicant as to why the specific requirement of paragraph 4(b) of Zone SD23 should not apply to this application for subdivision.

Turning to the second matter, if the proposed unit title subdivision meets the requirements of SD23 for lot size, Clause 7.3.2 (Distance between Residential Buildings on One Site) requires that more than one building comprising one or two storey residential buildings is located on a site, the distance between the buildings is to be calculated in accordance with Table A to Clause 7.3 as if there was a boundary between the buildings. By virtue of this clause, the minimum distance between dwellings is required to be 3m. The building envelope plan proposes that the future dwellings will be separated by 1.8m rather than 3m.

The purpose of Clause 7.3.2 is to ensure residential buildings are located:

a. so they are compatible with the streetscape and surrounding development including residential buildings on the same site;

b. to minimise any adverse effects of building massing when viewed from adjoining residential buildings, associated private open space and the street; and

c. to avoid undue overlooking of adjoining residential buildings and associated private open space.

The Authority considers that, in the current form, the application lacks a statement addressing special circumstances to support a reduced separation distance between the two future dwellings. Special circumstances were considered in Bradley v Development Consent Authority & Kalhmera Pty Ltd [2017] NT CAT 922 and the Tribunal in that case stated that such circumstances require demonstration of

"something about a proposed development that means that requirements of the NTPS that would otherwise apply can appropriately be relaxed. Consideration of that issue will normally involve attention to aspects of the proposed development which set it apart from developments on other, similarly zoned land] The question is whether there is anything ‘unusual, exceptional, out of the ordinary and not to be expected’ about the proposed development that justifies a departure from the requirements of the planning scheme."

The Authority considers that the proposal fails to explain the special circumstances justifying a variation to this clause or what safeguards can be put in place to justify the variation to Clause 7.3.2.
The Authority notes the comments of the service authorities and considers that all requirements can be addressed through the inclusion of conditions and notes on any permit issued for the subdivision.

Should you require any further information on this matter, please telephone Development Assessment Services on 8999 6046.

Yours faithfully

Dawn Parkes
Delegate
2 June 2020

cc City of Darwin
Re: Lot 12104, Town of Nightcliff

At its meeting on 22 May, 2020 the DCA resolved to defer consideration of the application to develop the above property for the purpose of a unit title schemes subdivision to create two vacant land units and common property and a building envelope plan, to require the applicant to provide the following information:

1. a written statement considering the application of Zone SD23 (Specific Use Zone Darwin No. 23) of the Northern Territory Planning Scheme to the present proposal specifically addressing paragraph 1, 2, 3(a)(ii) and 4(b); and

2. special circumstances that apply to consider the proposed reduced setback between buildings on the site from 3m to 1.8m, as required under Clause 7.3.2 (Distance between Residential Buildings on One Site) for the future development of dwellings.

3. amended plans generally in accordance with the plans submitted with the application but modified to show greater compliance with the minimum setback requirement along the street frontages required under setback plan endorsed under DP16/0052B. Further justification for any continued non-compliance should be provided and presented in the context of special circumstances which justify the giving of consent.

To assist in providing the details in relation to Deferral Point 1, the landowner has sought advice from the Brad Cunnington from Northern Planning Consultants, given Brad’s early involvement with SD23 and its application to preceding stages of the Muirhead subdivision.

Following is the statement in relation to Deferral point 1:

**Consideration of Zone SD23**

The aforementioned components of SD23 in **Schedule 1** of the Northern Territory Planning Scheme provide as follows:

1. The purpose of this zone is to facilitate the subdivision, use and development of the land as a residential estate that provides for housing choice through a range of lot sizes and housing types.

2. Development Design Philosophy
Any subdivision and future development is expected to be designed to respond to Darwin’s tropical climate and lifestyle attributes. This includes, but is not limited to, adherence to the following design principles:

(a) lot patterns which are best suited to catching prevailing breezes;

(b) local streets which include a single carriageway with footprints which enable groupings of large street trees in public space and smaller trees in front yards;

(c) lots and dwellings sited so as to have sufficient area to provide for the dwellings, vehicle access, parking and ancillary structures;

(d) the inclusion and adaptation of porches and decks as living spaces which are designed to encourage activation of and overlooking of streets and public spaces;

(e) a mix of heavy and lightweight elements in the front façade of the building;

(f) breezeway separations between buildings and the inclusion of side yard spaces; and

(g) housing which promotes cross ventilation through building orientation and layout, with extended roofs and overhangs for additional shade and weather protection.

3. With consent land within this zone may be developed for the purpose of a subdivision if:

(a) the development application to subdivide the land is accompanied by:

   ii. a setback plan indicating the minimum building setbacks for each lot, consistent with the Development Design Philosophy in paragraph 2;

and the drawings form part of any development permit for subdivision.

4. The purpose of this paragraph is to ensure residential subdivisions contain lots of a size, configuration and orientation suitable for residential purposes.

The overall subdivision design should:

(b) not include any lot with an area of less than 450m²;

From the DCA’s minutes of the hearing held 22 May 2020, the primary concerns relate to whether or not the proposal will create a “lot” with an area of less than 450m², thus creating a non-compliance with Clause 4(b), and whether the resultant future development of the proposed unit parcels (individually) would result in a change from “potential duplex dwelling developments to stand-alone detached single dwelling development on proposed unit lots.” The DCA required clarification as to how the proposed UTS subdivision does not undermine the SD23 philosophy by
creating lots within the range of 300m$^2$ – 400m$^2$, particularly given it viewed the proposed subdivisions different to the unit titling of previously constructed multiple dwellings as the lots could potentially be developed for single dwelling type housing.

To respond to the deferral decision, it is first necessary to consider the minimum lot size in Zone SD23. Zone SD23 was first introduced into the Planning Scheme in December 2009 for the purpose of facilitating an integrated estate subdivision on land located in Darwin’s Northern suburbs. Zone SD23 has been amended three times since first introduced – Amendment 170 in January 2011 to alter the zone boundaries; Amendment 237 in August 2012 for minor amendments to Clause 3 (require a setback plan for each lot) and Clause 5 (allow the development of listed uses without consent); and Amendment 434 in March 2016 for amendments to Clause 5 (clarify open space requirements).

The designation of a minimum lot size of 450m$^2$ per Clause 4 of Zone SD23 was, at the time, consistent with Territory-wide Clause 11.1.2 – Lots intended for Zone SD in Greenfield Areas. Clause 11.1.2 enabled the development of greenfield areas intended to be zoned SD, to a minimum lot size of 450m$^2$ with similar average lot size requirements to SD23. Whilst SD23 included the allowance for multiple dwelling development (Clause 7 of SD23), it is relevant that the minimum allotment size for land in Zone MD at the time was 800m$^2$ (per Clause 11.1.1). NT Planning Scheme Amendment 320, signed in March 2014, amended Clause 11.1.1 to reduce the minimum lot size in Zone MD from 800m$^2$ to 300m$^2$.

Clause 4(b) requires that the design of subdivision/s within Zone SD23 “not include any lot with an area of less than 450m$^2$.” Lot is not defined by the Planning Scheme or the Northern Territory Planning Act, although the Northern Territory Land Title Act defines lot as including “a unit and common property within the meaning of the Unit Title Schemes Act.” However, Clause 11.1.5 of the Planning Scheme (relating to Subdivision for the Purposes of a Unit Title Scheme) provides the following guidance:

The Land Title Act describes a “lot” as a separate, distinct parcel of land that may be a unit or common property. For the avoidance of confusion, the Surveyor General uses the term “unit” for a parcel of land or building unit or common property created under the Unit Title Schemes Act and described on a UTS plan and “lot” for a parcel of land created under the Land Title Act and described on an LTO plan as a “lot”.

From the application of the Territory-wide provisions of the Scheme, it’s clear the Planning Scheme takes the above approach (for example, Clause 11.1.5 consistently refers to “individual units” rather than “lots.” Likewise, Clause 11.1.1 stipulates a minimum lot size of 800m$^2$ in Zone MR, however Clause 7.1 and 11.1.5 enable the creation of unit titles well below this). Accordingly, it is reasonable to assume Clause 4(b) of SD23 is not intended to refer to individual unit titles, irrespective of whether or not they apply to land vacant at the time of the UTS being introduced.
To the second component of the DCA’s concern relating to Item 1, specifically whether the resultant future development of the proposed unit parcels would result in a change from “potential duplex dwelling developments to stand-alone detached single dwelling development on proposed unit lots”, Clause 3 of the Planning Scheme provides the following definitions:

“single dwelling” means a building containing one dwelling only

“multiple dwellings” means a building or group of buildings on a site which individually or collectively contain more than one dwelling (including serviced apartments) but does not include an independent unit; Given the reference in the multiple dwelling definition, it is also necessary to consider the definition of site:

“site” means an area of land, whether consisting of one lot or more, which is the subject of an application to the consent authority;

The DCA’s reference to duplex dwellings is unclear. Whilst to date the majority of multiple dwelling sites in Muirhead may have been developed with duplex’s, a duplex (two dwellings adjoined by a common wall) is but one possible multiple dwelling configuration (DP12/0622A is an example of an approval for detached, multiple dwellings). Whilst the subject allotments could potentially be developed with duplex’s, Clause 7 of Zone SD23 enables their development in any number of other multiple dwelling configurations, including two multiple dwellings in two stand-alone buildings. Furthermore, Clause 5 of SD23 enables the development of any lot within the SD23 area (including those previously identified for multiple dwellings) without consent. As such, any of the multiple dwelling lots could be developed for the purpose of single dwellings irrespective of the current applications.

In conjunction with the statement provided above by Brad Cunnington, Development Assessment Services (DAS) was consulted in regard to how future development of dwellings on the proposed vacant, unit titles will be dealt with under the NT Planning Scheme.

DAS has confirmed that if the proposed unit title scheme subdivision proceeds, involving the registration of a Scheme Statement to create the two unit titles and Common Property, any future development is a multiple dwelling. Consequently, there is a requirement for consent as a multiple dwelling under the requirement of the SD23 zone and Zone MD.

In relation to Clauses 1 and 2 of SD23, there is no potential conflict with the proposed UTS subdivisions and the overarching development design philosophy for Zone SD23. The proposals will further the range of available housing types, and will not compromise objectives relating to local streets. Future compliance with the development design philosophy will require:

- Dwelling design consistent with the siting, streetscape and facade design requirements;
- Compliance with the location of breezeways per the approved setback plans;
- Provision of cross-ventilation, shading and weather protection; and
Building Setbacks

Attached plan 20/9052/604D indicates increased setbacks from the proposed boundary. This results in 3 metres separation between proposed buildings as required under Clause 7.3.2 (Distance between Residential Buildings on One Site).

Minimum Street Setbacks

The DCA approval that created Lot 12104 had a building envelope setback of 7.5m from the Stanley Street boundary. It is unclear why this setback was nominated in the Development Application as it is inconsistent with the rest of the Muirhead development and greater that the standard street setback of 6 metres in the NTPS.

The DCA previously considered a change to the Stanley Street setback for this property and subsequently approved a 6 metre setback when it issued DP19/0109.

The setbacks now being proposed by the current application are compliant with the NTPS and the overall Muirhead subdivision.

We trust that this information addresses the reasons for deferral and the application may now be reconsidered.

Yours sincerely,

Kevin Dodd
Unit 3
315m²

Unit 4
313m²

Lot 12103
89°45'40"
23.995
20.835

Lot 12104
89°45'40"
24.005

Lot 12105
89°45'40"
24.005

Note
Subdivision to create two Unit Titles and Common Property
All areas and dimensions are subject to survey
Easements should be confirmed with the current Certificate of Title

denotes Common Property

denotes Building Envelope

denotes Building setback

LOCATION DIAGRAM
Not to Scale
DEVELOPMENT CONSENT AUTHORITY
DARWIN DIVISION
NORTHERN TERRITORY PLANNING SCHEME

AGENDA ITEM: 4 MEETING DATE: 22/05/2020 FILE: PA2020/0109

APPLICATION: Unit title schemes subdivision to create two units and common property and a building envelope plan
APPLICANT/CONTACT: Earl James and Associates/ Kevin Dodd
LAND OWNER: Defence Housing Australia
LOCATION: Lot 12104 (5) Stanley Street, Town of Nightcliff (Bookmark A)
ZONE: Zone SD23 (Specific Use Zone)
AREA: 629m²

1. PROPOSAL

The application is for a unit title schemes subdivision to create two units and common property and a building envelope plan over Lot 12104 Town of Nightcliff within Muirhead.

A common property lot is identified on the subdivision plan comprising the water connection and meter, which is also identified as an electricity supply easement. There is no other common property or easements proposed.

A copy of the application is at Bookmark B. On 22 April 2020, during the exhibition period, the applicant submitted an amended plan which altered the proposed setback between buildings on the same site from 0.6m to 1.6m and is provided at Bookmark B2.

2. REASON FOR APPLICATION

Section 44(b) of the Planning Act 1999 states that a development permit is required, 'if the proposed development is the subdivision or consolidation of land.' The application proposes a subdivision for the purpose of a unit title scheme with planning consent therefore required.

3. ASSESSMENT SYNOPSIS

This report concludes that the Authority should approve the application subject to conditions on the development permit.

4. BACKGROUND

The subject lot is currently vacant and the surrounding lots within the suburb of Muirhead have been or are in the process of being developed for single and multiple dwellings under the requirements of Zone SD23 (Specific Use Zone Darwin No. 23). The purpose of Zone SD23, is to facilitate the subdivision, use and development of the land as a residential estate that provides for housing choice through a range of lot sizes and housing types. Any subdivision and future development is expected to respond to Darwin’s tropical climate and lifestyle attributes.

The original subdivision permit for the Muirhead subdivision, DP13/0812 was for the purpose of subdivision to create 451 lots. Under the requirements of Zone SD23 subdivision was required to respond to a Development Design Philosophy and include a land use plan and
setback plan indicating the minimum building setbacks for each lot. The minimum lot size for
the original subdivision was limited to 450m². The subject lot has an area of 736m² and was
created through granting of DP16/0052 and variation permit DP16/0052B issued in December
2016 which endorses the current setback plan (Drawing No. 2015/0877/06B) and land use
plan (Drawing No. 2015/0877/03B). A copy of the setback plan and land use plan is provided
at Bookmark C1.

The land use plan identifies the subject lot for multiple dwellings and the setback plan specifies
a 7.5m setback to Stanley Street, 4m setback to Saunders Street, 3m to the northern side
boundary and 1.5m to the western side boundary.

In May 2019 DP19/0109 issued for the purpose of subdivision and consolidation to create two
lots (boundary realignment) and amendments to the setback plan approved through
DP16/0052A (Bookmark C2). There is no other relevant planning history.

5. PUBLIC EXHIBITION

The application was advertised in the NT News on 9 April 2020 and placed on public exhibition
for a period of two weeks. No public submissions were received under section 49(1) of the
Planning Act 1999.

6. THIRD PARTY APPEAL RIGHTS

There is no right of appeal by a third party under section 117 of the Planning Act 1999 in
respect of this determination and the application relates to subdivision.

7. MATTERS TO BE TAKEN INTO ACCOUNT (SECTION 51 OF THE PLANNING ACT
1999)

(a) any planning scheme that applies to the land to which the application relates

The proposal has been assessed against Clause 2.4 (Specific Use Zones) and Clause 11.1.5
(Subdivision for the Purposes of a Unit Title Scheme) of the Northern Territory Planning
Scheme (NTPS) and does not comply in full. A technical assessment is at Bookmark D.

Building Envelope Plan

Clause 2.4 (Specific Use Zones) provides that, despite anything to the contrary in this Planning
Scheme, land described in Schedule 1 (Specific Use Zones) may be used or developed as
specified in the Schedule subject to any conditions specified in the Schedule and any further
conditions imposed by the consent authority. The provisions of Parts 1, 2, 4, 5, 7 and 8 apply
to development described in Schedule 1 except where they conflict with any conditions
specified in that Schedule. In particular the setbacks to boundaries imposed under Zone SD23
differs from the setbacks that apply under Part 4 of the Scheme.

The proposed building envelope plan provides for setbacks as follows:

- 6m setback to Stanley Street;
- 4m setback to Saunders Street;
- 1.5m to the west side boundary; and
- 1.6m between the wall of each dwelling.

These setbacks meet the minimum distance required to the lot boundary stipulated in the
endorsed setback plan other than the setback to Stanley Street. As the front setback to Stanley
Street is consistent with the maximum setback distance applied to lots in the area the reduced
setback is not likely to materially affect the amenity of adjoining or nearby land.
The proposed setback distance between two residential buildings is 1.6m and a minimum of 3m would typically apply under Clause 7.3.2 (Distance Between Residential Buildings on One Site). However, the setback will encourage breeze penetration between buildings and is generally supported. Further, this distance will comply with Clause 7.3.3 (Reduced Setbacks for Single Dwellings on Lots less than 600m² but not less than 300m²) which applies to standard lots, as a single dwelling on a small lot may have a zero building setback to a side boundary, and a multiple dwelling can have a minimum side setback of 1.5m (or 1m provided it meets the requirements such as maximum height and length limits).

However, in considering the separation distance of 1.6m Building Advisory Services, Department of Infrastructure, Planning and Logistics (BAS) have recommended that an increase to 1.8m (0.9m to unit boundary) would provide more flexibility in the construction of dwellings whilst enabling compliance with the National Construction Code. It is noted that generally, a minimum distance of 1m between a residential building and side boundary of a lot is permitted under the NT Planning Scheme where the wall only includes:

- openings that are either glazed in an opaque material and cannot be opened, or have a sill height of 1.6m or greater;
- does not extend beyond a maximum height of 3.5m; and
- does not extend beyond a maximum length of 9m.

It is understood that under the National Construction Code a setback of less than 0.9m would require the wall to be fire rated and not permit any openings to the unit title boundary. Therefore the increased setback would be beneficial as the ability to include openings will support increased light and natural ventilation for passive cooling.

This was discussed with the applicant and amended plans are expected to be provided prior to the consent authority meeting to address the BAS advice.

It is recommended that the Authority alter the application to require the increased setback in response to the BAS advice.

Clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme)

The proposed subdivision will result in two units and common property. The proposed unit areas are 313m² and 315m² with a 1.0m² common property lot.

Paragraph 1 of Clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme) identifies the purpose of this 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 land is currently vacant and is expected to be vacant at the time unit titles issue. The proposed unit plan will support a multiple dwelling development which is consistent with the intended use of the land. The setback plan proposed is consistent with the minimum building setbacks to lot boundaries as currently applies under Zone SD23 (other than the Stanley Street frontage as discussed above) and is not expected to contribute to loss of amenity within the locality.
Paragraph 2 of Clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme) states that subdivision to create a unit title scheme should meet the requirements of Part 4 of the planning scheme and in particular:

(a) all car parking provided as a requirement of a development must be available at all times for the use of the occupants of the development and their visitors or clients and be included:
   i. in common property; or
   ii. as part of the area under the title for the individual units;
(b) any loading bays provided for:
   i. common use must be in common property; and
   ii. the sole use of an individual unit must be in the entitlement of that unit;
(c) any areas set aside for the communal storage and collection of garbage and other solid waste must be included in common property;
(d) any private open space associated with a dwelling must be included in the unit entitlement of that dwelling; and
(e) any communal facilities and amenities or open space provided for hostels, multiple dwellings and supporting accommodation must be included in common property.

The requirements of Clause 11.1.5 have been addressed through the proposed subdivision design. It is considered that car parking spaces can be accommodated on the title of each unit for the future dwellings. Being a residential development there is no requirement for loading bays. The private open spaces can be accommodated wholly within the respective units. In the future it is expected that any future development on the proposed units will have to satisfy the provisions under Zone SD23 and part 4 unless approved by the consent authority.

Paragraph 6 of Clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme) requires that the common infrastructure for water supply and power generation must be within common property or vested in the relevant service authority. However, Power and Water Corporation have only advised of a requirement for electricity easements and not advised of a requirement for common property or easements in relation to water supply.

The applicant advised that each of the proposed units will be serviced from the existing connections (water, sewer and power) and the internal service connections, providing power, water and sewerage services to each of the two vacant land units will be constructed prior to the issue of titles for the proposed vacant units. In this application there will be no communal facilities and the common property is provided over the existing electricity supply easement and the water connection and meter.

Considering the response from Power and Water Corporation in relation to servicing requirements it is recommended that the proponent ensure that the proposed easement and common property satisfy the service authority, prior to the endorsement of the plan of subdivision to form part of the permit. It is recommended that a condition precedent be applied to respond to this non-compliance.

Paragraph 7 of Clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme) states that where a subdivision to create a unit title scheme proposes that the land will be vacant at the time titles issue, the land area of individual units should be consistent with Clause 11.1.1 (Minimum Lot Sizes and Requirements) and Clause 11.1.2 (Lots intended for Zone SD in Greenfield areas).

The land use plan identifies the intended use of the land for multiple dwellings. The minimum lot size in Zone MD (Multiple Dwelling Residential) is 300m² and each of the two unit areas exceed this requirement. In this instance Clause 11.1.2 (Lots intended for Zone SD in Greenfield areas) is not applicable.
(b) **any proposed amendments to such a planning scheme:**
   (i) that have been or are on exhibition under Part 2, Division 3;
   (ii) in respect of which a decision has not been made under Part 2, Division 5; and
   (iii) that are relevant to the development proposed in the development application

A proposed Planning Scheme Amendment (PA2020/0031) is relevant to this application.

On 6 March 2020, a Planning Scheme Amendment that proposes to repeal the current Northern Territory Planning Scheme (NTPS) and introduce the Northern Territory Planning Scheme 2020 (NTPS2020) commenced exhibition.

The NTPS2020 aims to:

- have a clearer structure;
- create a stronger role for strategic plans and policies;
- introduce “overlays” (specific requirements that have the potential to impact on a particular development);
- give more guidance around the intent of zones and development requirements; and
- split “discretionary uses” into two categories - “merit assessable” and “impact assessable”.

Due to the structure of the NTPS2020 and the introduction of ‘overlays’, the numbering associated with the clauses will change. For example the current scheme details the requirements for building setbacks of residential buildings under Clause 7.3, however the NTPS2020, will refer to the same provisions under Clause 5.4.3.

Under the current NTPS, planning permission is required as the proposal is for a unit title schemes subdivision and to amend the endorsed setback plan. The technical requirements for assessing the unit title scheme subdivision and the setback plan remain unchanged other than the changes to the considerations given when applying discretion to a non-compliant development.

The NTPS2020 will not alter the requirements that apply to development within specific use zones or to subdivision for a unit title scheme subdivision and in this instance would not have any impact on the assessment of the application.

Copies of the unit title scheme subdivision clause can be found at Bookmark E.

(c) **an interim development control order, if any, in respect of the land to which the application relates**

There are no interim development control orders relevant to the site.

(d) **an environment protection objective within the meaning of the Waste Management and Pollution Control Act that is relevant to the land to which the application relates**

There are no environmental protection objectives relevant to the land.

(e) **any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application**

There were no public submissions received in relation to this application.
(f) a matter that the Minister has, under section 85, directed it to consider in relation to development applications generally

The Minister has made no direction in relation to the application.

(g) if a public environmental report, or an environmental impact statement, has been prepared or is required under the Environmental Assessment Act in relation to the proposed development – the report or statement and the results of any assessment of the report or statement under that Act by the Minister administering that Act

The proposed development does not require the preparation of any environmental reports or impact statements under the Environmental Assessment Act 1982.

(h) the merits of the proposed development as demonstrated in the application

The applicant considers the following as merits of the application:

- Creation of units and common property is more affordable because new connections to power and water infrastructure are not required;
- Each of the units will be serviced from the existing service connections (water, sewer and power) prior to titles issuing as would otherwise be required were multiple dwelling were constructed;
- A subdivision under the Land Title Act 2000 rather than the Unit Title Scheme Act 2009 would create lots with areas that do not meet the requirements that apply to Zone SD23;
- The land has always been intended for unit title subdivision, hence the identification of the land for multiple dwellings; and
- The covenant registered on the title permits creation of unit titles therefore the proposal is consistent with the expectations of property owners in Muirhead.

DAS notes that the identification of the land for multiple dwellings on the site does not imply that the intention is for unit title subdivision, rather the potential for a duplex was envisaged.

(j) 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 subject land is identified for multiple dwellings and is considered to be capable of supporting the intended unit arrangement and building setbacks. The application was reviewed by the Department of Environment and Natural Resources and there were no issues raised. The land is therefore considered capable of supporting the proposed unit title schemes subdivision.

(k) the public facilities or public open space available in the area in which the land is situated and the requirement, if any, for the facilities, or land suitable for public recreation, to be provided by the developer

No additional facilities or public open space for public use is required for this style of development.

(m) 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 proposal was circulated to the following service authorities and agencies for comment:

**City of Darwin – Bookmark F**

City of Darwin requests the inclusion of conditions precedent to address vehicle access to both lots and stormwater easements. Further a separate application to the City of Darwin is required for all works over City of Darwin property.

All requirements can be addressed through conditions and notes on any permit issued.

**Power and Water Corporation (PWC) - Bookmark F2 & F3**

In relation to power supply, PWC advised:

To supply power the developer will be required to install a shared main switchboard for separate power connections to Unit 1 and Unit 2 for future developments. A spare 100mm conduit shall need to be installed at the shared customers’ main switchboard and extended into 0.5m beyond the proposed boundary to avoid future trenching works over unit 1. The applicant clarified that the Power and Water Corporation incorrectly identified the proposed 1m² common property lot as an electricity easement.

In relation to water supply, PWC advised:

Upgrades to water and sewer services may be required and shall be carried out to the requirements of PWC.

DAS notes that the common property proposed for water connection and metering arrangements was not identified as a requirement by PWC. Further, PWC have no requirements for common property or easements.

A condition precedent to identify required electricity easements and inclusion of standard conditions and notes on any permit issued is recommended to address these requirements.

**Building Advisory Services (Department of Infrastructure, Planning & Logistics)- Bookmark F4**

In relation to the proposed building setback, BAS advised that an increase to a 0.9m setback would provide flexibility in construction whilst complying with the National Construction Code.

BAS recommended further consideration be given to appropriate access for the installation, maintenance and repairs of services, such as relocation of common property to the common boundary or an easement for the purpose of access to utilities for both dwellings.

At the time of writing the applicant had not provided amended plans to respond to the recommended setback of 0.9m between the unit title boundary and the building, however may table a response at the meeting. Further discussion of this matter is provided under section 51 (a) of this report.

DAS notes that the applicant responded to the matter raised relating to internal servicing by referring to Section 51 of the *Unit Title Scheme Act 2009*. This section refers to statutory easements and states that:

1. An easement (statutory easement) exists for a lot (the benefited lot) against another lot for the following purposes:
   1. an easement for establishing, maintaining and replacing a utility infrastructure located in the other lot
Further, where a service authority has a requirement for an easement the consent authority must take this into account. Similarly the allocation of common property over services would only be imposed where the service authority has identified this in its submission to the consent authority.

**Survey Land Records (Department of Infrastructure, Planning & Logistics) - Bookmark F5**

Survey Land Records have advised that street addressing will be assigned to the development on data allocation according to the Australian/New Zealand Standard.

All requirements can be addressed through conditions and notes on any permit issued.

**Department of Environment and Natural Resources - Bookmark F6**

Department of Environment and Natural Resources advised of no issues of concern with the proposal.

**(n) the potential impact on the existing and future amenity of the area in which the land is situated**

The unit title scheme subdivision is unlikely to impact the existing and future amenity of the area and future development of the land will be required to respond to the Development Design Philosophy including:

- dwellings sited so as to have sufficient area to provide for the dwellings, vehicle access, parking and ancillary structures; and
- breezeway separations between buildings and the inclusion of side yard spaces.

The first dwelling constructed on the site will be permitted subject to meeting the requirements of Zone SD23 including the minimum setbacks to each lot boundary as shown on an approved setback plan. Where a single dwelling does not meet the requirements and special circumstances are applicable, an application can be considered for a Development Permit. Further, the second dwelling will require consent and meet the requirements of the Scheme as if the land was within Zone MD.

Therefore further consideration of possible amenity impacts of physical development of the land can considered where required through assessment of a Development Application.

**(p) the public interest, including (if relevant) how the following matters are provided for in the application:**

- community safety through crime prevention principles in design;
- water safety;
- access for persons with disabilities

The proposal is unlikely to impact the public interest.

**(q) for a proposed subdivision of land on which a building is, or will be, situated – whether the building complies, or will 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)**

The land is currently vacant with no buildings proposed as part of this application.

Clause 11.1.5 (Subdivision for the Purpose of a Unit Title Scheme) requires that where scheme land will be vacant at the time titles issue, all lots must comply with the minimum lot sizes required under Clause 11.1.1 (Minimum Lot Sizes and Requirements) of the NTPS. As is
discussed above, the units comply with the minimum lots size for the intended use of the land which suggests that dwellings of appropriate design could be developed on the land.

(r) **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**

There are no known natural, social, cultural or heritage values on the site or in the immediate surrounding area.

(s) **any beneficial uses, quality standards, criteria, or objectives, that are declared under section 73 of the Water Act**

There is no declared beneficial use likely to be impacted as a result of the proposed unit title schemes subdivision. It is the responsibility of the developer and land owner to ensure that the eventual land use does not result in a contravention of the *Water Act 1992*.

(t) **other matters it thinks fit**

Section 54A of the *Land Title Act 2000* provides that the plan of subdivision for the purpose of a unit title scheme cannot be registered unless the first scheme statement is also registered at the same time. Under the *Unit Title Schemes Act 2009*, the scheme statement is a written statement for:

- the creation of 2 or more units and common property from:
  - land subdivided under a plan of subdivision when the scheme is formed; and
  - any changes to the land at a later time (including, for example, an addition to, or consolidation or further subdivision of, the land); and
- the formation of a body corporate constituted by the unit owners.

Should consent be granted, a development permit condition is to be included which requires the consent authority endorsement of a Scheme Statement which meets the requirements of the *Unit Title Schemes Act 2009* (as confirmed by the Land Titles Office).

No other matters are raised for consideration by the consent authority.

8. **RECOMMENDATION**

That, pursuant to section 53(b) of the *Planning Act 1999*, the Development Consent Authority alter the proposed development and consent to the proposed development as altered to develop Lot 12104 (5) Stanley Street, Town of Nightcliff for the purpose of a unit title schemes subdivision to create two units and common property and a building envelope plan, subject to the following conditions:

**CONDITIONS PRECEDENT**

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), confirmation shall be provided to the satisfaction of the consent authority that the:
   - design of electrical services to each unit satisfies the requirements of the Power and Water Corporation; and
   - design of stormwater infrastructure satisfies the requirements of the City of Darwin.

2. 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. The plans must be generally in accordance with the plans submitted with the application but modified to show:
a) a building envelope plan with the minimum setback distance between buildings on the lot increased from 1.6m to 1.8m; and
b) any changes required as a result of compliance with Condition Precedent 1.

CONDITIONS

3. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.

4. 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.

5. 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.

6. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage and electricity facilities and telecommunication networks to each lot shown on the endorsed plan in accordance with the authorities’ requirements and relevant legislation at the time.

7. Prior to new titles being issued for the units shown on the endorsed drawings, a Scheme Statement meeting the requirements of the Unit Title Schemes Act 2009 (as confirmed by the Land Titles Office) shall be submitted for endorsement by the consent authority.

8. 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.

9. 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.

10. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin, to the satisfaction of the consent authority.

11. 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) demonstrating that the Power and Water Corporation has been provided with a copy of the survey plan with the new lot numbers. This is for the purpose of ensuring the relevant Power and Water Information and Billing System is updated. Please provide a copy of an email addressed to both landdevelopmentnorth@powerwater.com.au & powerconnections@powerwater.com.au.

12. 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.

13. Prior to new titles being issued, it shall be confirmed by the consent authority that all areas shown on the plans 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 of the survey plan as Common Property.

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 8995 5354. The numbers shown on the plans endorsed as forming part of this permit are indicative only and are not for addressing purposes.

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. 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.

5. Prior to new titles being issued, it shall be confirmed by the consent authority that all areas shown on the plans endorsed by the consent authority through this permit as service authority easements, communal open space, shared driveways, or areas set aside for communal storage and collection of garbage or solid waste, or other shared amenities are shown on the survey plan as common property.

6. The subdivision results in a unit title scheme subdivision resulting in two units and common property including a private driveway. Vendors are requested to inform future landowners of the nature of the development to ensure future landowners understand the entitlements and contributions associated with the unit title scheme subdivision.

9. REASONS FOR THE RECOMMENDATION

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

The application is for a unit title schemes subdivision to create two units and common property Lot 12104 Town of Nightcliff. The Northern Territory Planning Scheme (NTPS) applies to the land. The land is within Zone SD23 (Specific Use Zone Darwin No. 23) of the NTPS.

Section 44(b) of the NT Planning Act 1999 states that a development permit is required, ‘if the proposed development is the subdivision or consolidation of land.’ The application
proposes a subdivision for the purpose of a unit title scheme with planning consent therefore required.

The application was considered against the applicable clauses of the NTPS including Clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme). The proposal generally satisfies the requirements of Clause 11.1.5 and consent is therefore considered appropriate. However, the determination of appropriate electricity and drainage easement locations is required to be addressed and a condition precedent is applied to ensure plans are endorsed which identify easements to be vested with the relevant authority.

Section 54A of the Land Title Act 2000 provides that the plan of subdivision for the purpose of a unit title scheme cannot be registered unless the first scheme statement is also registered at the same time. A condition requiring endorsement of a scheme statement prior to the issue of titles is therefore included as part of this permit.

2. Pursuant to section 51(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 considered capable of supporting the proposed unit title schemes subdivision as it is generally consistent with the relevant requirements of Part 5 of the NTPS. The application was circulated to relevant service authorities for comment with no land capability concerns identified.

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

The unit title scheme subdivision is unlikely to impact the existing and future amenity of the area. The setback plan, as altered, generally accords with the plan submitted and endorsed as part of the Muirhead subdivision but modified to show a breezeway between the two building envelopes on the site. Future development of the land will be required to respond to the endorsed setback plan and Zone SD23 (Specific Use Zone Darwin No. 23) Development Design Philosophy including siting of dwellings.

4. Pursuant to section 51(m) of the Planning Act 1999, the consent authority must take into consideration 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.

Comment received from service authorities highlighted a number of development specific requirements that have been addressed through appropriate conditions and/or notations on the permit.

In particular, regarding electricity supply, Power and Water Corporation require electrical installations to be carried out to facilitate unit building constructions in future, as part of the subdivision works. City of Darwin require the proponent to address the stormwater drainage infrastructure requirements to service each of the units from the single connection point.

AUTHORIZED: ..............................................
SENIOR PLANNER
DEVELOPMENT ASSESSMENT SERVICES
Development Consent Authority

I hereby authorise Earl James and Associates to lodge a Development Application over Lot 12104, Town of Nightcliff.

Regards,

Chris Grimm
Senior Development Manager
Defence Housing Australia
Lot 12104, Town Nightcliff
Development Application

INTRODUCTION

Lot 12104, Town of Nightcliff is located in the northern Darwin suburb of Muirhead that has been developed by Defence Housing Australia (DHA). The lot is still owned by DHA.

Muirhead is a master planned residential development marketed as Muirhead Breezes. The whole subdivision covers an area of approximately 167 hectares.

The subdivision has been developed under a specific use zoning (SD23) with the purpose of the zone being to facilitate the development of the land as a residential estate that provides for housing choice through a range of lot sizes and housing types.

Lot 12104 has been identified as a Multiple Dwelling lot in the Development Consent Authority (DCA) approval (DP16/0052B) however this designation, and the size of the lot has not attracted any interest from potential multiple dwelling developers.

The lack of interest stems from the fact that after constructing a multiple dwelling development, comprising two dwellings, the final sales price for each of the dwellings, which includes the developer’s profit margin, is simply out of the price range that most people are willing to pay.

In order to make the land available to potential home owners, at an affordable price that does not include a developer’s profit margin, the intention is to create two vacant land units that can then be sold separately to home owners/builders.

Consequently, this application is seeking the approval of the Development Consent Authority to subdivide Lot 12104, Town of Nightcliff for the purpose of creating 2 units (vacant) and Common Property in accordance with design plan 20/9052/604A.
MATTERS TO BE ADDRESSED

46(3)(a) – Compliance with the NT Planning Scheme

Lot 12104 is within the area designated as zone SD23 (Specific Use Zone Darwin 23) under the NT Planning Scheme.

The purpose of this zone is to facilitate the subdivision, use and development of land as a residential estate that provides for housing choice through a range of lot sizes and housing types.

The lot was identified and endorsed (by the DCA) as being suitable for a Multiple Dwelling development with a resulting yield of 2 dwellings on the parcel.

The proposed unit title subdivision will not result in an increase in the yield so the total dwellings per hectare, one of the items set out in SD23, will not increase.

DP16/0052B also approved site setbacks for proposed Lot 12104 although the setback from Stanley Street was revised by DP19/0109.

This current application is proposing to maintain the previously approved setbacks from both Saunders and Stanley Streets. All existing side and rear boundary setbacks are to be retained in order for the breezeway concept for the Muirhead subdivision to be maintained.

The multiple dwellings that could be developed on Lot 12104 under the existing arrangements would likely have included a common party wall between two units being constructed perpendicular to Stanley Street. The current application is now proposing a setback of 0.3 metres from the proposed common boundary between Units 1 and 2. This 0.3 metres will be available to accommodate termite protection and/or drainage measures if required.

This application is also seeking approval for the boundary setbacks indicated on plan 20/9052/604A.

Clause 11.1.5 of the NT Planning Scheme (NTPS) deals with subdivision for the purpose of a unit title scheme.

This section of the NTPS would have been utilised if multiple dwellings had been constructed on Lot 12104, prior to subdivision into separate titles, as approval under the Planning Act is required for unit titling of multiple dwellings.

In particular, Clause 11.1.5 (7) specifically addresses the situation where a subdivision to create a unit title scheme proposes that the land will be vacant at the title titles issue.

That is what is being proposed by the current application but once the dwellings are developed on each of the proposed vacant units, all the relevant sub-clauses of 11.1.5 will be satisfied:

- All car parking associated with each of the units will be comprised within the unit title boundaries.
- There will be no areas for communal storage and collection of garbage and other solid waste.
- The private open space associated with each dwelling will be included in the unit entitlement of that dwelling.
- There will be no communal facilities and amenities as the Common Property will be limited to a small area comprising the water connection and metering arrangements.
- Sub-clauses 3, 4, 5, 6, 8 and 9 are not applicable to the current application.

Sub-clause 7 requires that the land area of the individual units should be consistent with clause 11.1.1.

Whilst the subject land is zoned SD23 under the NTPS, it is identified as a Multiple Dwelling lot on the plans endorsed as part of DP16/0052B.

Each of the proposed vacant units will have an area in excess of the 300m² specified for MD lots in the table to Clause 11.1.1.

Sub-clause 7 also refers to Clause 11.1.2 (lots intended for Zone SD in Greenfield areas) however this clause is not applicable given that Lot 12104, and therefore the proposed vacant units, have been identified for multiple dwellings.
Given that the subject land is identified for Multiple Dwellings, any future development on either of the proposed vacant units will require approval under the Planning Act and the proposed development will be required to conform with the requirements of the NTPS.

**46(3)(b) – Compliance with an Interim Development Control Order**

The Applicant is not aware of any Interim Development Control Orders applying to the subject land.

**46(3)(c) – Public Environmental Report or Environment Impact Statement**

There is no requirement for a report or statement under the Environmental Assessment Act.

**46(3)(d) – Merits of the proposed development**

The purpose of this application to create more affordable land parcels that will in turn facilitate the development of more affordable dwellings.

Unit titling of vacant land is permitted under the NTPS and the land will be titled in accordance with the provision of the Unit Title Schemes Act.

The titling process involves the registration of a Scheme Statement that describes the development, lists the interest and contribution entitlements of each unit, details dispute resolution procedures and the details of any by-laws that apply to the land.

The Scheme Statement for the proposed unit title subdivision will be very basic as there will be very little Common Property.

A valuer will be engaged to prepare the Schedule of Interest Entitlements and these entitlements reflect the differences in market value between the two units at the time the Scheme is created.

The contribution entitlement of each unit represents each unit owner’s contribution to the annual expenses of the body corporate. For the proposed subdivision the contribution entitlement for each unit will be equal.

Unit titling of Lot 12104 to create two units and Common Property has been determined to be preferable to a conventional subdivision of the Lot to create two smaller lots, for a number of reasons.

One of the major reasons for unit titling being the more desirable option is that development costs will be much cheaper due the fact that new connections from PWC infrastructure are not required. Lower development costs mean that the savings can be passed onto the purchasers with the vacant unit land being sold at a more affordable price.

Each of the proposed units will be serviced from the existing PWC connections (water, sewer and power), just as they would be if multiple dwellings were constructed on 12104 prior to titling.

The internal service connections, providing power, water and sewerage services to each of the two vacant land units will be constructed prior to the issue of titles for the proposed vacant units.

The division of the subject land as a conventional subdivision, as opposed to unit titling, would create conventional lots with areas that conflict with the SD23 zone. Unit titling of Lot 12104 has always been intended (hence the identification as a Multiple Dwelling lot) so the current proposal is consistent with SD23.

The subject lot also has a covenant registered on title with the purpose of the covenant being to control the standard of development throughout the Muirhead subdivision. The covenant permits subdivision for the purpose of creating unit titles so the current proposal is consistent with the covenant and also the expectations of the other property owners in the Muirhead subdivision.

**46(3)(e) – The physical characteristics of the land**

Prior to the development of 12104, it was determined that the physical characteristics of the land were suitable for the development of a residential allotment and the subsequent development of multiple dwellings. The current proposal only introduces a single boundary, prior to the construction of the intended multiple dwellings, and there are no physical characteristics that would make this proposal inappropriate.
**46(3)(f) – Public facilities or open space**

The public facilities and open space areas already approved by the DCA have all been constructed in Muirhead and these will be available for the families that will reside on the proposed units.

The proposal will not result in the development of any additional dwellings and consequently there is no increased demand for public facilities or open space resulting from the current application.

**46(3)(g) – Public utilities and infrastructure**

As previously mentioned, Lot 12104 is connected to reticulated sewer, water and power and no changes to these connections are required. Furthermore, no new connections are required.

Multiple water meters will be established prior to the issue of titles and, once constructed, the multiple dwellings will have separate power meters. This is exactly the same arrangement that results from unit titling after the construction of multiple dwellings so the situation is not altered by creating vacant land units.

Both of the proposed units can be accessed from a public road. One access is already in place and the second access will be designed and constructed in consultation with City of Darwin council during the development of the dwelling on the vacant land unit.

**46(3)(h) – Potential impact on the existing and future amenity of the area**

The proposal does not result in any additional dwellings and consequently the proposal will facilitate an outcome that was expected by the other residents in the area.

The proposal to create vacant land units will have no adverse impact on the existing or future and amenity of the area.
Unit 3
315m²

Unit 4
313m²

SAUNDERS STREET

ALDENHAM ROAD

LOCATION DIAGRAM
Not to Scale

Note
Subdivision to create two Unit Titles and Common Property
All areas and dimensions are subject to survey
Easements should be confirmed with the current Certificate of Title

denotes Common Property
denotes Building Envelope
denotes Building setback

LOT 12104
TOWN OF NIGHTCLIFF
DEVELOPMENT APPLICATION
Client: DEFENCE HOUSING AUSTRALIA
Our ref: 9052

There are no buildings on the land proposed to be subdivided in accordance with the provisions of the Unit Title Schemes Act.
Location Diagram

Note
Subdivision to create two Unit Titles and
Common Property
All areas and dimensions are subject to survey
Easements should be confirmed with the current
Certificate of Title

denotes Building Envelope

denotes Building setback

denotes Common Property
Master Plan
Stage 7 Variation
Lot 11793 - Town of Nightcliff
MUIRHEAD

Development Returns

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Lot Breakdown

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<tbody>
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</tr>
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This sheet has been prepared exclusively for
Maunders and Gifford for the Stage 7 Variation
Application Lot 11793 - Town of Nightcliff
Information provided on this sheet has been obtained through multiple sources.
PerryB. L2000; D. 20 NOVEMBER 2015 15:44, 10
O'Canion Court
Warwick, W.A. 6392
P. 935 892 2480
masterplan.com.au
NORTHERN TERRITORY OF AUSTRALIA

Planning Act 1999 - sections 54 and 55

DEVELOPMENT PERMIT
DP19/0109

DESCRIPTION OF LAND THE SUBJECT OF THE PERMIT
Lot 12103
Lot 12104
Town of Nightcliff
7 STANLEY ST, MUIRHEAD
5 STANLEY ST, MUIRHEAD

APPROVED PURPOSE
To use and develop the land for the purpose of subdivision and consolidation to create two lots (boundary realignment) and amendments to the setback plan approved through DP16/0052A lots, in accordance with the attached schedule of conditions and the endorsed plans.

VARIATIONS GRANTED
Nil.

BASE PERIOD OF THE PERMIT
Subject to the provisions of sections 58, 59 and 59A of the Planning Act 1999, this permit will lapse two years from the date of issue.

SUZANNE PHILIP
Delegate
Development Consent Authority
02 May 2019
DEVELOPMENT PERMIT
DP19/0109

SCHEDULE OF CONDITIONS

1. The works carried out under this permit shall be in accordance with drawings 2019/0084/01 and 2019/0084/02 endorsed as forming part of this permit.

2. 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.

3. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities and electricity to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

4. 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.

5. The inclusion of a design covenant that future development is required to comply with is to be registered on the title of each lot which enforces compliance with Zone SD23 of the Northern Territory Planning Scheme, in particular subclauses 2(d), 2(e), 2(f) and 2(g), to the satisfaction of the consent authority.

6. 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.

NOTES

1. Power and Water Corporation advise that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and the Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of one month prior to construction works commencing to determine servicing requirements and the need for upgrading of infrastructure.

2. The Northern Territory Environment Protection Authority advises that construction work should be conducted in accordance with the Authority’s Noise Guidelines for Development Sites in the Northern Territory. 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.

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 Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records Unit on (08) 8995 5362 (surveylandrecords@nt.gov.au).
Existing boundary

Lot 12092

Lot 12105

Lot 1
806m²

Lot 2
450m²

1.0m x 1.0m ELECTRICITY SUPPLY EASEMENT (existing)

Note
All areas and dimensions are subject to survey

Proposed land use:
- Lot 1 - Multiple dwelling
- Lot 2 - Single dwelling

Drawing number 2019/0084/01
Referred to in Permit No: DP19/0109

This document contains drawing numbers:
2019/0084/01 - 2019/0084/02

Referred to in Permit No: DP19/0109
Issued by the consent authority on: 02 MAY 2019

All drawings contained within this document have been authorised by the delegate of the consent authority.

Delegate
Note
All areas and dimensions are subject to survey.
Easements should be confirmed with the current Certificate of Title.

- denotes building envelope
- denotes building setback

Proposed land use:
Lot 1 - Multiple dwelling
Lot 2 - Single dwelling

Drawing number: 2019/0084/02
Referred to in Permit No: DP19/0109
TECHNICAL ASSESSMENT OF PROPOSED DEVELOPMENT AGAINST RELEVANT PROVISIONS OF THE NORTHERN TERRITORY PLANNING SCHEME

Application No: PA2020/0109
Lot number: Lot 12104
Town/Hundred: Town of Nightcliff
Zone: SD23 (Specific Use – Darwin)
Site Area: 629 m²
Proposal: Unit title schemes subdivision to create two units and common property and a building envelope plan

Clause 2.6 (Subdivision of Land) of the NT Planning Scheme states that land may be subdivided and consolidated only with consent and subject to the relevant provisions of Part 5 of the Planning Scheme. Accordingly, the application is considered against the following relevant clauses of the Scheme:

- Clause 2.4 Specific Use Zone SD23
- Clause 2.7 Reference to Policy - Darwin Regional Land Use Plan 2015
- Clause 11.1.5 Subdivision for the Purposes of a Unit Title Scheme

Date Assessment finalised: 15/05/2020
Plans used for assessment: ‘20/9052/604-B’

This is a technical assessment of the proposal against the requirements of the Northern Territory Planning Scheme and is no indication of whether or not approval will be given by the Development Consent Authority. It is noted that clause 2.5 (Exercise of Discretion by the Consent Authority) allows the Development Consent Authority discretion to vary standards only where special circumstances justify the giving of consent or impose a condition requiring a higher standard if it considers it necessary to do so.
2.4 Specific Use Zone

Zone SD23

The purpose of this zone is to facilitate the subdivision, use and development of the land as a residential estate that provides for housing choice through a range of lot sizes and housing types.

Paragraph 2

Development Design Philosophy

Any subdivision and future development is expected to be designed to respond to Darwin’s tropical climate and lifestyle attributes. This includes, but is not limited to, adherence to the following design principles:
(a) lot patterns which are best suited to catching prevailing breezes;
(b) local streets which include a single carriageway with footprints which enable groupings of large street trees in public space and smaller trees in front yards;
(c) lots and dwellings sited so as to have sufficient area to provide for the dwellings, vehicle access, parking and ancillary structures;
(d) the inclusion and adaptation of porches and decks as living spaces which are designed to encourage activation of and overlooking of streets and public spaces;
(e) a mix of heavy and lightweight elements in the front façade of the building;
(f) breezeway separations between buildings and the inclusion of side yard spaces; and
(g) housing which promotes cross ventilation through building orientation and layout, with extended roofs and overhangs for additional shade and weather protection.

Paragraph 3

With consent land within this zone may be developed for the purpose of subdivision if:

- The development application to subdivide the land is accompanied by:
  i. a drawing including the proposed land use; and
  ii. a setback plan indicating the minimum building setbacks for each lot, consistent with the Development Design Philosophy in paragraph 2; and the drawings forming part of any development permit for subdivision.

The subject lot was created through granting of DP16/0052 in February 2016 and variation permit DP16/0052B was issued in December 2016 and endorses the current setback plan (Drawing No. 2015/0877/06B) and land use plan (Drawing No. 2015/0877/03B) shown below.

This application includes an indicative building envelope plan which illustrates how the future development of the land can occur in accordance with the NT Planning Scheme. The plan submitted is generally
consistent with the existing plan approved under DP16/0052B other than applying a new minimum setback between future dwellings and a 6m setback to Stanley Street rather than 7.5m.

The existing lot configuration limits the opportunity for flexibility in building envelope orientation however the siting has considered breezeway penetration and provides sufficient area for a dwelling, vehicle access, parking and ancillary structures.

**Paragraph 5**

Without consent a lot may be development for the purpose of a single dwelling, if the development:

- is consistent with the setback plan endorsed for the lot under paragraph 3 of this zone, and includes a breezeway along one side boundary of a width no less than 4.5m;
- has no more than 16m² of roofed area intruding into the breezeway;
- provides, in lieu of compliance with the minimum dimensions of private open space in Table to Clause 7.5 Private Open Space, a total area of private open space of no less than 130m² and 'open to the sky’; and
- complies with all other requirements of the Planning Scheme as if the land were in Zone SD (Single Dwelling Residential).

If the development does not comply with the requirements in the paragraph above, it shall be permitted only with consent and the consent authority may consent only if it is satisfied that special circumstances justify the giving of consent.

The first dwelling constructed on the site will be permitted subject to meeting the requirements of Zone SD23 including the endorsed setback plan. An application can be considered for a Development Permit where the single dwelling did not meet the requirements where special circumstances are applicable.

**Paragraph 7**

With consent a lot may be developed for the purpose of multiple dwellings subject to all the relevant clauses of the Planning Scheme that would apply were the land within Zone MD.

The consent authority may consent to the development of a lot for the purpose of multiple dwellings only where it has been identified for multiple dwellings on the land use drawing endorsed under paragraph 3.

The second dwelling constructed on the site, will require consent and to meet the requirements for development within Zone MD.

The site is identified on the land use plan for multiple dwellings.

The relevant clauses that apply to a multiple dwelling within Zone MD (Multiple Dwelling Residential) are:

- Clause 6.5.1 (Parking Requirements)
- Clause 7.1 (Residential Density and Height Limitations)
- Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures)
- Clause 7.5 (Private Open Space)
- Clause 7.6 (Communal Open Space)
- Clause 7.7 (Landscaping for Multiple Dwellings, Hostels and Supporting Accommodation)
- Clause 7.8 (Building Design for Multiple Dwellings, Hostels and Supporting Accommodation)

The applicant has submitted a setback plan to demonstrate how the building envelope of future developments can be located on the proposed units. It is expected that any future development on the proposed units will have to satisfy part 4 requirements unless a variation is approved by the Consent Authority. Comment is provided where variation to provisions is required.
Residential building setbacks relate to lot boundaries and not unit title boundaries. The minimum setback distance between residential buildings to a lot boundary is determined based on the endorsed setback plan shown in Drawing No. 2015/0877/06B. The setback requirements for one and two storey residential buildings are shown below:

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<th>Setback plan</th>
<th>Boundary</th>
<th>Minimum Requirements</th>
<th>Proposed setbacks – Unit 3</th>
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<td>NA</td>
<td>4m</td>
<td>Complies</td>
</tr>
<tr>
<td>2015/0877/06B</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stanley Street</td>
<td>7.5m</td>
<td>6m</td>
<td>NA</td>
<td>Does not comply (Unit 3)</td>
<td></td>
</tr>
<tr>
<td>Side and rear</td>
<td>1.5m (west side)</td>
<td>1.5m (west side)</td>
<td>NA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>boundaries</td>
<td>3m (north side)</td>
<td>3m (north side)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In summary, the setback plan proposed meets the minimum distance required to the lot boundary, other than the setback to Stanley Street.

Further, the plan introduces a proposed setback distance between two buildings which does not meet Clause 7.3.2 (Distance Between Residential Buildings on One Site).

**Clause 7.3.2 (Distance between Residential Buildings on One Site)**

Where more than one building comprising one or two storey residential buildings is located on a site the distance between the buildings is to be calculated in accordance with Table A to Clause 7.3 as if there was a boundary between the buildings.

A minimum 3m setback between the two buildings would therefore be required and the proposal is for 1.6m, or 0.8m from the building to the unit title boundary.

**CAN COMPLY – CONSENT REQUESTED TO ENDORSE REVISED BUILDING SETBACK PLAN TO FORM PART OF ZONE SD23**

### 2.7 Reference to policy

Clause 2.7 (Reference to Policy) of the NTPS states that the interpretation of the Planning Scheme and the determinations of a consent authority must have regard to the policies and planning concepts expressed in those documents appearing in Part 8 or Schedule 2 and ensure that a use or development or proposed use or development is consistent with them. Schedule 2 of the Planning Scheme makes reference to eleven policy documents. The following documents are relevant.

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

The purpose of the Darwin Regional Land Use Plan 2015 is to identify the essential characteristics and needs that will shape future development in the region and establish an overarching framework for
development. The DRLUP identifies the subject land as within the urban/peri-urban extent in Casuarina. The DRLUP is intended as a high-level document and does not provide much guidance regarding development in the region relevant to this proposal.

11.1.5 Subdivision for the Purpose of a Unit Title Scheme

1. The purpose of this 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 proposes subdivision for the purpose of a unit title scheme to create two units and one common property lot. The land is currently vacant and is expected to be vacant at the time unit titles issue. The proposed unit plan will support a multiple dwelling development which is consistent with the intended use of the land.

The applicant has submitted a setback plan for the development on the proposed unit lots. The proposed setback to the Stanley Street frontage and the new setback distance between dwellings that is being proposed is inconsistent with the existing endorsed setback plan. The proposed setback to the street of 6m is not expected to contribute to loss of amenity within the locality as the surrounding lots have a minimum setback of 6m.

2. Subject to sub-clauses 3, 4, 5 and 8 a subdivision to create a unit title scheme should meet the requirements of Part 4 of the planning scheme and in particular:
   a) all car parking provided as a requirement of a development must be available at all times for the use of the occupants of the development and their visitors or clients and be included:
      i. in common property; or
      ii. as part of the area under the title for the individual units;
   b) any loading bays provided for:
      i. common use must be in common property; and
      ii. the sole use of an individual unit must be in the entitlement of that unit;
   c) any areas set aside for the communal storage and collection of garbage and other solid waste must be included in common property;
   d) any private open space associated with a dwelling must be included in the unit entitlement of that dwelling; and
   e) any communal facilities and amenities or open space provided for hostels, multiple dwellings and supporting accommodation must be included in common property.

The land is currently vacant with eventual development yet to be determined/approved.

3. A lawfully established use or development on a lot may be subdivided to create a unit title scheme only if the use or development has been upgraded to meet the performance criteria within Part 4 of the planning scheme that apply to the use or development of the land. If it is not possible to meet the criteria the consent authority must be satisfied that the proposed upgrading is the only practicable design solution.

The land is currently vacant – not applicable.

4. The consent authority must not consent to a subdivision that results in a separate unit title for:
a) an independent unit;
b) a business associated with a home occupation, home based child care, home based contracting or medical consulting rooms; or
c) a dependant unit lawfully established prior to the introduction of Amendment No. 321 published in the NT News.

The land is current vacant – not applicable.

5. If there is a requirement for a firebreak along the perimeter boundary of the unit title scheme, the consent authority must not consent to a subdivision unless the firebreak is within common property.

No firebreaks are required – not applicable.

6. If there is a requirement for common infrastructure including internal roads, water supply, effluent disposal, waste disposal or power generation, the consent authority must not consent to a subdivision unless that infrastructure is within common property or vested in the relevant service authority.

Power and Water Corporation advised that only one power supply on Common Property unit is provided to a UTS lot and a shared main switchboard for the two units must be designed and installed prior to supply to individual units can be constructed safely and in compliance with Power and Water Corporation requirements.

To supply power the developer will be required to install a shared main switchboard for separate power connections to Unit 1 and Unit 2 for future developments. A spare 100mm conduit shall need to be installed at the shared customers’s main switchboard and extended into 0.5m beyond the proposed boundary to avoid future trenching works over unit 1. An 1m x 1m electricity easement is shown on the proposed plan.

In regards to water, Power and Water Corporation have no requirements for common property or easements.

7. Where a subdivision to create a unit title scheme proposes that the land will be vacant at the time titles issue, the land area of individual units should be consistent with clauses 11.1.1 (Minimum Lot Sizes and Requirements) and 11.1.2 (Lots intended for Zone SD in Greenfield areas).

For the purpose of sub-clause 7, “land area” does not include:

a) common property;
b) land that will be permanently inundated; or
c) a marina berth.

The land is expected to be vacant at the time unit titles issue and the individual unit areas must therefore comply with Clause 11.1.1. The land is ultimately intended to be used in accordance with Zone MD (Multiple Dwelling Residential) which requires a minimum lot size of 300m². The submitted plan show unit 3 will have an area of 315m² and Unit 4 an area of 313m².

8. Despite subclause 7, a subdivision to create a unit title scheme on unzoned land may include units with reduced land areas if the unit title scheme addresses the requirements of sub-clause 9.

The subject land is not on unzoned land – not applicable.

9. A subdivision to create a unit title scheme on Zone R, RL, H and unzoned land must demonstrate that:
a) The intensity of the use is not likely to have a detrimental impact on the locality;
b) On zoned land the density of residential development within the unit scheme matches that of the zone in which it is located;
c) An adequate supply of potable water is available for the intended development;
d) Appropriate sanitation and waste disposal facilities are provided;
e) An appropriate power supply is available to the development;
f) There is an adequate separation between;
   i. Activities proposed on common property; and
   ii. Uses on or that can reasonably be expected on land outside the unit title scheme;
g) Any proposed dwellings, garages, sheds and structures without external walls within a unit title scheme shall be setback at least 10m from the unit title scheme boundary to minimise the potential impact on the existing and future amenity of land outside the unit title scheme.

The subject land is not on land within Zone R, RL, H or unzoned – not applicable.

DOES NOT COMPLY

Note: The consent authority has discretion to consider special circumstances where the development does not meet the requirements of Part 5 of the NT Planning Scheme. In this clause paragraph 6 establishes where the consent authority does not have discretion and the requirements of Power and Water Corporation in relation to electricity easements has not been met.
6.6 Other Subdivision Requirements

6.6.1 Subdivision for the Purposes of a Unit Title Scheme

Purpose
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.

Administration
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 performance criteria within Part 5 of the planning scheme that apply to the development of the land.

If it is not possible to meet the criteria the consent authority must be satisfied that the proposed upgrading is the only practicable design solution.

2. The consent authority must not consent to a subdivision that results in a separate unit title for:
   (a) a dwelling-independent;
   (b) a home based business; or
   (c) a dependant unit lawfully established prior to the introduction of Amendment No. 321 published in the NT News; or
   (d) an independent unit, home occupation, home based child care, home based contracting or medical consulting rooms, lawfully established prior to the introduction of Amendment No. xx (this scheme) published in the NT News.

3. If there is a requirement for a firebreak along the perimeter boundary of the unit title scheme, the consent authority must not consent to a subdivision unless the firebreak is within common property.

4. If there is a requirement for common infrastructure including internal roads, water supply, effluent disposal, waste disposal or power generation, the consent authority must not consent to a subdivision unless that infrastructure is within common property or vested in the relevant service authority.
5. Despite sub-clause 7, a subdivision to create a unit title scheme on unzoned land may include units with reduced land areas if the unit title scheme addresses the requirements of sub-clause 8.

Requirements
6. Subject to sub-clauses 1, 2, 3 and 5 a subdivision to create a unit title scheme should meet the requirements of Part 5 of the planning scheme and in particular:
   (a) all car parking provided as a requirement of a development must be available at all times for the use of the occupants of the development and their visitors or clients and be included:
      i. in common property; or
      ii. as part of the area under the title for the individual units;
   (b) any loading bays provided for:
      i. common use must be in common property; and
      ii. the sole use of an individual unit must be in the entitlement of that unit;
   (c) any areas set aside for the communal storage and collection of garbage and other solid waste must be included in common property;
   (d) any private open space associated with a dwelling must be included in the unit entitlement of that dwelling; and
   (e) any communal facilities and amenities or open space provided for rooming accommodation, dwellings-group, dwellings-multiple and residential care facilities must be included in common property.

7. Where a subdivision to create a unit title scheme proposes that the land will be vacant at the time titles issue, the land area of individual units should be consistent with the relevant minimum lot size.

For the purpose of sub-clause 6, “land area” does not include:
   (a) common property;
   (b) land that will be permanently inundated; or
   (c) a marina berth.

8. A subdivision to create a unit title scheme on Zones R, RL, H and unzoned land must demonstrate that:
   (a) the intensity of the use is not likely to have a detrimental impact on the locality;
   (b) on zoned land the density of residential development within the unit title scheme matches that of the zone in which it is located;
   (c) an adequate supply of potable water is available for the intended development;
   (d) appropriate sanitation and waste disposal facilities are provided;
   (e) an appropriate power supply is available to the development;
   (f) there is an adequate separation between:
      i. activities proposed on common property; and
ii. uses on or that can reasonably be expected on land outside the unit title scheme; and

(g) any proposed **dwellings** and **non-habitable structures** within a unit title scheme shall be set back at least 10m from the unit title scheme boundary to minimise the potential impact on the existing and future amenity of land outside the unit title scheme.

6.6.2 Consolidation

**Purpose**
Ensure that the consolidation of land results in lots that are of a size and configuration and are appropriately serviced in a manner that achieves the relevant zone purpose and outcomes.

**Administration**
1. The consent authority may **consent** to a consolidation that is not in accordance with sub-clause 3 only if the relevant requirement allows.

2. The consent authority must not **consent** to a consolidation that is not in accordance with sub-clause 4.

**Requirements**
3. The lot created by consolidation must comply with the relevant development and subdivision requirements including residential density, setbacks, minimum lot size, lot configuration, and connection to reticulated services (where available) and the local road network.

4. The lot created should achieve at least one of the following:
   
   (a) the consolidation remedies an existing boundary encroachment by a building;
   
   (b) the consolidated lot will be made more regular in shape;
   
   (c) access is provided to a lot that previously had no access or an unsuitable access;
   
   (d) the consolidated lot enhances compliance with the outcomes for the zone and any Area Plan in which the site is situated;
   
   (e) the consolidated lot will provide for enhanced economic opportunities in accordance with the zone purpose; or
   
   (f) the consolidated lot results in an improvement in the protection of the environment.
### 5.4.3 Building Setbacks of Residential Buildings and Ancillary Structures

**Purpose**
Ensure that *residential buildings* and *ancillary* structures are located in a manner that:

(a) is compatible with the streetscape and surrounding development including *residential buildings* on the same *site*;
(b) minimises adverse effects of building massing when viewed from adjoining land and the street;
(c) avoids undue overlooking of adjoining properties; and
(d) facilitates breeze penetration through and between buildings.

**Administration**
3. The consent authority may consent to a development that is not in accordance with sub-clause 5 only if it is satisfied that the reduced setback 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.

2. In this clause:
   (a) an *ancillary* structure includes an *outbuilding*, verandah, balcony, shade sail and the like, which may or may not include external walls; and
   (b) where a lot has a boundary with a public street from which vehicular access to the lot is restricted by the controlling Agency or local authority, this boundary shall be considered a side or rear lot boundary for the purpose of calculation of the building setback.

3. This clause does not apply in Zones CB, C, LI, GI and DV.

4. Despite subclause 5 a shed in Zones other than H, A, RR, RL and R may have a nil setback to the side and rear boundaries provided it is
   (a) 6m or more from the primary street and 2.5m or more from a secondary street when measured to the wall of the shed or where there is no wall, the outer face of any column;
   (b) has a cumulative floor area of 15m² or less;
   (c) is 2.5m or less in height;
   (d) has no openings in walls that are less than 1.5m from a lot or unit title; and
   (e) does not discharge rainwater on an adjacent lot or unit title.

**Requirements**
5. Subject to clause 5.8.11, *residential buildings* and *ancillary* structures are to be setback from lot boundaries in accordance with table A or B (as the case requires) to this clause noting that no part of the roof structure, including gutters and eaves, is to encroach more than 0.9m into the
minimum building setbacks (subject to the Building Code of Australia) from
the lot boundaries.

Table A to Clause 5.4.3: Minimum building setbacks for residential buildings and
ancillary structures in zones other than RR, RL, R, H and A

<table>
<thead>
<tr>
<th>Lot Boundary</th>
<th>Minimum Setback for 1 or 2 storey buildings</th>
<th>Minimum Setback for buildings over 2 storeys</th>
</tr>
</thead>
</table>
| Primary street frontage      | 6m for **residential buildings**, and **ancillary** structures with external walls
and
4.5m for **ancillary** structures without external walls
or
3m for shade sails, to a maximum height of 2.5m at the minimum setback | 7.5m for **residential buildings**, and **ancillary** structures with external walls
and
4.5m for **ancillary** structures without external walls |
| Secondary street frontage    | 2.5m for **residential buildings**
and
1.5m for **ancillary** structures
or
0.9m for shade sails, to a maximum height of 2.5m at the minimum setback | 2.5m for **residential buildings** and **ancillary** structures with external walls
and
1.5m for **ancillary structures** without external walls |
| Side and rear lot boundaries | 1.5m for **residential buildings** and **ancillary** structures or
1m, provided that the subject wall:
- only includes openings that are either glazed in an opaque material and cannot be opened, or have a sill height of 1.6m or greater;
- does not extend beyond a maximum height of 3.5m; and
- does not extend beyond a maximum length of 9m
except shade sails which may be setback 0.9m to a maximum height of 2.5m at minimum setback | 3m for **residential buildings** with
- habitable rooms with windows or doors facing the subject boundary; and
- verandahs and/or balconies facing the subject boundary; and
- shade sails
or
1.5m for **residential buildings** where the subject wall only includes:
- non-habitable rooms;
- habitable rooms without windows and/or doors facing the boundary; and
- **ancillary** structures, whether with or without external walls excluding, verandahs, balconies or shade sails
Table B to Clause 5.4.3: Minimum building setbacks for residential buildings and ancillary structures in Zones RR, RL, R, H and A

<table>
<thead>
<tr>
<th>Lot Boundary</th>
<th>Minimum Setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary street frontage</td>
<td>10m or 7.5m for lots less than 1ha in Zones RR and RL</td>
</tr>
<tr>
<td>Secondary street frontage</td>
<td>10m or 5m for lots less than 1ha in Zones RR and RL</td>
</tr>
<tr>
<td>Side and rear lot boundaries</td>
<td>10m or 5m for lots less than 1ha in Zones RR and RL</td>
</tr>
</tbody>
</table>

Editor’s Notes:

1. Ancillary structures include ancillary outbuildings such as garages, carports, sheds and the like.
2. Clause 5.4.3.3 provides reduced setback requirements in certain circumstances for dwellings-single.
3. Clause 5.8.7 Demountable Structures includes specific setback requirements.
4. Clause 5.8.11 provides specific setback requirements for Development Adjacent to Land in Zones LR, LMR, MR or HR.

5.4.3.1 Additional Setback Requirements for Residential Buildings longer than 18 metres and for Residential Buildings over 4 storeys in Height

Purpose

Ensure that residential buildings respond to the potential adverse effects of building massing and visual bulk when viewed from adjoining land and the street.

Administration

1. The consent authority may consent to a development that is not in accordance with sub-clause 3 if it is satisfied it is consistent with the purpose of this clause and that the design of the development adequately mitigates the adverse effects of building massing and visual bulk that may arise from non-conformity with sub-clause 3.

2. The length of the building excludes verandahs, balconies, carports and porticos integrated into the residential building design and fully open to affected boundaries.

Requirements

3. For residential buildings, except dwellings-single, that are longer than 18m or taller than 4 storeys, additional setback requirements apply to those outlined in the tables to clause 5.4.3 as follows:
   (a) for each additional 3m or part thereof in building length over 18m, an additional building setback to the affected boundary of 0.5m; and
(b) for each additional storey over four storeys above ground level, an additional building setback to that storey of 1.5m from all boundaries.

4. No part of a residential building is required to exceed a building setback of 10.5m from any boundary.

5.4.3.2 Distance Between Residential Buildings on one Site

**Purpose**

Ensure residential buildings provide a sympathetic interface with the streetscape and surrounding development, minimise adverse effects of building massing, and avoid undue overlooking of adjoining residential buildings and private open space.

**Administration**

1. The consent authority may consent to a development that is not in accordance with sub-clauses 2 and 3 only if it is satisfied it is consistent with the purpose of this clause and that the design of the development adequately mitigates the adverse effects of building massing and privacy and overlooking impacts that may arise from non-conformity with sub-clauses 2 and 3.

**Requirements**

2. Where more than one building comprising one or two storey residential buildings is located on a site the distance between the buildings is to be calculated in accordance with Table A to Clause 5.4.3 as if there was a lot boundary between the buildings.

3. Where more than one building comprising residential buildings that exceeds two storeys in height is located on a site, the distance between buildings is to be a minimum of:
   (a) 3m for walls to non-habitable rooms and habitable rooms without windows or doors; and
   (b) 4.5m for walls with windows or doors to habitable rooms or to a verandah or balcony.

4. For each storey over four storeys, the distance between buildings referred to in sub-clause 3 is measured from a straight line that is half the average distance between the walls of the buildings.
5.4.3.3 Reduced Setbacks for Dwellings-Single

Purpose
Provide flexibility for the design and siting of dwellings-single that adopt specified reduced setbacks in a manner that responds to the streetscape and surrounding development.

Administration
1. The consent authority must not consent to a dwelling-single subject to this clause that does not comply with sub-clauses 3, 4 and 5.

Requirements
2. Any part of a dwelling utilising a zero building setback shall have its external wall erected to the boundary with no gap.

3. Despite Table A to clause 5.4.3, a dwelling-single on a lot less than 600m² but not less than 300m² may, in accordance with the table to this clause, have a zero building setback to a side boundary, providing:
   (a) that boundary is internal to the subdivision that created the lot; and
   (b) that lot was created after the inclusion of this clause to the Planning Scheme (Amendment No. 320, introduced on 26 March 2014).

4. Despite Table A to clause 5.4.3 a dwelling-single on a lot less than 600m² but not less than 300m² with a zero side building setback may, in accordance with the table to this clause, have a reduced front setback to habitable rooms only, providing:
   (a) the area of the reduction is to allow an equal increase to the minimum provision of compliant private open space in accordance with clause 5.4.6;
   (b) that any outbuildings, such as a garage or carport, shall have a front setback no less than 6m; and
   (c) a landscaped area is included along the front boundary that will provide visual amenity to the public road.

5. Despite Table A to clause 5.4.3, a dwelling-single on a lot greater than 600m² may, in accordance with the table to this clause, have a reduced front setback to habitable rooms only, providing:
   (a) the area of reduced setback is offset by an equal area with an increased setback;
   (b) the setback increase is equal in dimension to the setback reduction; and
   (c) the area of increased setback is at least 3m from the nearest side or secondary street boundary.
Table to Clause 5.4.3.3: Reduced setbacks for dwellings-single

<table>
<thead>
<tr>
<th>Lot Size</th>
<th>Minimum Setbacks</th>
</tr>
</thead>
<tbody>
<tr>
<td>300m² to less than 450m²</td>
<td>Zero setback is permitted to no more than one side boundary of the lot.</td>
</tr>
<tr>
<td></td>
<td>3m to the primary street frontage.</td>
</tr>
<tr>
<td>450m² to less than 600m²</td>
<td>Zero setback is permitted to one side boundary of the lot only where a 3m setback is provided to the other side boundary.</td>
</tr>
<tr>
<td></td>
<td>3m to the primary street frontage.</td>
</tr>
<tr>
<td>600m² or greater</td>
<td>4.5m to the primary street frontage.</td>
</tr>
</tbody>
</table>

5.4.4 Extensions and Ancillary Structures to a Dwelling-group or Dwelling-multiple Development

Purpose
Ensure an extension or ancillary structure that is ancillary to an existing dwelling-group or dwelling-multiple responds to the streetscape and surrounding development.

Administration
1. An extension to an existing dwelling-group or dwelling-multiple, or addition of an ancillary structure, is Permitted without consent if it complies with sub-clause 2.

Requirements
2. An extension or ancillary structure to a dwelling-group or dwelling-multiple is:
   (a) to be located in accordance with clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures);
   (b) to be contained wholly within the respective unit title and not on or over a registered easement;
   (c) to be of a scale and design compatible with the existing dwellings and the streetscape and surrounding development including residential buildings on the same site;
   (d) not to result in:
      i. the creation of a habitable area capable of separate occupancy;
      ii. an additional storey; or
      iii. an increase in the maximum height of the development; and
   (e) to include adequate measures to prevent the discharge of concentrated stormwater onto an adjacent lot or unit title.
24 April 2020

Please Quote: PA2020/0109 BS:hd

Ms Dawn Parkes
Manager Urban Planning
Department of Infrastructure, Planning & Logistics
GPO Box 1680
DARWIN NT 0801

Dear Ms Parkes

Parcel Description: Lot 12104 - Town of Nightcliff
5 Stanley Street, Muirhead

Proposed Development: Unit title schemes subdivision to create two units and common property and a building envelope plan

Thank you for the development application referred to this office 8 April 2020, concerning the above.

The following issues are raised for consideration by the Authority:

i). City of Darwin requests that should a development permit be issued, that the following be provided as conditions precedent:

a). Vehicle access to both unit title lots shall be provided to City of Darwin requirements.

b). Stormwater easements shall be provided on the subject site, to ensure that stormwater from both units discharges into the underground stormwater drainage system.

Should this application be approved, the following conditions pursuant to the Planning Act and City of Darwin’s responsibilities under the Local Government Act are also recommended for inclusion in the development permit issued by the Development Consent Authority.
• All 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.

If you require any further discussion in relation to this application, please feel free to contact me on 8930 0528.

Yours faithfully

CINDY ROBSON
MANAGER CITY PLANNING
Dear Julie,

Re: Lot 12104 Stanley Street Muirhead Town of Nightcliff

In response to your letter of the above proposal for the purpose of Unit Title Schemes (UTS) subdivision to create 2 units and Common Property and a building envelope plan on vacant land, Power and Water Corporation advises the following with reference to electricity enquiries:

1. The UTS subdivision scheme happening after the completion of the actual unit building construction is a logical process in DAS standard practice. Refer the attached power clearance letter for UTS DP17/0258 being issued after its Condition 3 with reference to completion of the unit development DP16/0425 is satisfied.

2. Only one power supply on Common Property unit is provided to an UTS lot. It means that a shared customer’s main switchboard for all units on the lot must be designed and installed prior so that power supply to each individual unit can be constructed safely and in compliance with Power and Water’s Service Rules, Installation Rules and Metering Manual.

3. If the above UTS subdivision on a vacant land is allowed to proceed by DAS, the Proponent shall be required to complete the following works for power clearance consideration:
   - Engaging a licensed electrician to design and install a shared customer’s main switchboard on a suitable location for separate power connections to Unit 1 and Unit 2 for future unit building developments. Depending on the location of the shared customer’s main switchboard, a spare 100mm conduit shall need to be installed at the shared customer’s main switchboard and extended into 0.5m beyond the proposed boundary of Unit 1 and Unit 2 to avoid future trenching works over Unit 1.
   - Submission of survey plan showing new unit title lot numbers and the electricity easement for updating electricity Retail customer records.
   - Appropriate new UTS number labels shall be correctly installed at the shared customer’s main switchboard to the satisfaction of Power and Water.

If you have any further queries regarding UTS customer’s electrical installation requirements, please contact Andrew Venhuizen, Senior Customer Connections Officer on 8924 5700.

Yours sincerely,

Thanh Tang
Manager Distribution Development

16 April 2020
Hanna Steevens  
Development Consent Authority  
GPO Box 1680  
Darwin - NT 0801  

Dear Hanna  

Re: Section 6052 Mel Road Berrimah Hundred of Bagot  

With reference to the Development Permit DP17/0258 for the purpose of a Unit Title Schemes subdivision to create 7 units and common property, Power and Water advises the following:  

- Condition number 3 with reference to Part V power clearance for the Development Permit DP16/0425 and Variation DP16/0425A is satisfied.  

- Condition number 5 with reference to required electricity easement on Common Property Unit 7518 is not applicable.  

- Condition number 6 with reference to submission of a survey plan UTS 2017/026 showing new unit numbers and power servicing location for Power and Water Information and Billing System Update is satisfied. Existing single power point of service remains unchanged on Common Property Unit 7518.  

- Condition number 7 with reference to all UTS number labels being correctly installed at the Customer’s Mains Switchboard is satisfied.  

If you have any further queries, please contact Andrew Venhuizen, Senior Customer Connections Officer on 8924 5700.  

Yours sincerely  

Thanh Tang  
Manager Distribution Development  
05 September 2017
Dear Julie,

RE: Revised - PA2020/0109 - Lot 12104 Town of Nightcliff - 5 Stanley Street Muirhead - Unit Title Schemes Subdivision to Create Two Units and Common Property and a Building Envelope Plan

In response to your letter of the above proposal for development application purpose, Power and Water Corporation Water Services advises the following with reference to water and sewer enquiries:

1. The developer may need to upgrade the existing water and sewer service and should contact Services Development prior to start of construction.

2. Multi-metering is required for all new multiple residential dwelling developments that are to be Unit-Titled. Multi-metering is suitable for up to 12 units.

3. All required works mentioned above must all be at according to Power and Water’s Connection Code and at the developer’s expense. A letter has been sent to the applicant outlining the fees and charges applicable for this development. All standard and quoted charges, as well as contribution charges will be valid for a period of 6 months from date of letter issue. As required, Power and Water will reassess the charges for the development.

4. Power and Water advises that contacting the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (powerdevelopment@powerwater.com.au) via email, a minimum of 1 month prior to construction works commencing is essential.

If you have any further queries, please email waterdevelopment@powerwater.com.au

Yours sincerely

Sarah Hemopo

Services Development

13th May 2020

cc: Kevin Dodd
email: kdodd@eja.com.au
5. All required works mentioned above must all be at according to Power and Water’s Connection Code and at the developer’s expense. A letter has been sent to the applicant outlining the fees and charges applicable for this development. All standard and quoted charges, as well as contribution charges will be valid for a period of 6 months from date of letter issue. As required, Power and Water will reassess the charges for the development.

6. Power and Water advises that contacting the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (powerdevelopment@powerwater.com.au) via email, a minimum of 1 month prior to construction works commencing is essential.

If you have any further queries, please email waterdevelopment@powerwater.com.au

Yours sincerely

Joseph Ciarla
Services Development

15th April 2020

cc: Mr Kevin Dodd
email: kdodd@eja.com.au
Dear Sir/Madam,

**PA2020/0109**

**DATE:** 17 April 2020

Survey Land Records has NIL comment regarding the Planning Application PA2020/0109.

Survey Land Records will assign street addressing to the development on data allocation according to the Australian/New Zealand Standard.

Please be aware that there may be survey marks within the area, if any of these become disturbed please advise Survey Land Records.

Kind Regards
Survey Land Records
Mrs Julie Hillier  
Department of Infrastructure, Planning and Logistics  
GPO Box 1680  
Darwin NT 0801

Dear Mrs Hillier

Re: PA2020/0109 - Lot 12104 Town of Nightcliff, Unit title schemes subdivision to create two units and common property and a building envelope plan

The Department of Environment and Natural Resources has assessed the information contained in the above application and has not identified any issues of concern with respect to this submission.

Should you have any further queries regarding these comments, please contact Maria Wauchope by email maria.wauchope@nt.gov.au or phone (08) 8999 3692.

Yours sincerely

Luis Da Rocha  
Executive Director, Rangelands  
9 April 2020
Hi Julie,

Building Advisory Services has considered the applications and provides the following response:

- It is unclear as to the intention of the 0.8m setback between the building envelopes within the two unit titles – an increase to 0.9m for this setback would provide more flexibility in construction of dwellings on the two allotments, whilst enabling compliance with the National Construction Code. It is understood that the building setback would constitute setbacks to dwelling walls.

- It is recommended that access to services (water, sewer etc) be further considered for each allotment to provide more appropriate access for the installation, maintenance and repairs of services. For example, provision of connection points for both units, relocation of common property for meters etc be to a common boundary between the two allotments or provide an easement for the purposes of access to utilities for both dwellings.

Please advise if you require further information or clarification.

Kind regards,

Sheree Scott
Manager Building Control
Building Advisory Services
Department of Infrastructure, Planning and Logistics
Northern Territory Government

Floor 1 Energy House, 18-20 Cavenagh Street, Darwin
GPO Box 1680, Darwin, NT 0801

p ... 08 8999 8989
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e ... sheree.scott@nt.gov.au
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