

DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES – PART 2 - ITEM 3 ONLY

MEETING No. 412 – FRIDAY 17 NOVEMBER 2023

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

MEMBERS PRESENT: Marion Guppy (Presiding Member), Monica Baumgartner, Peter Pangquee and Mick Palmer

APOLOGIES: Mark Blackburn and Suzanne Philip

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Sally Graetz, Fletcher Willis and David Burrow (Development Assessment Services)

COUNCIL REPRESENTATIVE: Conneil Brown, Brian Sellers and Suzie Bree

Meeting opened at 11.30 am and closed at 1.10 pm

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

The Chair, Development Consent Authority, under section 93(1) of the *Planning Act 1999*, appointed Monica Baumgartner who is a member in relation to the Batchelor Division, to act as a member for Mark Blackburn in relation to the Darwin Division from 9 November 2023 to 27 November 2023 as Mark Blackburn is prevented from performing his duties of office because of absence.

That, pursuant to section 101(3) of the *Planning Act 1999*, in the Chair's absence the members of the Darwin Division of the Development Consent Authority elect Marion Guppy to preside at the hearing of Item 3 at the Darwin DCA meeting held on Friday 17 November 2023

ITEM 3
PA2022/0321 **READVERTISED WITH CHANGES: 56 DWELLINGS-MULTIPLE AND 63 SERVICED APARTMENTS IN 1 X 10 AND 1 X 11 STOREY BUILDINGS PLUS THREE LEVELS OF BASEMENT CAR PARKING LOTS 1287 & 1288 (1 & 2) MONTORO COURT, LARRAKEYAH & LOTS 1295 & 1296 (8 & 7) PACKARD PLACE, LARRAKEYAH, TOWN OF DARWIN**
APPLICANT Cunnington Rosse Town Planning and Consulting

Pursuant to section 97 of the *Planning Act 1999*, Suzanne Philip, Chair, Development Consent Authority disclosed an interest and was not present during, contributed to or took part in the deliberation or decision of the Division in relation to Item 3.

That, pursuant to section 101(3) of the *Planning Act 1999*, in the Chair's absence the members of the Darwin Division of the Development Consent Authority elect Marion Guppy to preside at the hearing of Item 3 at the Darwin DCA meeting held on Friday 17 November 2023.

Applicant: Brad Cunnington and Alex Deutrom (Cunnington Rosse Town Planning and Consulting), Jo Best (Troppo Architects) and Peter La Pira (Joondanna Investments - landowner) attended.

Submitters: Carolyn Marriot, Kevin Flynn, Kylie & Allan McColley, Prue Birdling, Nick Kirlew (PLan: The Planning Action Network Inc), Nathan Walter, Denise Ashworth, Steven Porter and John Wade.

Submitter Julie Pini attended via teams.

Submitter Margaret Clinch (PLan: The Planning Action Network Inc) sent her apologies.

RESOLVED
46/23 That, the Development Consent Authority vary the requirements of Clause 5.2.4.4 (Layout of car parking areas), Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and Clause 5.4.6 (Private Open Space for Dwellings-multiple), of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lots 1287, 1288, 1295 and 1296 (1 and 2 Montoro Court and 8 and 7 Packard Place, Larrakeyah) Town of Darwin for the purpose of 56 dwellings-

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multiple and 63 serviced apartments in 1x10 and 1x11 storey buildings plus three levels of basement car parking, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works, amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with *the plans submitted with the application* but modified to show:
 - (a) *details of end of trip facilities for bicycle parking and shower and change facilities to the requirements of Clause 5.3.7 of the NT Planning Scheme 2020, and Australian Standards AS2890.3;*
 - (b) *landscaping changes to show the addition of low to mid-level planting within the communal open space area adjacent to Montoro Court; and*
 - (c) *details of full height screening to street facing balconies to the requirements of clause 5.4.8.2(14)*
2. Prior to the endorsement of plans and prior to the commencement of works, approval is required by the City of Darwin for any element of the building (separate to awnings) that is designed to be constructed or installed over the City of Darwin road reserve, to the satisfaction of the consent authority.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.
4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the applicant is to prepare a Site Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP should specifically address the impact to Council owned public spaces and include a waste management plan for disposal of waste to Shoal Bay, traffic control for affected City of Darwin roads, haulage routes, storm water drainage & sediment control, use of City of Darwin land, and how this land will be managed during the construction phase.
5. Prior to the endorsement of plans and prior to the commencement of works, an updated traffic impact assessment report is to be prepared by a suitably qualified traffic engineer in accordance with the Austroads Document Guide to Traffic Management - Part 12: Traffic Impacts of Developments (Appendix C), with particular attention to vehicular, pedestrian, cyclist and public transport issues and opportunities. The report shall include justification to how the 0.32 to 0.5 trip generation rates were considered for the peak hour trips, a network analysis instead of an individual intersection performance analysis with SIDRA files to be submitted for further analysis,

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details of internal vehicle circulation including swept paths for waste collection vehicles to ensure no blockages at either entrance and/or SIDRA blockage probability, and details of any necessary upgrades to the surrounding street network as a result of the development and any other necessary information as identified by the City of Darwin. The developer will be required to install all required upgrade measures resulting from the traffic assessment at no cost and to the requirements of the City of Darwin, to the satisfaction of the consent authority.

6. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the crossover and driveway to the site from the City of Darwin road reserve, to the satisfaction of the consent authority.
7. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Guidelines, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.
8. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.
9. Prior to the commencement of works, written confirmation from a qualified traffic engineer that the car parking spaces and access lanes associated with the development comply with the relevant Australian Standards for car parking must be provided in instances where the car parking does not comply with the minimum requirements of Clause 5.2.4.4 (Layout of car parking areas) of the Northern Territory Planning Scheme, to the satisfaction of the consent authority.

GENERAL CONDITIONS

10. The works carried out under any permit shall be in accordance with the drawings endorsed as forming part of that permit.
11. All works recommended by the traffic impact assessment are to be completed to the requirements of the City of Darwin, to the satisfaction of the consent authority.
12. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage, electricity and telecommunication networks to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time. Please refer to notations 1, 2, 3, 4, 5, 6, 7 and 8 for further information.
13. Lots 1287, 1288, 1295 and 1296 (1 and 2 Montoro Court and 8 and 7 Packard Place, Larrakeyah) Town of Darwin are required to be consolidated

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and a new title issued for the consolidated lot. Also please refer to Note 7 for advice related to the National Construction Code (NCC).

14. Confirmation shall be provided to Development Assessment Services (in the form of an email addressed to the Power and Water Corporation) from a suitable qualified professional—confirming that all new number labels have been correctly installed at the Customer's Metering Panel(s) and water meters (where applicable). Please provide a copy of an email addressed to both landdevelopmentnorth@powerwater.com.au and powerconnections@powerwater.com.au
15. Prior to the use/occupation of the development and connection of services (i.e. power and water), the owner of the land must apply for street addressing from the Surveyor-General of the Northern Territory. This will form the legal address and will be required to be placed on the meters within the development in accordance with the allocation. An Occupancy Permit will not be able to be granted until such time as addressing is obtained.”
16. 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.
17. Before the occupation of the development starts, the areas set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - (a) constructed;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather-seal coat;
 - (d) drained;
 - (e) line marked to indicate each car space and all access lanes; and
 - (f) clearly marked to show the direction of traffic along access lanes and driveways.to the satisfaction of the consent authority. Car parking spaces, access lanes and driveways must be kept available for these purposes at all times.
18. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the City of Darwin, to the satisfaction of the consent authority.
19. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street, in accordance with the requirements of City of Darwin, to the satisfaction of the consent authority.
20. 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;

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all to the technical requirements of and at no cost to the City of Darwin, to the satisfaction of the consent authority.

21. All substation, fire booster and water meter arrangements are to be appropriately screened to soften the visual impact of such infrastructure on the streetscape, to ensure that the infrastructure is sympathetic to and blends in with the design of the building. Details will need to be resolved to the satisfaction of the consent authority in consultation with the Power and Water Corporation, and NT Fire and Emergency Services.
22. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view and from view of neighbouring or nearby developments (or developments reasonably anticipated), located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority. The use of angled louvered slats for screening purposes is acceptable, however the slat screening must be designed with a panel to gap ratio, such that the condenser units are not readily visible from any angle.
23. Before the occupation of the development starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
24. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.
25. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
26. All balconies are to be internally drained and discharge is to be disposed of at ground level and in a manner consistent with stormwater disposal arrangements for the site to the satisfaction of the consent authority.
27. All pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the consent authority.
28. A Compliance Certificate under the *Swimming Pool Safety Act 2004* issued by the Swimming Pool Safety Authority is required for the swimming pool/s prior to the commencement of the use/development to the satisfaction of the consent authority

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

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determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.

2. All developers, including owner-builders, are required to comply with Commonwealth telecommunications requirements. Under Commonwealth law, developers are generally required to provide fibre-ready pit and pipe in their developments at their expense. Developers may be able to access an exemption from these arrangements in some circumstances. For more information visit www.infrastructure.gov.au/tind
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 5346 (surveylandrecords@nt.gov.au).
5. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
6. The City of Darwin advises that all street trees shall be protected at all times during construction. Any tree on a footpath, which is damaged or removed during construction, shall be replaced, to the satisfaction of the *General Manager Infrastructure, City of Darwin*. A Tree Protection Zone (TPZ) shall be constructed for all existing trees to be retained within the development, in accordance with Australian Standards – AS 4970-2009 "Protection of Trees on Development Sites". Copies of AS 4970-2009 "Protection of Trees on Development Sites" can be obtained from the Australian Standards website.
7. This development permit is not an approval to undertake building work. You are advised to contact a Northern Territory registered building certifier to seek a building permit as required by the Northern Territory *Building Act 1993* before commencing any demolition or construction works. Due to provisions in the National Construction Code (NCC), the subject lots may need to be consolidated before a building permit can be issued.
8. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.

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9. All land in the Northern Territory is subject to the *Weeds Management Act 2001* (WM Act). The WM Act describes the legal requirements and responsibilities that apply to owners and occupiers of land regarding declared weeds. Section 9 general duties include the requirement to take all reasonable measures to prevent land being infested with a declared weed and to prevent a declared weed from spreading. There are additional duties including a prohibition on buying, selling, cultivating, moving or propagating any declared weed and the requirement to notify the Weed Management Branch of a declared weed not previously present on the land within 14 days of detection.

Should you require further weed management advice contact the weed management branch by phone on (08) 8999 4567 or by email to weedinfo@nt.gov.au

10. The development and use hereby permitted must be in accordance with Northern Territory legislation including (but not limited to) the *Building Act 1993*, the *Public and Environmental Health Act 2011* and the *Food Act 2004*.
11. The Department of Defence advises that there must be no site activity which would attract birds and create a hazard for aircraft operations.

REASONS FOR THE DECISION

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

The Northern Territory Planning Scheme 2020 applies to the land and dwellings-multiple and serviced apartments require consent under Clause 1.8 (When development consent is required). The land use is identified as *Impact Assessable* under Clause 1.10(4) therefore the strategic framework (Part 2 of the Scheme, including the Darwin Regional Land Use Plan 2015 and Central Darwin Area Plan 2019, Clause 4.13 (Zone TC – Tourist Commercial), Clauses 5.2.1 (General Height Control), 5.2.4.1 (Car Parking Spaces), 5.2.4.4 (Layout of car parking areas), 5.2.6.1 (Landscaping in Zones other than Zone CB), 5.3.7 (End of Trip Facilities), 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), 5.4.3.2 (Distance Between Residential Buildings on one Site), 5.4.6.2 (Private Open Space for Dwellings-multiple), 5.4.7 (Communal Open Space), 5.4.8.2 (Building Design of Dwelling-multiple) and 5.4.17 (Building Articulation), need to be considered.

These clauses have been considered and it is found that the proposal complies with the relevant requirements of the Planning Scheme except for Clauses 5.2.4.4 (Layout of car parking areas), 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC), 5.4.3 (Building Setbacks of Residential Buildings), 5.4.6.2 (Private Open Space for Dwelling-multiple) and 5.4.8.2 (Building Design for Dwelling-multiple).

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Conditions precedent, requiring submission of amended plans, have been determined necessary and appropriate to address issues of non-compliance with Clauses 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC) concerning details of end of trip facilities for bicycle parking and shower and change facilities, and 5.4.8.2 (Building Design for Dwelling-multiple) concerning screening to street facing balconies, such that the development will achieve compliance. The consent authority was also of the view that additional landscape treatment, including low to mid-level planting within communal open space areas adjacent to Montoro Court, would be advantageous and improve the attractiveness and screening of the ground level areas, and included a condition precedent requiring further landscaping treatment as a result. The applicant acknowledged these conditions precedent at the hearing, advising of no objection to their inclusion.

It is noted that Clauses 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR and HR) and 5.4.4 (Extensions and Structures Ancillary to a Dwelling-Group or Dwelling-Multiple Development) are not applicable due to the specific circumstances of the proposal including that no non-residential buildings were proposed (in relation to Clause 5.2.7) and that no extensions to existing developments were proposed (in relation to Clause 5.4.4).

Consideration of variations to Clauses 5.2.4.4 (Layout of car parking areas), 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and 5.4.6.2 (Private Open Space for Dwellings-multiple) are addressed further below.

The Authority considered the proposal against the relevant strategic framework being the Darwin Regional Land Use Plan (DRLUP) 2015 and Central Darwin Area Plan (CDAP) 2019 and considered the proposal generally in accordance with identified zoning and relevant themes on urban residential development, movement and transport, and the high amenity boulevard identified for Smith Street.

The Authority noted that no overlays apply to the site.

The Authority noted the proposal against the purpose of Zone TC to *facilitate commercial and residential development that caters for the needs of visitors, supports tourism activities, and is of a scale and character compatible with surrounding development*, as well as the zone outcomes. The proposed combination of dwellings-multiple with serviced apartments for short stay tourism and onsite communal facilities is considered to cater for the tourism market and not compromise the locality for tourism commercial activities. The scale and character of the proposal is considered compatible with the mixture of high rise and low rise development within the area and development reasonably anticipated by the zoning of adjacent land in Zones HR (High Density Residential), Zone TC (Tourism Commercial) and CB (Central Business).

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NT Planning Scheme 2020, the consent authority may consent to a proposed development which is not in accordance with a requirement set out in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:

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- (a) The purpose and administration clauses of the requirement; and
- (b) The considerations listed under Clause 1.10(3) or 1.10(4).

Regarding Clause 1.10(5), the proposal has been found to not be in accordance with Clauses 5.2.4.4 (Layout of car parking areas), 5.4.3 (Building Setbacks of Residential Buildings) and 5.4.6.2 (Private Open Space for Dwelling-multiple).

Clause 5.2.4.4 (Layout of car parking areas)

The proposal has been found not to be in accordance with Clause 5.2.4.4 (Layout of car parking areas) because the proposal will result in 11 non-compliant car parks ('small car bays') with the dimensions set out in the diagram to this clause, and 6 non-compliant car parks due to their location at the end of and perpendicular to a driveway where the bays do not achieve the required width of 3.5m and/or the driveway not extending a further 1m beyond the end of the bay.

Despite the non-compliant bay dimensions for the identified 'small car' bays, the parking areas still satisfy the purpose of Clause 5.2.4.4 in providing a parking area that is *appropriately designed, constructed and maintained for its intended purpose*. In acknowledgment that 'small car bays' are widely used and accepted as a legitimate style of parking recognised by Australian Standard AS2890.1, the layout is considered to be of 'appropriate design' and capable of being 'constructed and maintained' as required by the clause purpose.

In relation to the departure from the standards required for bays located at the end of and perpendicular to driveways, the bays are still accessible with minimal manoeuvring due to their location directly opposite driveway space, enabling vehicles to enter/exit in a single movement.

Administratively, *the consent authority may consent to a car parking area that is not in accordance with sub-clauses 7 and 8 if it is satisfied that the design and construction is safe and functional with regard to the location of the development*. For the reasons outlined above, the consent authority was satisfied that the design would enable construction that is 'safe and functional' and suited to its location, which is within a predominantly high density residential area, and given that the non-compliance only impacts 17 of the required 185 bays across the site (where 248 are proposed to be provided).

Clause 5.4.3 (Building Setbacks of Residential Buildings)

The proposal has also been found not to be in accordance with Clause 5.4.3 (Building Setbacks of Residential Buildings) due to the 0m setback of Building 1 to the primary street frontage ('Smith Street').

The consent authority notes that the purpose of Clause 5.4.3 seeks to 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;*

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- (c) *Avoids undue overlooking of adjoining properties; and*
- (d) *Facilitates breeze penetration through and between buildings.'*

The consent authority considered a number of factors in determining whether the reduced building setback to the Smith Street frontage was acceptable. These factors included:

- the non-compliance only occurs to part of the Smith Street primary street frontage and only to the width of Building 1 and the width of the lesser pedestrian entry shade structure (17m and 7.5m respectively of the 69.8m frontage) or 35% of the primary street frontage;
- towards the 17m wide road verge of Smith Street rather than neighbouring properties therefore not imposing undue overlooking on existing residential development;
- the orientation of the reduced setback to the 17m wide Smith Street road verge also provides the perception of a much larger setback and when including the existing and potentially enhanced green element of landscaping within the road verge;
- existing built form diagonally adjacent the proposed development provides a 0m setback to the same primary street, and the proximity of Zone CB (which permits 0m setbacks to the primary street) and developments reasonably anticipated in the locality suggest similar form in the future and compatibility of the proposal; and
- the staggering of and separation between proposed buildings facilitates breezes through the development and area more broadly.

Furthermore:

- the reduced setback of Building 1 to Smith Street enables a much greater setback of 7m to the rear lot boundary well in excess of the required 3m and reduces any potential overlooking of properties to the rear of the site;
- the siting and narrow form of Buildings 1 and 2 provide for a setback of 10.5m to Montoro Court and 11.6m to Packard Place well in excess of the required 2.5m setbacks to secondary streets and reduce any potential overlooking of properties adjacent the side streets.

Administratively, *the consent authority may consent to a development that is not in accordance with sub-clause 6-8 only if it is satisfied that the reduced setback is consistent with the purpose of this clause and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.* For the reasons outlined above, the consent authority was satisfied that the reduced setback to Smith Street (with larger setbacks to side streets and the rear boundary) is compatible with the streetscape, surrounding development and development reasonably anticipated in the area.

Clause 5.4.6.2 (Private Open Space)

Private open space for each of the dwellings is provided in the form of a balcony accessed off living areas of dwellings. The application proposes an alternative response to the requirement of the clause resulting in some private open space areas having areas of less than 12m² and a dimension of less than 2.8m. The alternative design is present for 1-bedroom dwellings only, with all other dwelling types achieving compliance with the clause.

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At the meeting, the applicant drew attention to a discrepancy between the application materials and assessment of private open space performed by Development Assessment Services. In relation to the private open space for 1-bedroom dwellings, the figure of 10.3m² referred to in the assessment report should instead refer to open space areas of 9.47m², with the consent authority acknowledging this plan measureable discrepancy.

Despite this discrepancy, the consent authority was of the opinion that the areas of private open space provided are acceptable, having considered the areas of communal open space proposed and the small number of dwellings providing the alternative design across the development (being just 28 of the 119 total dwellings).

In relation to areas of communal open space, the consent authority note that these spaces provide for a wide range of activities accessible to both residents and guests, including the provision of green open space, a swimming pool, BBQ facilities and children's play area, with improvements to site landscaping required via condition precedent also considered likely to add to the enjoyment of these spaces.

Administratively, the consent authority may consent to dwellings-multiple that do not meet the requirements of the clause where the development comprises of serviced apartments in Zone TC that is not in accordance with sub-clause 3-5 if it is satisfied that the communal open space and communal facilities will adequately meet the activity needs of residents.

Given the range of activities provided for and that the communal open space achieved is well in excess of the provision stipulated by Clause 5.4.7 (Communal Open Space), at 40.9% of the site area instead of the 15% required. This, in the consent authority's opinion, ensures that the activity needs of residents will be adequately met.

In relation to the remaining non-compliance impacting the 18 residential multiple dwellings, administration subclause 2 allows that *the consent authority may consent to dwellings-multiple, other than dwellings multiple comprising of services apartment in Zone TC, that is not in accordance with sub-clause 3-5 if it is satisfied the development is consistent with the purpose of the clause.*

The consent authority notes that the purpose of Clause 5.4.6.2 is to *ensure dwellings include private open space that enhances the function of the dwelling and are:*

- (a) Of an adequate size to provide for outdoor living; and*
- (b) Appropriately sited to provide outlook for the dwelling.*

The consent authority noted the information provided in the application, together with further information presented at the meeting by the applicant, Mr Brad Cunnington (Cunnington Rosse Town Planning and Consulting) together with the additional information contributed by Architect, Jo Best (Troppo Architects) and specifically around the design of dwellings and outdoor living spaces. At the meeting, the applicant spoke to the reasonable expectation that demand for private open space was relative to dwelling size. As the rate of private

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open space is applied across all dwelling types, regardless of dwelling size, the slight reduction in private open space sought is viewed as reasonable given that the non-compliance only occurs for smaller 1-bedroom dwellings, which are less likely to have the same demands on outdoor living spaces as 3-bedrooms dwellings, for example. The consent authority was also persuaded by the information presented around the design of living spaces, including provision of screening to balconies and operable walls between indoor/outdoor living spaces to improve breeze movement but also provide greater flexibility for users. The consent authority considered that these features contributed to the private open space in such a way that the function of the dwellings were sufficiently 'enhanced'.

In relation to the siting of private open space, 1-bedroom dwellings generally occur at the ends of buildings 1 and 2 with balconies that project beyond the building line, thereby ensuring private open space areas are *appropriately sited to provide outlook for the dwelling*. Additionally, the 'operable walls' included between indoor/outdoor living spaces further enable views from dwellings over communal open space areas within the site, toward the harbour or along the 'green corridor' along Smith Street, depending on the individual dwelling's location within the development.

In consideration of these features, the consent authority was satisfied that private open space is appropriate and is consistent with the purpose of the clause.

3. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent authority must take into consideration any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application.

A total of 52 public submissions were received attracting 21 submissions for the initially exhibited development proposal and 31 for the revised and current development proposal. The consent authority understands the concerns to be primarily with potential amenity impacts and character of the area with regards to building height and scale, the design and siting of proposed buildings, and potential increases to traffic and car parking issues in the area. Written submissions also raised concerns that the proponent had not engaged with the local community in developing a proposal for the site, and believed the proposal was not appropriate use of the land use zone and did not meet requirements of relevant planning policy.

In addition to written submissions, the Authority also heard from submitters present at the hearing.

At the meeting, Mr Nick Kirlew noted the proponent had not approached or included the community or neighbours on any development proposals for the site, which would be to the benefit of the proponent and community. Mr Kirlew questioned the development's compliance with Clause 5.9.2.9 (Public Domain Contributions for Development on Large Sites), and in particular the requirement for sites over 3500m² to provide publicly accessible open space within the site. Mr Kirlew raised issues with how the application was publicly exhibited including

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that the volume of documents was too high and confusing to deal with and referenced a term called 'warehousing' in relation to the continual lodging of applications for the subject site. Mr Kirlew raised concerns on the impact to sight lines down Smith Street and with regard to reliance on other reduced setbacks in the locality, suggesting instead that perhaps these reflected poor planning outcomes and were therefore not relevant. Mr Kirlew spoke of the high value the green corridor along Smith Street provides in preserving vistas along Smith Street and to places of cultural heritage. Mr Kirlew raised concerns with the potential for overlooking and with the size of balconies, acknowledging that while balconies of this design had been approved before, they were not large enough in his opinion. Mr Kirlew made reference to the lack of security and safety around the current vacant site which has two large excavations. In relation to traffic and safety issues caused by scooter usage and on street parking in the area, an independent traffic study was suggested by Mr Kirlew. Finally, Mr Kirlew noted that when buying property on Montoro Court that there were no expectations a building of the scale proposed would occur on the site.

The consent authority notes Mr Kirlew's frustration with the way in which the development application had been publicly exhibited, however acknowledges that this was a matter for the Department of Infrastructure, Planning and Logistics, but despite this, understood that the issue was a matter of too much information being available, rather than too little and that as a result, it was satisfied that the application had met exhibition requirements under the *Planning Act*. In relation to applicability of Clause 5.9.2.9 (Public Domain Contributions for Development on Large Sites) the consent authority notes that the clause is a location specific clause which applies only to the extent of Darwin City Centre with the subject site located outside this extent and therefore not applicable to the proposal. Finally, in relation to site safety, the consent authority confirmed that this issue is not a matter that can be considered by the consent authority but is rather a matter for NT Work Safe, for example.

Ms Denise Ashworth spoke at the meeting with concerns that community safety has not been addressed. Ms Ashworth suggested that a new traffic assessment should be undertaken, and noted that residents struggle with traffic on a day-to-day basis due to existing traffic and parking issues on Montoro Court and on street parking on Smith Street which is a concern for public safety.

The consent authority noted that the DAS recommendation included a pre-condition requiring an updated traffic impact assessment to be prepared to address a number of matters, in line with recommendations of the Council

Ms Prue Birdling spoke of concerns with increased traffic, acknowledging that traffic was problematic when the old 'Asti' motel previously operated from the site and that the issues had never been resolved including service vehicles' access down side streets. Ms Birdling acknowledged that while she did not object to development, she would prefer a reduced number of dwellings, a lower building height, dwellings with air flow and a design that is more modern and tropical. Ms Birdling noted that the development is not designed with the future in mind and does not include EV charging capability, which in her opinion, is a feature that should be included. Finally, Ms Birdling stated that the design of the

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building reminded her of high density public housing and that she would like to see something that the community could be proud of.

Mr Nathan Walter, added to his written submissions noting that the development raised concerns regarding potential impacts on surrounding property values and that a 5-star hotel on the site would be more desirable. Mr Walter suggested that the scale of the 'old Asti Motel' was more appropriate and that there are everyday costs that local residents will have to bear from the scale of the proposed development. Mr Walter noted that Packard Place has existing car parking issues and that he has been involved in implementing preventative measures to reduce on-street parking in the area.

Mr Steven Porter wished to respond to the applicant's claim regarding the proposed building height and that, in his opinion, the building was an 'outlier' as all surrounding buildings are between 2-4 storeys in height.

Mr John Wade also supported the claim that the proposed building was an 'outlier' in terms of building height. Mr Wade lives in a nearby 8-storey building on the opposing side of Smith Street and fears that the proposed 10 and 11 storey buildings on the north-west side of Smith Street will alter the existing vistas. Mr Wade suggested that the existing 5 Storey development on the north-west side of Smith Street was in keeping with the height and character. Mr Wade also spoke to concerns regarding traffic increases, particularly within nearby Dashwood Place which is currently used as a shortcut by some motorists. Mr Wade suggests that the current on-street parking arrangements along Smith Street will need to cease if the development occurs. Mr Wade noted that he had lived in the area since 2007 and didn't expect an 'outlier' development of the proposed scale to be developed on the site. Mr Wade finished by saying that the additional people brought to the area by the proposal will impact on traffic safety and pedestrian safety.

During the meeting, the applicant, Mr Brad Cunningham, acknowledged the concerns raised by submitters and tabled an additional plan to demonstrate how the zones, heights and setbacks of nearby buildings influence the subject site and the current design. The plan draws attention to two nearby developments with heights of more than 8-storeys and number between 1 to 7 storeys to aid in demonstrating that the development, including its building heights of 10 and 11 storeys, is not an 'outlier' but rather, is compatible with the heights of surrounding buildings. Further to this, Mr Cunningham made reference to there being no identified maximum building height for Zone TC with the NT Planning Scheme, which the site and a number of surrounding sites are within. Mr Cunningham reinforced that the proposal in no way seeks to encroach on the road reserve (or potential future 'green corridor') and that instead, the design seeks to provide an improved interface to Smith Street and an appropriate level of amenity. In terms of access, Mr Cunningham spoke to the intentional design approach and avoidance of a new vehicle access from Smith Street, instead utilising existing accesses from Montoro Court and Packard Place (enabling through traffic) to split traffic accessing the site and preserve a quality frontage to Smith Street that may, depending on Council's longer term plans, enable uninterrupted continuation of the 'green corridor' along the north-western side of Smith Street. The need for an updated Traffic Impact Assessment, as

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requested by Council, was acknowledged as being expected as a typical requirement for developments of this nature.

In addition to the further information provided by the applicant, Ms Jo Best (Troppo Architects) spoke to the building design. Ms Best acknowledged an error in the north point on the drawings and talked to the credentials and features of the development including:

- a single dwelling width is proposed for each residential tower to allow for full natural ventilation of each dwelling between the front door and balcony areas and reduce the reliance on mechanical air conditioning. This uses a shaded external access corridor instead of the traditional internal corridors and draws inspiration from Singapore style to naturally ventilate the buildings;
- a front patio area with a 'porous secure line' that provides a two door system at the entry to each dwelling allowing for secure storage (including vertical bicycle parking) as well as to naturally ventilate the dwelling with the ability to lock the outer screen door while having the inner solid door open;
- the setbacks and orientation of the buildings allows for deeper eaves towards side streets providing shade and also reducing the need for mechanical air conditioning;
- window openings and green garden space at entry ways to each dwelling allows for alternative ways to ventilate as well as emphasise connectivity to the outdoors; and
- the intentional design of living spaces and the flexibility afforded by operable walls between indoor living spaces and balconies allows for an extension of the internal and external spaces with the ability to close off openings to mechanically air condition internal spaces as required.

The Authority also queried whether the gym shown on the plans would be private and whether car parking would be allocated. Mr Cunningham confirmed that the gym was intended to be private for use by occupants of the development and that, while specific parking arrangement were still to be resolved, parking would likely be allocated for residential users with a common pool to also service permanent residents and serviced apartment guests as is typically the case for developments of this type.

The consent authority acknowledges that many of the concerns raised with the proposal are centred on traffic and that the City of Darwin, which is the controlling agency of the surrounding road network, has requested that an updated Traffic Impact Assessment be required as part of any approval, together with standard conditions relating to the provision of any upgrades identified by the updated assessment. The recommendation of Council is reflected in the recommendation of Development Assessment Services, which the consent authority accepted. The consent authority also noted the advice provided by Council at the meeting that only its initial advice in relation to the proposal had been included in the application material prepared by Development Assessment Service, with its updated advice appearing to have been left out in error. The consent authority acknowledged this error and that the draft condition in the assessment report also quoted Council requirements from the initial advice. The consent authority has amended the condition to correctly reflect the requirements of Council in relation to the updated assessment.

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4. Pursuant to section 51(1)(j) of the *Planning Act 1999*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development.

The land is Zone TC (Tourism Commercial) and identified by the strategic framework in anticipation of a range of tourism related commercial and residential developments. The site is suitably accessible with appropriate services available with any necessary upgrades able to be carried out as demonstrated by responses from the relevant service authorities.

5. Pursuant to section 51(1)(n) of the *Planning Act 1999*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated.

The potential impact on amenity is considered in the context of the site and its surrounds. The development is within the broader intent of Zone TC (Tourism Commercial) as previously discussed. The application proposes redevelopment of a site that has sat vacant for approximately ten years with any change therefore likely to have some influence on the amenity of the area, whether as a result of construction works, changes to the appearance of the site, changes to urban noise levels or increase in traffic, for example.

The locality is characterised by a range of multi-storey buildings in proximity to the subject site ranging in heights up to 9 storeys with the proposal presenting development exceeding this by one and two storeys only. The placement of the buildings within the site provides building setbacks to 3 lot boundaries well in excess of distances required by the Planning Scheme and is considered reasonable in the context of existing neighbouring developments. The wide verge of approximately 17m (from site boundary to the kerb) which exists along Smith Street assists in providing the perception of a larger setback where a nil setback is proposed to the Smith Street road reserve, and is not considered unreasonable given the large road corridor and in the context of the locality. Car parking is provided well in excess of requirements and a review of the traffic impact assessment shows capacity within the current road network for traffic generated by the development. It is noted that the City of Darwin, as local road authority, has requested that the consent authority require a revised traffic impact assessment to clarify a number of points and ensure that any necessary upgrades are carried out. The proposal is not considered an unreasonable impact to the future amenity of the area taking in to account the future development reasonably anticipated by the zoning of adjacent lots.

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

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The consent authority notes the comments received in relation to the development application from relevant service authorities including the Power and Water Corporation, City of Darwin (as local authority) and Department of Environment, Parks and Water Security.

A combination of standard and precedent conditions is considered most appropriate to address the requirements of service authorities and ensure that the development is suitably serviced.

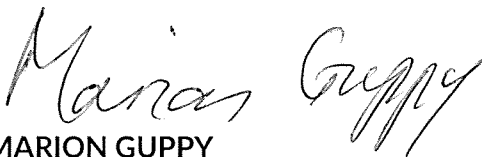
FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Determination

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



MARION GUPPY
Delegate

27 November 2023