



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 326 – FRIDAY 9 NOVEMBER 2018

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

MEMBERS PRESENT: Suzanne Philip (Chair), Doug Phillips, Mick Palmer and Sherry Cullen

APOLOGIES: John Gleeson

OFFICERS PRESENT: Margaret Macintyre (Secretary), Dawn Parkes, Amit Magotra and Richard Lloyd (Development Assessment Services)
Session 2 only - Adelle Godfrey and Susannah Penman (Development Assessment Services)

COUNCIL REPRESENTATIVE: Cindy Robson and James Whyte (Item 1 only)

Meeting opened at 10.00 am and closed at 12.30 pm

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

ITEM 1 **198 ROOM MOTEL, 23 X 3 BEDROOM MULTIPLE DWELLINGS AND**
PA2017/0442 **GROUND LEVEL COMMERCIAL TENANCIES IN A 38 STOREY BUILDING**
INCLUDING 4 ABOVE-GROUND PARKING LEVELS PLUS A PLANT AND
SERVICES BASEMENT LEVEL
APPLICANT **LOT 566 (84) MITCHELL STREET, TOWN OF DARWIN**
TOP END PROPERTIES (NT) PTY LTD

In Attendance:- Planning & Property Partners Pty Ltd - Mr Nick Touzeau, Architecton - Mr Daniel Galtieri, Top End Properties Group - Mr Peter Morrison, Mr David Barr and Mr Michael Scherini, Mr Ian Slater (Legal Counsel for the group).

Submitter: - Department of Tourism and Culture represented by Mr Daryl Hudson attended.

Mr Gary Shipway (NT News) attended.

RESOLVED That, the Development Consent Authority vary the requirements of Clause 6.3.2
194/18 (Volumetric Controls in Central Darwin) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act*, consent to the application to develop Lot 566 (84) Mitchell Street, Town of Darwin for the purpose of 198 room motel, 23 x 3 bedroom multiple dwellings and ground level commercial tenancies in a 38 storey building including 4 above-ground parking levels plus a plant and services basement level, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions must be generally in accordance with the plans submitted with the application but modified to include:
 - (a) any required changes resulting from the conditions precedent requirements of this permit.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), approval is required for the awnings, or an alternate solution, to the two street frontages to the requirements of the City of Darwin, to the satisfaction of the consent authority. The awnings shall not reduce the achievement of active frontages below 80% of the total length of the site boundary to the street.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation) approval is required from the Power Network Division of the Power and Water Corporation for the substation, located at podium level 3, to the satisfaction of the consent authority.

4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a traffic impact assessment report is to be prepared by a suitably qualified person, identifying the traffic impacts of the development with particular attention to pedestrian, vehicular, cyclist and public transport, and necessary upgrades to the surrounding street network (particular attention should be given to traffic turning right from Mitchell Street into McLachlan Street) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The traffic impact assessment shall also include swept paths for waste collection vehicles entering and exiting the site.
5. 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.
6. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a schematic plan demonstrating the on-site collection of stormwater and its discharge into the underground drainage system shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels and connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected to the underground or an alternate approved connection.
7. Prior to the commencement of works (including site preparation), the applicant is to prepare an environmental and construction management plan to the requirements of the City of Darwin, to the satisfaction of the consent authority. The plan is to address construction access, haulage routes, public access, waste management and the use of Council land during construction.
8. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.
9. Prior to the commencement of works (including site preparation), a waste management plan shall be submitted to and approved by the City of Darwin to the satisfaction of the consent authority.
10. Prior to the commencement of works (including site preparation), the applicant is to prepare a comprehensive landscape plan of the road reserve adjacent to the property. The plan shall include the location of street trees and all other infrastructure, to the requirements of City of Darwin, to the satisfaction of the consent authority.

GENERAL CONDITIONS

11. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
12. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, electricity facilities and telecommunication networks to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

13. 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.
14. 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.
15. 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.
16. 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.
17. The area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - (a) constructed;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather-seal coat;
 - (d) drained;
 - (e) line marked to indicate each car space and all access lanes; and
 - (f) clearly marked to show the direction of traffic along access lanes and driveways to the satisfaction of the consent authority. Car spaces, access lanes and driveways must be kept available for these purposes at all times.
18. Stormwater is to be collected and discharged into the drainage network to the standards and approval of the City of Darwin, to the satisfaction of the consent authority.
19. Storage for waste disposal bins is to be provided to the requirements of City of Darwin, to the satisfaction of the consent authority.
20. 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.
21. All roof top plant equipment, equipment relating to the operation of the lift and any other equipment (such as any vents and ducting associated with requirements for stairwell pressurisation or other such ventilation purposes or similar) that will be placed on the rooftop of the development shall be appropriately screened, or designed to soften the visual impact of such equipment from view from neighbouring or nearby developments (or developments reasonably anticipated).

22. 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.
23. 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.
24. General building lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the consent authority.
25. Feature lighting to the building must be designed and located so as to prevent any adverse effect on adjoining land to the satisfaction of the consent authority.
26. 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.
27. The car parking shown on the endorsed plans must be available at all times for the exclusive use of the occupants of the development and their visitors.
28. The landscaping works (including the green wall) shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
29. The landscaping (including the green wall) 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.
30. The loading and unloading of goods from vehicles must only be carried out on the land within the designated loading bay and must not disrupt the circulation and parking of vehicles on the land.
31. 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.
32. Dust control measures must be employed throughout the construction stage of the development to the requirements of the Environment division of the Department of Environment and Natural Resources, to the satisfaction of the consent authority.
33. Before the use commences the owner must, in accordance with Part 6 of the *Planning Act*, pay a monetary contribution to the City of Darwin for the upgrade of local infrastructure, in accordance with its Development Contribution Plan.
34. A Compliance Certificate under the Swimming Pool Safety Act issued by the Swimming Pool Safety Authority is required for the swimming pool/s prior to the commencement of the use/development to the satisfaction of the consent authority.

35. 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.
[Note: This condition relates to multiple dwellings located at level 29 - 36 of the development]
36. The development must at all times comply with the conditions of approval dated 16 August 2018, or any separate approval, granted under the airport (protection of airspace) regulations 1996.
37. 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.

NOTES:

1. Notwithstanding the approved plans, the demonstrated awning in the City of Darwin road reserve is subject to Council approval at no cost to Council.
2. Notwithstanding the approved plans, any proposed works (including landscaping and awnings) within the City of Darwin's road reserve is subject to approval and shall meet all requirements to the satisfaction of the City of Darwin, at no cost to Council.
3. Notwithstanding the approved plans, all signage is subject to City of Darwin approval, at no cost of Council.
4. The City of Darwin advises that all street trees shall be protected at all times during construction. Any tree on a footpath, which is damaged or removed during construction, shall be replaced, to the satisfaction of the General Manager Infrastructure, City of Darwin. A Tree Protection Zone (TPZ) shall be constructed for all existing trees to be retained within the development, in accordance with Australian Standards – AS 4970-2009 "Protection of Trees on Development Sites".
5. A "Permit to Work Within a Road Reserve" will be required from the City of Darwin before commencement of any work within the road reserve.
6. The City of Darwin advises that the applicant shall ensure that a building number is displayed in position clearly visible from the street in accordance with Council's by- laws.
7. The City of Darwin advises that the developer must protect and support adjacent properties and pedestrians during the basement excavation, and where necessary, underpin the adjoining premises to prevent any damage.
8. Darwin International Airport advises that separate requests for assessment and approval must be submitted to Darwin International Airport and the Department of Defence for any cranes used during construction that will

infringe on either the Obstacle Limitation Surfaces (OLS) or Procedures for Air Navigation Services – Operations (PANS-OPS) surfaces for Darwin Airport.

9. Water Services advice that essential infrastructure is located in the road reserve adjacent to the property and that a separate approval for the use of cranes during construction should be submitted.
10. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
11. The Environment division of the Department of Environment and Natural Resources advises that construction work should be conducted in accordance with the Authority's Noise Guidelines for Development Sites. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.
12. 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>
13. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5354 (surveylandrecords@nt.gov.au).
14. The development and use hereby permitted should be designed, constructed, registered and operate in accordance with the National Construction Code of Australia, the *NT Public Health Act* and Regulations, the *NT Food Act* and National Food Safety Standards.
15. The permit holder is advised that the proposal may have assessment implications under the *Waste Management and Pollution Control Act*. More information can be found on the Northern Territory Environment Protection Authority website at: <https://ntepa.nt.gov.au/waste-pollution>. The applicant is encouraged to contact the NT EPA on (08) 8924 4218 or ntepa@nt.gov.au
16. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.

17. Department of Defence advises that:
- The height and location of the building and cranes shall be in accordance with the plans supplied in correspondence from The Airport Group dated 4 December 2017 and 1 February 2018. The height of the building must not exceed 132.5mAGL and the height of the cranes must not exceed 135m AGL. Any change to the proposed location or increase in height voids this approval and a new application must be submitted;
 - The building must be obstacle lit and the crane must be obstacle marked and lit in accordance with Section 9.4 of the Civil Aviation Safety Authority (CASA) Manual of Standards 139 (MOS 139). If LED lighting is used, the frequency range of the LED light emitted is to fall within the wavelength range of 665 to 930 nanometres so as to be visible to pilots using night vision devices; the proponent is to notify the Darwin International Airport Duty Safety Officer at the commencement and completion of construction on telephone 0402088145;
 - The proponent is to provide Airservices Australia (ASA) with "as constructed" details. The details can be emailed to ASA at vod@airservicesaustralia.com; and
 - To mitigate any potential risk to aviation safety, the proponent shall arrange for a Notice to Airmen (NOTAM) to be issued following completion of construction of the building if it is not yet registered on ASA's database of tall structures. Information on the process for issuing a NOTAM can be obtained from ASA's NOTAM office website www.airserviceaustralia.com/flight-briefing/notam-originator/
18. Transport and Civil Services Division of Department of Infrastructure Planning and Logistics advises that Mitchell Street inbound is used for public transport and needs to remain clear at all times during construction. For any potential works within / closures of Mitchell Street during construction, the Public Transport branch, DIPL must be consulted. Contact Ben Mountcastle, Manager Passenger Transport Planning on (08) 8924 7577.

REASONS FOR THE DECISION

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

The NT Planning Scheme applies to the land. Lot 566 Town of Darwin is identified within Zone CB (Central Business) of the NT Planning Scheme. The purpose of Zone CB (Central Business) is to provide for a diversity of activities with a commitment to the separation of incompatible activities, and building form and design is expected to be sensitive to the needs to pedestrian movement and facilitate the creation of safe and active street frontages and public places and a vibrant commercial precinct. The building aligns with the broader intent of Zone CB in providing development which is of high architectural quality and presents well to the street frontages in terms of pedestrian amenity and activation, particularly the Mitchell Street and McLachlan Street frontages. A variation to Clause 6.3.2 (Volumetric Controls in Central Darwin) is discussed below however the building provides an overall height and scale comparable to a complying design expected in Zone CB.

The building has an overall height of 132.50 metres (156.5m AHD). As per the advice received from the Department of Defence, the Conical Surfaces of the Obstacles Limitation Surfaces (OLS) for Aircraft Operations above this site is at 145.5m and as such the proposed development penetrates into the OLS by 11.0m AHD. The application was initially deferred by Development Assessment Services to provide an approval from the Department of Defence on the height of the structure.

Following the issue of the Notice of Deferral, the applicant provided an approval from the Federal Department of Infrastructure, Regional Development and Cities, under the Airports (Protection of Airspace) Regulations 1996, for the intrusion of the building into prescribed airspace of Darwin International Airport. The approval listed various conditions and compliance is ensured through the inclusion of condition number 36 on the development permit.

2. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the Planning Scheme, the consent authority may consent to a development that does not meet the standard set out in Parts 4 and 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

Clause 6.3.2 (Volumetric Control in Central Darwin)

The purpose of clause is to ensure that the siting and mass of buildings within Central Darwin promote: The purpose of this clause is to ensure the siting and mass of buildings within Central Darwin promotes:

- a. *a built form that maximises the potential for view corridors to Darwin harbour;*
- b. *the penetration of daylight and breeze circulation between buildings;*
- c. *privacy for residents of adjoining properties; and*
- d. *a built form that reasonably anticipates the future development of adjoining sites.*

The clause requires that development be constructed with a Tier 1 / podium up to 25m with 6m setbacks applying to windows to habitable rooms, balconies and verandahs only, and a Tier 2 / tower above with a maximum floor area of 1,200m² per tower, setback 6m from each boundary with building lengths of not more than 75% of the total length of each adjacent boundary. A small portion of level 7 of the building, exceeding 25m, is assessed as forming part of Tier 2 with non-compliances to the floor area, setbacks and dimension. In effect level 7 forms the extension of a taller Tier 1, up to a maximum height of 27.8m (2.8m higher). The extent of the numerical non-compliances are:

- 94% site coverage (1910m²)
- Setbacks as below:
 - Side and rear boundary : 0.2m – 0.4m.
 - Mitchell Street : 0.45m – 9.8m
 - Mclachlan Street : 0.45m – 4.5m
- The boundary length is 94% to the northern rear boundary, 97% to the western side boundary, 94% to the Mitchell Street frontage and 86% to the McLachlan Street frontage.

The applicant presented special circumstances to the consent authority which satisfied the identification of special circumstances pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority), being:

- The building provides an excellent design outcome including an exceptional architectural standard. The podium level has been designed with a high site coverage and adopts a rectangular-like shape, with ribboning features and curved cut-outs provided along the street edges in order to create articulation and visual interest at the pedestrian level. The podium has incorporated a clear glazing at ground and mezzanine level, with a cascading green wall that extends over the car parking levels, including during periods of growth and regrowth.
- The curved shape of the tower will allow daylight and breeze circulation to be provided around the tower. The articulated podium, which does not rely on an outlook over the adjacent sites, preserve equitable development rights for adjoining properties.
- The extent of podium, exceeding 25m, visible from McLachlan Street is 21.9m (33% of site boundary) and Mitchell Street is 2.5m (8% of site boundary) only.

The response provided by the applicant was accepted by the authority, noting in particular the arguments relating to the articulation of the podium design to provide varying setbacks to the street frontages shows merit as it reduces the overall mass of the building and also improves the appearance of the building in terms of its interaction with the public realm. The use of full height clear glass frontages and alfresco areas in front of the multifunction rooms, at level 7, not only adds to the merit in achieving the objectives of Clause 6.3.3 (Urban Design Requirements) but will encourage passive surveillance over surrounding public spaces.

In relation to part (a), the clause ensures that the siting and mass of buildings promotes a built form that maximises the potential for view corridors to Darwin harbour. Having regard to part (d), it can be reasonably anticipated that other CBD lots can be developed in accordance with the volumetric controls, notwithstanding the views that may currently exist over undeveloped CBD lots. The Urban Context analysis detailing the context of the site and the surrounding area prepared by the applicant demonstrates that the development from podium terrace level upwards provides unobstructed 360 degree panoramic views.

In relation to part (b), the curved design of the podium with varied setbacks will not impact on the penetration of daylight and breeze circulation between the buildings. In relation to part (c), of the clause, the reduced setbacks of 0.2m – 0.45m to side and rear boundary will not impact on the privacy of the adjoining properties as majority of the façade along these boundaries has no openings.

In accordance with Clause 2.5 (Exercise of Discretion by the Consent Authority) of the NT Planning Scheme, the authority were satisfied that the aforementioned design features and site conditions are considered to be sufficient special circumstances and justify the granting of a variation to Cause 6.3.2 of the Scheme.

Clause 6.3.3 (Urban Design Requirements in Central Darwin)

The purpose of Clause 6.3.3 is to promote exemplary urban design in Central Darwin. The clause has a number of requirements including in providing active street frontages, in providing awnings, and in limiting services at street level. The building is assessed as responding to a number of requirements of this clause, including active street frontages.

Subclause 4(a) of the clause requires the “buildings in Central Darwin are to provide awnings to streets for the full extent of the site frontage that allow for the planting and growth of mature trees within the road reserve”.

The building provides an awning in the form of an extended covering of the porte cochere to approximately 3/4 length of the McLachlan Street but only a small part of the Mitchell Street frontage is provided with an awning to the street.

In response to compliance of this clause the applicant states that the extent of weather protection is provided by a combination of canopy and projections at Mezzanine level and cantilevered building form at Level 1. Furthermore, weather protection opportunities are afforded to 100% of the sites' frontage in an architecturally integrated manner that does not compromise the open and inviting expression of the ground and mezzanine levels.

The authority noted and accepted the response provided by the applicant and acknowledged that as the building is designed to provide a well-articulated and visually interesting built form outcome, the design of the awning depicts the geometrical changes of the façade and offers interactive street activation by means of a ribbon like banding.

While Clause 6.3.3 typically requires awnings to the street for the full extent of the site frontage, it is noted that awnings over the street are to the requirements of the City of Darwin and should comply with their applicable policy. The additional response from the City of Darwin requested that a condition be placed on any permit issued, requiring additional awning coverage in accordance with City of Darwin's *Awnings, Balconies and Verandahs on Council Property Policy No. 037, or an alternative solution to the satisfaction of the City of Darwin, at no cost to Council*. Compliance is therefore ensured through the inclusion of condition number 2 on the development permit.

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

One submission under Section 49 was received in relation to the application from Plan: the Planning Action Network, Inc. One late submission from the Department of Tourism and Culture was also received. The authority considered the submissions in detail and noted that the development is largely compliant with the relevant requirements of the NT Planning Scheme and that a number of

conditions have been applied to the development permit to meet service authority requirements.

4. Pursuant to section 51(j) of the *Planning Act*, the consent authority must take into consideration the capability of the land to which the proposed development relates and the effect of the development on the land and on other land.

The scale of the development is largely consistent with that anticipated in the Darwin CBD with respect to the capability of the land and the effect on surrounding properties. Comments from the City of Darwin, Power and Water Corporation, Department of Defence and Darwin International Airport have been sought in relation to the capability of the land including the proposed access arrangements, easements, and building heights as discussed in section 7(m) below.

The development has an overall height of 132.50 metres (156.5m AHD). As per the advice received from the Department of Defence, the Conical Surfaces of the Obstacles Limitation Surfaces (OLS) for Aircraft Operations above this site is at 145.5m and as such the proposed development penetrates into the OLS by 11.0m AHD.

The Federal Department of Infrastructure, Regional Development and Cities, under the Airports (Protection of Airspace) Regulations 1996, granted consent to the intrusion of the building into prescribed airspace for Darwin International Airport subject to the conditions attached to the approval which is reflected through condition number 36 on the development permit.

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

The application was circulated to relevant service authorities and appropriate conditions and/or notations have been included on the development permit to ensure servicing requirements are met.

The City of Darwin were present at the hearing and requested that in addition to the recommended conditions that an additional condition precedent relating to landscaping within the road reserve be included on any development permit issued. The authority noted Council's request and given the changes that will be occurring to the streetscape as part of the proposed development an appropriate condition is included on the development permit.

The authority noted the Traffic Impact Assessment dated 6 September 2017 and Technical Memorandum dated 1 November 2018 submitted by the applicant and further that the City of Darwin, as the controlling agency of the surrounding street network, raised no particular issues in relation to potential traffic impacts resulting from the proposed development. City of Darwin did however request that a condition be placed on any permit issued to enable them to undertake a full review

of the Traffic Report and this is reflected through condition number 4 on the development permit.

Notwithstanding the above comments, the authority considered that the proposed development has the potential to cause traffic delays along Mitchell Street as a result of outbound traffic along Mitchell Street waiting to turn right into McLachlan Street. The authority considered that a simple solution could be to widen the Mitchell Street road reserve in this location to provide a passing lane. The authority noted that the City of Darwin are the relevant authority in relation to traffic and the surrounding street network and therefore condition number 2 is amended to include reference that when reviewing the Traffic Impact Assessment Report, particular attention is given to this matter.

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

The development is consistent with the broader intent of Zone CB (Central Business) and applicable clauses, including the overall height, scale and setbacks proposed. The varying setbacks provided along both street frontages as part of the podium design, with 'semi-podium' levels at levels 7 and 8 treated with increased setbacks from the Mitchell Street and McLachlan Street frontages minimises any adverse amenity impacts on the surrounding developments.

The car parking levels of the podium are proposed to be covered by a cascading feature 'green wall' which contributes to the 'greening' of the streetscape and also adds a natural cooling to the building. The authority placed particular emphasis on this aspect of the building design and conditions on the development permit relating to landscaping have been amended to include specific reference to the development and maintenance of the green wall. The podium section of the building incorporates a variety of colours and materials, including clear and burnt orange glazing as well as the burnt oxide feature ribbon banding, which provides a clear break in form. The tower section of the building consists of a light grey and red oxide tinted glass façade, with a low reflectivity level, and coal black aluminium composite aluminium panels with perforated metal screening. These design features provide a clear 'top section' to the building.

In summary despite the variation sought to Clause 6.3.2 (Volumetric Controls in Central Darwin) the design and architectural style of the building will enhance the amenity of the streetscape and surrounding areas.

ACTION: Notice of Consent and Development Permit

ITEM 2
PA2018/0413
APPLICANT

CHANGE OF USE FROM OFFICE TO EDUCATION ESTABLISHMENT (UNIT 8005) UNIT 8005 (APT C306) L1, TOWER 3, 19C KITCHENER DRIVE, TOWN OF DARWIN
NORTHERN PLANNING CONSULTANTS PTY LTD

Mr Brad Cunnington (Northern Planning Consultants) attended.

RESOLVED
195/18

That, pursuant to section 53(a) of the *Planning Act*, the Development Consent Authority consent to the application to develop Lot 8005 (Apartment C306, Level 1, Tower 3, 19C) Kitchener Drive, Town of Darwin for the purpose of a change of use from office to educational establishment, subject to the following conditions:

GENERAL CONDITIONS

1. The works carried out under this permit shall be in accordance with drawing number 2018/0413/01 endorsed as forming part of this permit.
2. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage and electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
3. 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.

NOTES:

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.

REASONS FOR THE DECISION

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

The development comprises the change of use of an existing tenancy from office to educational establishment. The development has been found to be fully compliant with the Planning Scheme and is a form of development anticipated in Zone CB (Central Business) of which the purpose is to provide for a diversity of activities including entertainment, cultural and retail business activities with a commitment to the separation of incompatible activities. Clause 14.1.1 (Darwin City Waterfront Planning Principles and Area Plan) also encourages a diversity of uses and an educational establishment is considered compatible with the existing uses. The use is contained within an existing tenancy with no changes to the exterior of the building, and no additional car parking requirement is generated.

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

No concerns have been identified in relation to the capability of the land in accommodating the development.

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

An educational establishment is compatible with the existing uses at the Darwin Waterfront and is unlikely to have a broader impact on the existing and future local amenity. The tenancy is also limited in size and contained on an upper level of an existing building with no physical changes required to allow for the use.

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

The applicant, Mr Brad Cunnington of Northern Planning Consultants Pty Ltd attended the meeting on behalf of the landowners and raised concern with the Power and Water Corporation (Water Services) comments dated 18/10/2018 in which it requested that *the developer must install the backflow prevention device at the water service*. The applicant submitted that it was an unreasonable request given that the application related to a change in use of one tenancy within the overall building and that it was a matter to be taken up by instead by PWC directly with the building owner. The authority acknowledged the applicant's concerns and confirmed that there would be no condition applied to the development permit that related specifically to the installation of a backflow prevention device. A standard condition relating to the provision of water, sewerage and electricity to the development is included on the development permit however and the authority encouraged the applicant to liaise directly with PWC regarding their servicing requirements.

ACTION: Notice of Consent and Development Permit

ITEM 3 **ALTERATIONS AND ADDITIONS TO AN EXISTING SINGLE DWELLING**
PA2018/0389 **WITH A REDUCED SIDE SETBACK**
LOT 1186 (23) GREBE CRESCENT, TOWN OF SANDERSON
APPLICANT **AB CONSULTING (NT) PTY LTD**

The applicant did not attend.

RESOLVED That, pursuant to section 46(4)(b) of the *Planning Act*, the Development Consent
196/18 Authority defer consideration of the application to develop Lot 1186 (23) Grebe Crescent, Town of Sanderson for the purpose of alterations and additions to an

existing single dwelling with a reduced side setback to require the applicant to provide the following information that the authority considers necessary to properly consider the application:

- Demonstration of special circumstances, pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the NT Planning Scheme that justify the granting of a variation to Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures).

REASONS FOR THE DECISION

1. The authority noted the application material including the additional information provided by the landowner in which an explanation was provided for the proposed location and use of the proposed building. The authority were not satisfied that special circumstances had been demonstrated that could justify the granting of a variation to Clause 7.3 which ordinarily requires a 1.5m setback where in this instance a 0m setback is proposed.
2. Though not a point of deferral, the authority noted that while the DAS report refers to the proposed addition as a 'shed' the application alludes to the proposed addition being used for habitable purposes and therefore the authority would find it helpful if further clarification could be provided in relation to this matter to ensure the correct use is reflected on any subsequent development permit issued.

ACTION: Notice of Deferral

**ITEM 4
PA2018/0382
APPLICANT**

**SINGLE DWELLING EXCEEDING 8.5M IN HEIGHT WITH A REDUCED FRONT AND SIDE SETBACK
LOT 5930 (8) HICKEY COURT, TOWN OF DARWIN
ONE PLANNING CONSULT**

Mr Israel Kgosiemang (One Planning Consult) and Savvas Savvas (Savvas Savvas Architect) attended.

**RESOLVED
197/18**

That, the Development Consent Authority vary the requirements of Clause 7.1.2 (Residential Height Limitations) and 7.3 (Building Setbacks of Residential Buildings) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act*, consent to the application to develop Lot 5930 (8) Hickey Court, Town of Darwin for the purpose of a two storey single dwelling exceeding 8.5m in height with reduced front and side setbacks, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), plans shall be submitted demonstrating that the kerb crossovers and driveways to the site approved by this permit meet the technical standards of the City of Darwin, to the satisfaction of the consent authority.
2. Prior to the commencement of works (including site preparation), a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Darwin 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. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council's system or an alternate approved connection.

3. 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.
4. Prior to the commencement of works (including site preparation), the applicant is to prepare an Environmental and Construction Management Plan (ECMP) to the requirements of the City of Darwin. The ECMP is to address how construction will be managed on the site, and is to include details of waste management, traffic control and haulage routes, stormwater drainage and the use of City of Darwin land during construction. The ECMP should include details of the location of the crane and any holding areas.

GENERAL CONDITIONS

5. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
6. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage and electricity to the land shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
7. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
8. 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.
9. No polluted and/or sediment laden run-off is to be discharged directly or indirectly into City of Darwin drains or to any watercourse.

NOTES:

1. 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.
2. The City of Darwin advises designs and specifications for landscaping of the road verges adjacent to the property shall be submitted for approval by City

of Darwin and all approved works shall be constructed at the applicant's expense, to the requirements of City of Darwin.

3. 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.
4. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
5. 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.
6. The Northern Territory Environment Protection Authority has advised that the proponent must comply with their General Environment Duty provided by section 12 of the Waste Management and Pollution Control Act. More information can be found on the Northern Territory Environment Protection Authority website at: <https://ntepa.nt.gov.au/waste-pollution>. The applicant is encouraged to contact the NT EPA on (08) 8924 4218 or ntepa@nt.gov.au.

REASONS FOR THE DECISION

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

The proposal is consistent with the purpose of Zone SD (Single Dwelling), being to provide for single dwellings on individual lots. As set out below there are special circumstances to justify the variations to Clause 7.1.2 (Residential Height Limitations); and Clause 7.3 (Building Setbacks of Residential Buildings).

2. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the Northern Territory Planning Scheme the Authority may consent to a development that does not meet the standard set out in Part 4 and 5 of the NT Planning Scheme where it is satisfied that special circumstances justify the granting of consent:
 - a) A variation to the requirements of Clause 7.1.2 (Residential Height Limitations) to a maximum height of 9.26 metres is considered justifiable given the area of non-compliance relates to a small section of the roof where the lot slopes quite considerably towards the rear of the site as it approaches the water. The building presents as a two (2) storey dwelling to Hickey Court with the three (3) storey appearance limited to the rear boundary only (Cullen Bay marina). The dwelling is

compatible with nearby existing development whereby many dwellings present as two-stories to the street and three stories to the water.

- b) A minor variation to the front setback requirements of Clause 7.3 (Building Setbacks of Residential Buildings) is considered justifiable, given the previous planning policy for the Cullen Bay Estate enabled surrounding properties to be built with reduced front setbacks to those now prescribed. The proposed development would have complied with these previous front setback provisions. Only a small portion of the front façade is non compliant, with the balance of the front façade complying with the 6 metre requirement. The setback variation won't be readily apparent given the location of the site within the curve at the top end of a cul-de-sac; and the staggering of the façade, provides articulation so as to minimise any adverse effects of building bulk.
- c) Variations to the side setback requirements of Clause 7.3 (Building Setbacks of Residential Buildings) are considered justifiable, given the lot is an unusual shape in that it is narrow at the front and increases in width to the rear near the water. The staggering of the side elevations, provides articulation so as to minimise any adverse effects of building massing when viewed from adjoining land and also to encourage breeze penetration through and between buildings. Approval of the side setback variations will not cause an undesirable precedent given existing development along Hickey Court demonstrates a wide range of side setbacks, including nil setbacks which are resultant from the previous planning policy for the Cullen Bay Estate.
3. Pursuant to section 51(n) of the *Planning Act*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated

The development of the currently vacant site is likely to improve the amenity of the area through increased surveillance and activation; and importantly it will fill in a vacant 'gap' in the Hickey Court streetscape and the marina-scape.

ACTION: Notice of Consent and Development Permit

**ITEM 5
PA2018/0005**

10 X 3 BEDROOM AND 1 X 5 BEDROOM MULTIPLE DWELLINGS IN A 9 STOREY BUILDING

APPLICANT

**LOT 2458 (150) SMITH STREET, TOWN OF DARWIN
NORTHERN ABORIGINAL CULTURAL & EDUCATIONAL ASSOCIATION LTD**

Mr Samir Raut and Mr Sohum Raut (NBC Consultants) attended.

**RESOLVED
198/18**

That, pursuant to section 46(4)(b) of the *Planning Act*, the Development Consent Authority defer consideration of the application to develop Lot 2458 (150) Smith Street, Town of Darwin for the purpose of 10 x 3 bedroom and 1 x 5 bedroom multiple dwellings in a 9 storey building, to require the applicant to provide the following information that the authority considers necessary to properly consider the application:

- Further information and/or amended plans to demonstrate how the design of the development has mitigated the adverse effects of building massing and visual bulk that result from the non-compliances sought under Clause 7.3.1

- (Additional Setbacks for Residential Buildings longer than 18m and for Residential Buildings over 4 Storeys in Height).
- Further information and/or amended plans with regard to the non-compliance sought under Clause 7.1.1 (Residential Density Limitations), to demonstrate that the proposed density is appropriate in relation to compliance with Clauses 7.3.1 (Additional Setbacks for Residential Buildings longer than 18m and for Residential Buildings over 4 Storeys in Height) and 7.1.2 (Residential Height Limitations) of the Planning Scheme.
 - Confirmation from the Water Services division of the Power and Water Corporation regarding the green wall proposed adjacent to the water service infrastructure at ground level.
 - Clarification of the location of pedestrian entrance and carports proposed at ground level on all site and elevation plans.

REASONS FOR THE DECISION

1. Pursuant to Section 46(4)(b) of the *Planning Act*, the consent authority may defer consideration of a proposal to allow the applicant to provide additional information it considers necessary to enable the proper consideration of the proposal and its impact on the site and surrounding area. Pursuant to Section 51(a) of the *Planning Act*, the consent authority must, in considering a development application, take into account any Planning Scheme that applies to the land to which the application relates.

Clause 7.1.1 of the Planning Scheme provides that the consent authority may consent to a development that is not in accordance with the maximum number of dwellings that may be constructed on a site, if it is satisfied that compliance with other aspects of the Planning Scheme indicates that the density of the development is appropriate. The authority is of the opinion that the proposal as currently presented is an over-densification of the site. Amended plans demonstrating changes to the current design to improve compliance are therefore requested.

ACTION: Notice of Deferral

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

SUZANNE PHILIP
Chair

15 November 2018