



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 346 – FRIDAY 8 NOVEMBER 2019

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

MEMBERS PRESENT: Suzanne Philip (Chair), Mark Blackburn, Marion Guppy and Simon Niblock

APOLOGIES: Peter Pangquee and Mick Palmer

OFFICERS PRESENT: Breanna Lusty (A/Secretary), Dawn Parkes, Amit Magotra, Richard Lloyd and Emmet Blackwell (Development Assessment Services)

COUNCIL REPRESENTATIVE: Brian Sellers, Shenagh Gamble and Elly Bugg

Meeting opened at 9.45 am and closed at 12.45 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ITEM 1 WITHDRAWN

**ITEM 2 SHED ADDITION TO AN EXISTING SINGLE DWELLING WITH A
PA2019/0359 REDUCED FRONT SETBACK
 LOT 3204 (1) DOUGLAS STREET, PARAP, TOWN OF DARWIN
APPLICANT/S DPL Developments Pty Ltd**

Mr Darren Lyons (DPL Developments Pty Ltd) attended.

**RESOLVED That, the Development Consent Authority vary the requirements of Clause 7.3
185/19 (Building Setbacks of Residential Buildings and Ancillary Structures) of the
 Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning
Act 1999*, consent to the application to develop Lot 3204 (1) Douglas Street, Town
of Darwin for the purpose of a shed addition to an existing single dwelling with a
reduced front setback, subject to the following conditions:**

CONDITIONS PRECEDENT

1. Prior to the commencement of works (including site preparation), a schematic plan demonstrating the on-site collection of stormwater and its discharge into the local 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 surface flow direction, downpipe direction and any connection to Council connection points.
2. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.

GENERAL CONDITIONS

3. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
4. The owner of the land must enter into agreements with the relevant authorities for the provision of drainage and electricity services to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
5. 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.
6. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or site is to be created.

7. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
8. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of City of Darwin, to the satisfaction of the consent authority.
9. 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.
10. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.

NOTES:

1. Any proposed works on/over City of Darwin property shall be subject to a separate application to the City of Darwin and shall be carried out to the requirements and satisfaction of the City of Darwin.
2. Designs and specifications for landscaping of the road verge 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 the City of Darwin.
3. Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and the Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of one month prior to construction works commencing to determine servicing requirements and the need for upgrading of infrastructure.
4. This development permit does not grant building approval. You are advised to contact a NT registered private Building Certifier to ensure that you have attained all necessary approvals before commencing construction works.

REASONS FOR THE DECISION

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

The Northern Territory Planning Scheme (NTPS) applies to the land. Lot 3204 Town of Darwin is within Zone SD (Single Dwelling Residential) of the NTPS and is surrounded by lots predominantly developed as single dwellings. The purpose of Zone SD is to 'provide for low density urban residential development.' The proposal is for a shed addition to an existing residential dwelling and remains consistent with the purpose of Zone SD as it is an anticipated residential use.

2. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the NTPS the Authority may consent to a development

that does not meet the standard set out in Part 4 and 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

The subject site is located at the corner of Hudson Fysh Avenue and Douglas Street. Based on the NTPS classification of primary and secondary streets, Hudson Fysh Avenue is considered as Primary Street frontage for the site as it carries greater traffic flow and is also wider than Douglas Street.

The proposal has been assessed against the relevant clauses of the NTPS, and a non-compliance is identified with Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures) as a setback of 1.8 meters to the Primary Street (Hudson Fysh Avenue) is proposed where a minimum setback of 6 meters is required under the clause.

The applicant refers to the Clause 7.3 (4) (b) of the NTPS which states that *'where a lot has a boundary with a public street from which vehicular access to the lot is prohibited, this boundary shall be considered a side or rear lot boundary for the purpose of calculation of the building setback'*. The applicant submits that due to the existing bus stop on the Hudson Fysh Avenue, in front of the lot boundary, and two Frangipani trees within the road reserve, it is difficult to get access to the lot from the Hudson Fysh Avenue. Therefore, the lot boundary adjacent to the Hudson Fysh Avenue should be treated as side boundary setback, pursuant to Clause 7.3(4) (b), which allows for 1.5m setback for ancillary structures under the NTPS. The applicant in the application provided a response received from the City of Darwin regarding proposed access from Hudson Fysh Avenue. The response received states that "it is not impossible to get an access from Hudson Fysh Avenue, but the Council is strongly against the approval of an access at this location due to numerous factors including, but not limited to: removal of trees; proximity to the intersection; and high use of the road." The response demonstrates that the access from Hudson Fysh Avenue is not completely ruled out by the City of Darwin and depending upon the change in circumstances in the future, access from Hudson Fysh Avenue could be granted.

The application includes options analysis for the proposed shed location on Douglas Street vs Hudson Fysh Avenue. The analysis demonstrates that the shed location proposed in the application will retain the sense of openness and space form the corner of Douglas and Hudson Fysh. The proposed location will also have minimal impact on the streetscape and building massing and is a better option as compared to the fully compliant shed proposed on the Douglas Street frontage which is more building massing compared to the location proposed in the application. Furthermore, the shed is placed with its narrow frontage towards the Hudson Fysh Avenue, the reduced setback of the shed affects only 7m portion of the total 26m frontage to the Hudson Fysh Avenue. Rotating the shed to achieve greater compliance will increase the length of the façade, with a reduced setback, to the street frontage, which will have a more adverse building massing effect. The elevation plans provided by the applicant

demonstrates that the proposed shed will be constructed with corrugated wall cladding which will provide some visual appearance from the street frontage.

At the meeting on 8 November 2019, the applicant stated that at the commencement of design works, the proposed shed location was selected based on the orientation and location of the existing dwelling. Due to the existing infrastructure on Hudson Fysh Avenue (being two Frangipani trees and bus stop), it was assumed that access to Hudson Fysh Avenue would not be granted. Therefore, Hudson Fysh was considered as Secondary Street frontage, and the proposed shed being 1.8m from the street complies with the setback requirements. However, further discussions with the Development Assessment Services (DAS) and City of Darwin revealed that Hudson Fysh Avenue will be considered as Primary Street frontage. The applicant restated that the proposed location of the shed on Hudson Fysh Avenue is most appropriate as it will have less building massing, as compared to a fully compliant shed on Douglas Street. Furthermore, the existing dwelling on the lot is oriented towards Douglas Street; therefore, the shed on Douglas Street frontage will impact the views of the occupants of the dwelling to the street.

The meaning of special circumstances for the purposes of Clause 2.5 are circumstances that are 'unusual, exceptional, out of the ordinary and not to be expected' (as per Phelps v Development Consent Authority [2009] NTSC 54 Kelly J). In considering whether there are special circumstances, the Authority must take a holistic approach, with each case to be considered on its merits. Circumstances which by themselves might not be 'special' can, in combination with other circumstances, create a situation which overall gives rise to 'special circumstances'. Equally, a holistic approach to the application of clause 2.5 also applies to the respects in which a proposed development does not comply with the NTPS.

Considering the options analysis and having regard to the purpose of the clause, a variation to Clause 7.3 (Building Setbacks for Residential Buildings and Ancillary Structures) is granted due to the following reasons:

- The reduced setback of the shed relates to a 7m portion of the total 26m frontage to Hudson Fysh Avenue. Despite the setback variation proposed for the shed, the remainder setback to Hudson Fysh Avenue exceeds 6m which will assist in reducing overall building massing.
- Siting the structure 500mm below the road level, and addition of landscaping along the affected boundary provides adequate screening which will minimise the impact of building massing from the street.
- Placing the shed along the secondary street frontage (Douglas Street) will be significantly more visible. It will have a more adverse impact of building massing when viewed from the street compared to the location proposed in the application.
- Due to the angled placement of the dwelling on the lot, placing the shed on any other location will block the existing views of

the dwelling to the street and would also encroach on the area of open space available to the occupants of the dwelling.

In accordance with Clause 2.5 (Exercise of Discretion by the Consent Authority) of the NTPS, the aforementioned design features and site conditions are considered to be sufficient special circumstances and justify the granting of a variation to Clause 7.3 of the NTPS. These circumstances are expected to ensure that there are no undue or adverse effects of building massing when viewed from the street or adjoining land, that no overlooking issues are created, and that any impact on the streetscape is negligible. The Authority also noted that there is a 3m wide sewerage easement along Douglas Street boundary which can restrict the placing of the proposed shed along this frontage.

In response to the question raised by the Authority at the meeting regarding access to the shed, across the open space of the dwelling, from the existing crossover on Douglas Street, the applicant clarified that access to the shed will be provided by permeable landscape driveway to avoid minimum disturbance to the open space. The applicant confirmed that the owner does not need to put any concrete driveway across the open space area for the shed.

The Authority at the meeting also questioned why the roof of the proposed shed has a higher pitch at the rear. The applicant stated that the increased height is required for a hoist which the owner intends to install for service/repairs of his personal vehicles. The applicant confirmed that the proposed shed will not be used as a workshop.

The Authority noted that the property currently has black plastic privacy screening installed along the boundary fencing and questioned the applicant as to whether this was permanent or temporary. The applicant in response stated that there is existing landscaping around the boundary fencing; however, the plastic screen is installed to screen the tools and other personal belongings stored in the undercroft area of the dwelling. The applicant explained that once the construction of the shed was complete the black plastic can be removed from the boundary fence.

In granting a variation to the Primary Street setback requirements, the Authority considered that notwithstanding Hudson Fysh Avenue is technically the Primary Street it is clear that due to the existing orientation of the dwelling and other circumstances provided by the applicant, that Douglas Street has evolved as the Primary Street frontage rather than the Secondary Street. The Authority is therefore mindful that any future development along the Douglas Street frontage should comply with the NTPS setback requirements and attempt to maintain a setback distance consistent with the existing dwelling.

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

The application was circulated to the relevant authorities and comments received from these authorities are addressed by the inclusion of conditions on the development permit.

4. Pursuant to section 51(n) of the *Planning Act 1999*, 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 intent of Zone SD (Single Dwelling Residential), providing for a single dwelling and ancillary structures on an individual lot. The proposal is for a shed addition to an existing dwelling and remains consistent with the purpose of Zone SD as it is an anticipated residential use.

An assessment against the relevant clauses of the NTPS found that the proposal does not comply with the requirements of Clause 7.3 (Building Setbacks for Residential Buildings and Ancillary Structures).

Amenity under Section 3 of the Act and Clause 3 of the NTPS is defined as:

“amenity” in relation to a locality or building, means any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable.

The purpose of the Clause 7.3 which requires buildings to be compatible with the streetscape, minimise the adverse effect of building massing when viewed from the adjoining land and street and compatible with surrounding developments also relates to the amenity impacts of the development.

The application demonstrates that placing the shed along Hudson Fysh Avenue will have less impact of building massing as compared to placing along the Douglas Street frontage. Furthermore, the proposed location preserves the amenity of the dwelling through minimal encroachment on open space and views to streets. The siting of shed 500mm below the road level, and through landscaping and façade treatments of the shed is unlikely to detract from the visual amenity of the streetscape.

**ITEM 3
PA2019/0308**

ALFRESCO DINING ADDITION TO AN EXISTING CAFE (TENANCY 1)

**LOT 877 (29) ROSSITER STREET, RAPID CREEK, TOWN OF
NIGHTCLIFF**

APPLICANT/S

We Care NT Pty Ltd

Daniel Treacy (We Care NT Pty Ltd) and Israel Kgosiemang (One Planning Consult) attended.

Andrew Gray, Scott Smith and Dianne Walsh (submitters) attended.

**RESOLVED
186/19**

That, the Development Consent Authority reduce the car parking requirements pursuant to Clause 6.5.2 (Reduction in Parking Requirements) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 877 (29) Rossiter Street, Town of

Nightcliff for the purpose of alfresco dining addition to an existing cafe (tenancy 1), subject to the following conditions:

CONDITION PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), the applicant is to provide amended plans showing the proposed alternative disabled access point to the site.

GENERAL CONDITIONS

2. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
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.
4. Deliveries to and from the site must only take place between:
Waste collection: 10 a.m. and 2 p.m.
Monday to Saturday Newspapers and bread deliveries: not before 6 a.m.
Monday to Sunday All other deliveries: 8 a.m. and 2 p.m. Monday to Saturday

NOTES:

1. The development and use hereby permitted should be designed, constructed, registered and operate in accordance with the National Construction Code of Australia, the *Public and Environmental Health Act 2011* and Regulations, the *Food Act 2004* and National Food Safety Standards.
2. The applicant is advised to engage a building certifier, within the meaning of the *Building Act 1993*, as to whether the building/s comply with the *Building Act 1993* and associated Regulations.

REASONS FOR THE DECISION

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

The development comprises an alfresco dining addition to an existing café (tenancy 1). The proposal is a form of development anticipated in Zone C (Commercial) of which the purpose is to provide for a range of business and community uses. The use of the alfresco dining addition to the café is considered to comply with Zone C (Commercial), particularly provided it respects the amenity of adjacent and nearby uses. It is considered that this can be achieved through the applicant's proposed measures to reduce noise and the inclusion of a condition on the development permit that limits the hours for deliveries and waste bin collection.

The proposal has been assessed against the relevant clauses of the NT Planning Scheme that applies to Zone C, and a non-compliance was identified against Clause 6.5.1 (Parking Requirements).

The assessment identifies that the proposal generates the requirement for 3 car parking spaces. 8 parking spaces have been approved for the site with no additional parking spaces proposed as part of this application. As such, a reduction of 3 parking spaces is required for the proposal.

- A reduction to the parking required under Clause 6.5.1 (Parking Requirements), pursuant to Clause 6.5.2 (Reduction in Parking Requirements) of the Scheme is supported based upon the following reasons:
 - The site is zoned C (Commercial) under the Planning Scheme and it is unlikely that this zoning will change in the future.
 - In addition to the 8 spaces on the site, there are a number of public parking spaces in the vicinity of the land along Rossiter Street. Additionally, DAS has no record of any complaints being raised concerning parking for the development in the past and it is noted that City of Darwin raises no issues in relation to the application. As such, it is considered that the parking requirement of 3 parking bays can be accommodated in the vicinity of the land.
 - The site is in close proximity to the public bus network (along Ryland Road), being Route 4 between the Darwin and Casuarina interchanges.
2. Pursuant to Section 51(e) of the *Planning Act 1999*, the consent authority must take into consideration any submissions made under section 49, and any evidence received under section 50, in relation to the development application.

Five submissions were made under section 49 in relation to the application during the exhibition period. One was in support of the proposal. Three submitters were present at the meeting and spoke further to their written submissions.

The key planning issues raised in the submissions relate to: noise and amenity impacts and car parking.

In relation to noise and amenity impacts, the main concerns relate to noise from deliveries to the café, waste bin collection and from patrons/staff in the alfresco area. Mr Smith explained that he lives directly opposite the café on Rossiter Street and that his residential amenity is eroded by the noise associated with the café's operations, particularly delivery trucks idling outside of his house and the bins being collected from the Rossiter Street frontage. Mr Smith also questioned why the proposed condition for delivery times was allowing certain deliveries to take place one hour earlier than stated in a condition of the original approval. Both Mr Gray and Mr Smith raised concern in relation to the smell of cigarette smoke from the alfresco area, while Ms Walsh stated she had never experienced anyone smoking on the premises. The Authority acknowledged that Mr Treacy stated that the café is a no-smoking venue.

It is considered that the mitigation measures to be undertaken by the applicant - which include not having early deliveries or bin collection and appropriately placing plants to reduce noise from the alfresco area - will ensure noise levels are minimised. A condition is included on the development permit to ensure no deliveries occur before 6am and the majority occur between 8am and 2pm Monday to Friday, as well as bin collections only occurring between 10am and 2pm Monday to Saturday. It is acknowledged that these collection and delivery hours are, in part, earlier than those stipulated in the original development permit for the site (DP10/0052). This is because more specific information has been provided about the café's operation and practicality of deliveries, particularly in relation to newspapers / bread. It is further noted that the time of newspaper deliveries to the café are the same as the general newspaper deliveries to residences in the area. The Authority also clarified with Mr Smith that the current arrangement for the bins to be collected from the Kelly Place frontage rather than the Rossiter Street frontage was an improvement from his perspective and he agreed.

In relation to car parking, the main concern raised in submissions is that cars park down both sides of Rossiter Street and across driveways particularly at weekends. The Authority noted the comments from DAS that parking on public roads is a matter for the City of Darwin and City of Darwin has raised no concerns with the application. At the meeting the Authority clarified with the City of Darwin whether or not they would consider putting yellow lines across residents' driveways and the City of Darwin confirmed that their current investigations have not revealed any breach that would warrant yellow lines, but that they will continue to respond to any complaints received. The Authority also noted that DAS has not received any complaints regarding parking in relation to the site and concluded that due to the public parking availability in the vicinity of the site and the length of time the café (and other tenancies) have been operating without evident parking issues being raised, there are no major concerns regarding the parking for the café.

Ms Walsh spoke in support of the proposed development as a long-term nearby resident and regular patron of the café. Ms Walsh stated that the café encourages community spirit which is often difficult to find in today's society and that she believes the café is a benefit to the local area and the addition of the alfresco area, as has been there for some time, is a positive addition to the café.

The Authority noted that both Mr Gray and Mr Smith both raised concern at the meeting in relation to disabled access and a condition precedent is included on the development permit to ensure that any disabled access required under the *Building Act 1999* is shown on amended plans.

3. It is noted that bin storage for the café is currently located in the loading bay for the site which is not in accordance with the endorsed plans for the original development permit for the site (DP10/0052). This is because a single large bin is needed as the capacity of anything smaller is not sufficient for the café's use. The loading bay for the complex is not currently being used by the other tenancies on the site so the storage of the bin in the loading bay is considered acceptable.

However, provisions will need to be made for the loading bay to be used by any of the other tenancies should they require it, as the provision of one loading bay for the site is a requirement under Clause 6.6 (Loading Bays) of the NT Planning Scheme.

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

The application was circulated to the relevant authorities and comments received from these authorities are addressed by the inclusion of conditions and/or notations on the development permit. No concerns of note were raised by the authorities.

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

The proposal has the potential to impact the amenity of nearby residences principally through noise from and patrons particularly at weekends. However, it is noted that the applicant has installed noise blocking plants to help insulate the neighbourhood from any noise of customers talking on one side of the alfresco area and they are now looking to extend the amount of plants for noise reduction (and aesthetic) purposes. The alfresco dining area is not expected to significantly increase parking demand. It is noted that the alfresco area has been operating for a number of years without complaints being received by DAS, and City of Darwin raises no issues regarding the application. It is also noted that the applicant proposes to make some adjustments to the general operation of the café to reduce disturbance to neighbours particularly from delivery trucks by arranging later delivery times. In general, the Authority does not consider that the impact of the alfresco dining area will be greater than that which is to be reasonably expected from the existing legitimate use of tenancy 1 as a café.

**ITEM 4
PA2019/0371**

COMMUNITY CENTRE

LOT 5672 (56) WOODS STREET, DARWIN CITY, TOWN OF DARWIN

APPLICANT/S

Elton Consulting

Mr Brad Cunnington (Northern Planning Consultants Pty Ltd) attended on behalf of the applicant.

Mr Brad Cunnington tabled a response to submissions prepared by Elton Consulting.

Mr Steve Conn and Mr Brydin Roditis (Department of Housing) and Ms Kris Boyce (Department of Infrastructure Planning and Logistics) attended.

Submitters in attendance: Mr Peter McMillan, Mr Brian Kelly, Ms Linda Weatherhead and Mr Kevin & Mrs Alison McShanag attended.

Mr Kelly tabled the following documents:

- Census of Population and Housing: Estimating homelessness, 2016;
- Letter received from the Minister for Local Government Housing and Community Development; and
- Better Pathway Centre – Fact Sheet

**RESOLVED
187/19**

That, pursuant to section 53(a) of the *Planning Act 1999*, the Development Consent Authority consent to the application to develop Lot 5672 (56) Woods Street, Town of Darwin for the purpose of a community centre, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be provided electronically. The plans must be generally in accordance with the plans submitted with the application but modified to include:
 - a) Dimensions of car parking bays, driveway width and distance of car park from main road (Woods Street);
 - b) Details of fencing along the southern boundary adjoining boundary of 41 McMinn Street; and
 - c) Provision of bike racks in the development.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a landscape plan to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be generally in accordance with the landscape plan submitted with the application and must include a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, sizes at maturity, and quantities of each plant. All species selected must be to the satisfaction of the consent authority.
3. 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 Transport and Civil Services Division of the Department of Infrastructure Planning and Logistics stormwater drainage system shall be submitted to and approved by the Transport and Civil Services Division of the Department of Infrastructure Planning and Logistics, to the satisfaction of the consent authority. The plan shall indicate how stormwater will be collected on the site and connected underground to Transport and Civil Services Division of the Department of Infrastructure Planning and Logistics system or an alternate approved connection.

GENERAL CONDITIONS

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

5. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage and electricity services to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
6. 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.
7. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to the Transport and Civil Services Division of the Department of Infrastructure Planning and Logistics, to the satisfaction of the consent authority.
8. The installation of any services or service connections within the Garramilla Boulevard and McMinn Street road reserves are subject to Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics approval. All service related works are to be contained within the appropriate Nominal Service Corridor, to the satisfaction of the consent authority.
9. Upon completion of any works within or impacting upon the Garramilla Boulevard and McMinn Street road reserves, the road reserves shall be rehabilitated to the standards and requirements of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
10. No vehicle access shall be permitted to the subject lot from Garramilla Boulevard and McMinn Street road reserve.
11. Before the use/occupation of the development starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
12. 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.
13. 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.
14. All pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the consent authority.

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.

2. The Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics advises that The Developer shall consider the Department's Policy "Road Traffic Noise on Northern Territory Government Controlled Roads" and have carried out, in accordance with AS3671 Road Traffic Noise Intrusion - Building Siting and Construction, an assessment by a suitably qualified person of the Development's present and predicted future exposure to road traffic noise levels. Where required, the Developer shall provide appropriate noise attenuation measures. All noise attenuation works deemed necessary, e.g. building materials and design, lot layout or noise barriers, shall be wholly contained within the subject Lot (including foundations) and carried out and maintained at full cost to the Developer.
3. Any floodlighting or security lighting provided on site is to be shielded in a manner to prevent the lighting from being noticeable or causing a nuisance to the Garramilla Boulevard and McMinn Street traffic.
4. The Developer shall consider the Department's Policy "Road Traffic Noise on Northern Territory Government Controlled Roads" and have carried out, in accordance with AS3671 Road Traffic Noise Intrusion - Building Siting and Construction, an assessment by a suitably qualified person of the Development's present and predicted future exposure to road traffic noise levels. All noise attenuation works deemed necessary, e.g. building materials and design, lot layout or noise barriers, shall be wholly contained within the subject Lot (including foundations) and carried out and maintained at full cost to the Developer.
5. The finish of any Prime Identification sign, if erected, shall be such that, if illuminated, day and night readability is the same and is of constant display (i.e. not flashing or of a variable message). The sign shall be positioned:
 - i. so as not to create sun or headlight reflection to motorists; and
 - ii. be located entirely (including foundations and aerially) within the subject Lot.
6. The Aboriginal Areas Protection Authority recommends that the permit holder obtain an Authority Certificate to indemnify against prosecution under the *Aboriginal Sacred Sites Act 1989*. For advice on how to obtain a certificate, please contact the Aboriginal Areas Protection Authority.

REASONS FOR THE DECISION

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

The Northern Territory Planning Scheme (NTPS) applies to the land, and the site is zoned CB (Central Business) under the NTPS. The proposal includes the refurbishment of an existing building to facilitate the establishment of a community centre which is listed as a discretionary land use in Zone CB.

The Authority confirmed that the proposed development fits within the NTPS definition of a community centre which:

“means a building or part of a building designed or adapted primarily to provide facilities for social, sporting or cultural purposes but does not include premises licensed under the Liquor Act”.

The primary purpose of Zone CB is to provide for a diversity of activities, including administrative, judicial, professional, office, entertainment, cultural, residential and retail and other business activities with a commitment to the separation of incompatible activities. In Zone CB, 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.

Part 2, Clause 4 (Planning Principles and Framework) of the NTPS requires that the scheme be interpreted to have regard to the relevant framework drawings contained in Part 2. Clause 4.2 establishes principles relevant to the Darwin Region. Principle of particular relevance to the current proposal include sub-clause (b) which identify the administration of this Planning Scheme in relation to Darwin Region is to:

“affirm the primacy of the Darwin Central Business District as the dominant commercial, cultural, administrative, entertainment, tourist and civic centre and promote existing and planned activity centres as the principle locations for commercial, retail and community uses serving associated catchment populations” (underline emphasis added)

The proposal aligns with the broader intent of Zone CB as the proposed community centre will make use of an existing otherwise vacant building to provide a facility that will serve the needs of the local community as well as some of the needs of regional and Territory population.

In relation to the built form and design, the development will entail the refurbishment / upgrading of an existing building. The site features facilitate pedestrian movement from Garramilla Boulevard and Woods Street. The intent of establishing the community centre on the subject site is to try and increase activity and adaptive reuse of an existing building. Furthermore, landscaping along with screen fencing proposed along the south-west boundary (adjoining residential development) to limit visual intrusion.

At the meeting the applicant gave an overview of the background and nature of the proposed development (community centre). The applicant explained to the Authority that the proposed facility is viewed as a crucial part of the Northern Territory Government’s response to homelessness in the greater Darwin region. The applicant explained to the Authority that the proposed community centre is part of a broader programme addressing the needs of rough sleepers, specifically the daytime needs, to provide a safe place to access service, meals, shower, storage facilities and case management. The applicant

confirmed that the proposed development is a daytime facility and no overnight accommodation will be provided in the proposed community centre.

2. The purpose of Clause 6.5.3 (Parking Layout) is to ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose.

The application proposes to utilise the existing car parking area available on site which comprises of a mix of 90^o, 45^o and parallel car parks with 4.2m driveway for one-way traffic flow. The statement of effect states that the 90^o car parks measure 5.5m x 2.7m and 45^o car parks measures 2.7m x 2.6m as required under diagram to this clause. A condition precedent is included on the development permit to provide amended plans showing dimensions of car parking bays, driveway widths and the distance of the car park from the public road (Woods Street) as these details are not confirmed on the submitted plans.

3. The purpose of Clause 8.2 (Commercial and other developments in Zone CB) is to promote site-responsive designs of commercial, civic, community, recreational, tourist and mixed-use developments which are attractive and pleasant and contribute to a safe environment.

The proposed use will utilise an existing building, with only minor internal modifications and some changes to external doorway widths. Existing vistas will therefore be unaffected by the proposal. The existing building has a high level of external activation with louvered windows or opening doors throughout, and therefore expanses of blank walls are minimised / not present. The building provides a high level of passive surveillance of on-site open space, as well as toward the Frog Hollow public open space. A condition is included on the development permit to ensure any existing or future service plants, pipes, air conditioning units etc. are concealed from public view.

The existing site layout provides for safe and convenient pedestrian and vehicle access, and on-site circulation. Pedestrian and vehicle access have been separated. The existing building provides covered external walkways, and additional on-site landscaping is proposed for protection from sun and rain. Additional landscaping is also proposed along the full length of the site boundary, and specifically to screen the existing car park from Woods Street. The use as a community centre incorporates public toilets, parenting rooms, shower facilities and storage for personal belongings.

The clause requires the preservation of vistas along streets to buildings and places of architectural, landscape or cultural significance. The clause also requires the development to be sympathetic to the character of buildings in the immediate vicinity. While the existing building on site is not a heritage building, the design and façade of the building is a unique example of architecture from the post-war era. Located at the intersection of the Garramilla Boulevard and McMinn Street the façade of the building is highly visible from the surrounding street network. The development proposes to preserve this vista by not altering the facade of the building and providing low level landscaping along the street frontages.

In relation to the character of buildings in the immediate vicinity, it should be noted that the building is existing on site and no change to the character of the building is proposed as part of the development. The southern boundary of the site joins with residential uses (towards McMinn Street) and car parking associated with a medical clinic (towards Woods Street). The application proposes dense landscaping, medium height vegetation with lush foliage, along the boundary. High fencing to the boundary of 41 McMinn Street is also proposed to preserve the visual amenity.

A condition precedent is included on the development permit to provide a landscaping schedule of the proposed landscaping along with the fencing type details along the southern boundary of the site with 41 McMinn Street. In addition, a condition precedent has been included on the development permit to provide amended plans showing the location of bike racks within the development.

In response to a question raised by the Authority in relation to the safety of pedestrians accessing the site and its proximity to Garramilla Boulevard, the applicant explained that there are pedestrian crossing facilities on Garramilla Boulevard located adjacent to the subject site. These pedestrian crossings can provide safe and direct pedestrian access to the proposed development.

4. Pursuant to section 51(b) of the *Planning Act 1999*, the consent authority must take into consideration any proposed amendments to such a planning scheme:
 - (i) that have been or are on exhibition under Part 2, Division 3;
 - (ii) in respect of which a decision has not been made under Part 2, Division 5; and
 - (iii) that are relevant to the development proposed in the development application.

A proposed planning scheme amendment to include the Central Darwin Area Plan (CDAP) under Schedule 3 of the NT Planning Scheme was recently exhibited under Part 2, Division 3; in respect of which a decision has not been made under Part 2, Division 5 of the Act. The Central Darwin Area Plan (CDAP) provides the overarching planning principle along with objectives and acceptable responses for the development in the Central Darwin Area.

The draft area plan identifies that additional community, education, commercial, and retail activities are required to cater for future growth in Central Darwin and the broader region (underline emphasis added). Large undeveloped or underdeveloped sites along Garramilla Boulevard present opportunities to integrate community facilities into a mixed use urban village that complements the city centre

The DAS assessment notes that the proposed development supports the draft area plan objective to provide for the establishment of community facilities. The subject site is located along Garramilla Boulevard and the proposed development increases activity and adaptive reuse of an existing building.

The subject site also falls within focus area A3, City Centre: Education and Civic Precinct, of the draft area plan and is identified as an area for community and education facilities. The DAS assessment also notes that the proposed development complies with the objectives and acceptable responses of the focus area as:

- The proposal provides for a multi-use community centre similar to that proposed by the draft area plan. While it is focussed on a specific social outcome, it corresponds with the principle of a community centre within the CBD.
 - The proposed use will utilise an existing building, with only minor internal modifications and some changes to external doorway widths. The existing façade will be retained and restored in keeping with its original design. The development is viewed as sympathetic to the character of buildings in both the immediate vicinity and broader CBD context.
 - The development is located at the corner of Garramilla Boulevard and McMinn Street. The interface to this gateway location is preserved by not altering the existing architectural style of the building and addition of new low height landscaping to ensure the site is visually appealing from the public realm. The proposed use does not compromise the future redevelopment of the site as a prominent gateway location.
5. Pursuant to section 51(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.

The application was publically exhibited in accordance with the *Planning Act 1999*, and a total of 14 public submissions were received under Section 49 during the exhibition period. Of the 14 submissions received, 9 submissions were in support and 5 submissions in opposition to the application. A number of submitters were present at the meeting and four spoke further to their written submissions.

The submissions were received from residents of the residential properties surrounding the subject sites and agencies which provide services to people who are sleeping rough or those at risk of becoming homeless. The submissions in opposition raised concerns regarding character and amenity, access to the site, public utilities in the surrounding areas and lack of information in the application regarding operation of the facility. The submissions in support provided various reasons in support of the proposed development.

Mr McShanag spoke further to his written submission and advised the Authority that his property (3 Harvey Street) is in plain sight of the proposed development. Mr McShanag explained that the proposed development could increase antisocial behaviour activities in the surrounding area and that the proposed development will bring a number of itinerants into one spot, thereby causing safety issues to the surrounding residents. Mr McShanag also raised concerns regarding the use of Frog Hollow Park by itinerants.

Mr Kelly spoke further to his written submission that was provided on behalf of the Body Corporate of 41 McMinn Street located on the south-east boundary of the subject site. Mr Kelly expressed that they fully support the intent of the proposed development; however, object to the location in the concentrated area. Mr Kelly tabled statistics on homelessness from the 'Census of Population and Housing – 2016' and explained that Darwin has the highest number of homelessness and believes that the size of the facility is not adequate to cater to the demand. Mr Kelly made a number of references to the report 'Homelessness and Accommodation Responses to Rough Sleepers prepared' by KPMG for the Department of Housing and Community Development, which provides a detailed survey on the existing rough sleepers in the Darwin and recommendations to address the issues of rough sleepers. Mr Kelly also tabled a copy of a letter from the Minister for Local Government, Housing and Community Development stating that the proposed facility is temporary until a suitable permanent site at another location is identified and developed which Mr Kelly says indicates that the site of the proposed development is not considered suitable by the Government.

Mr Kelly noted that the submissions in support of the development draw a comparison with the Homelessness Hub located in the Katherine CBD, which has been a success in providing much needed support to help reduce issues associated with homelessness. However, the facility in Katherine, in scale and size, is not comparable to the proposed facility.

Mr Kelly emphasised that it is very unclear from the application as to the number of people using the facility, and questioned whether or not facilities such as showers, toilets, laundry etc. are of an adequate number to serve the proposed demand. Mr Kelly expressed that he has been unable to obtain adequate information in relation to the operation of the facility during the community consultation or from the Department of Housing and Community Development. Mr Kelly also raised concerns in relation to pedestrian safety, antisocial behaviour, noise, impact on amenity in comparison to the previous use of the site, the adequacy of public facilities in the area, the upkeep of the building and whether or not the application had been advertised correctly. Mr Kelly requested deferral of the application to obtain the further information necessary to answer many of the questions raised and provide more certainty on how the facility would operate.

Ms Weatherhead from Darwin Community Legal Services (DCLS) spoke further to her written submission in support of the proposed development. Ms Weatherhead expressed that as a neighbour to the proposed development with clear oversight of the premises, and also as a service provider to the homeless, that she supports the proposed development. Ms Weatherhead stressed that the proposed development will provide much needed facilities to rough sleepers and that the location is appropriate as it is accessible to public transport and facilities as well as many service providers in the CBD allowing for cross referrals.

Mr McMillan from NT Shelter relied on his written submission but added that he supports the location of the proposed development as it is

accessible from the locations that are popular with rough sleepers. Mr McMillan acknowledged that there are a number of social issues associated with homelessness but that many assumptions had been made in opposing submissions and that there is no evidence to support such fears. Mr McMillan stated that the proposed development would activate the area as the proposed development will allow the refurbishment of an existing building.

In response to comments made at the meeting, and over and above what has already been provided in the application materials and written response to submissions, the applicant commented that:

- The KPMG report is not a policy document etc. that needs to be considered by the Authority under the *Planning Act 1999*. The recommendations of the KPMG report do not relate to the proposed development as it specifically relates to the accommodation of rough sleepers in greater Darwin. A separate project is currently underway to establish an accommodation facility in an appropriate location.
- Except for minor upgrades, the service authorities raised no issues regarding servicing requirements. The issues raised in relation to the number of toilets etc. provided within the facility is dealt with under separate legislation (*Building Act 1999*).
- The development is intended to provide facilities to rough sleepers in the Darwin CBD and surrounding areas only. This is only one part of a number of packages to be provided by the Government to address the issues arising from rough sleepers.
- The impact on amenity has to be taken in context of the zone which in this case is CB. The proposed fencing and landscaping will improve the existing interface with the street and adjoining sites and the site will be activated which will improve the existing amenity.
- The application was exhibited in accordance with the requirements of the *Planning Act 1999*.

The Authority read, heard and considered all submissions in detail and ensured that these submissions formed an integral part of the determination. The Authority considered that the submissions received in opposition mostly relate to the specific use and subsequent operations of the community centre which are matters largely outside of what it is required to consider under section 51 of the *Planning Act 1999*. The Authority clarified that it is approving the use of an existing building as a community centre, which under the broad definition provided for in the NTPS, can be occupied by a number of organisations/service providers and therefore the Authority is unable to monitor the specific day to day operations of the facility. The Authority also noted that the development is assessed as fully compliant with the relevant requirements of the NTPS and that the draft CDAP also supports the development of the subject site for community uses such as a community centre.

The Authority considered that the proposed use as a community centre is not dissimilar to the historic use of the site as a primary school and then as an arts centre, which have both been community uses. The Authority noted the applicant's undertaking to consult further with the

neighbouring residents and businesses as the final design and operation details of the facility are developed. While not a condition on the development permit, the Authority also noted Mr Kelly's suggestion to paint the exterior of the building which is considered favourable given the site's newfound prominent location.

In response to concerns raised in relation to exhibition dates, the Authority was advised by DAS that the application has been advertised in accordance with the requirements of the *Planning Act 1999*. The application was advertised in the NT News on 27 September 2019 and placed on public exhibition for a period of two weeks (until 11 October 2019). However, the closing date for submissions and access to the application material online was extended by three days (until 14 October 2019) to compensate for a minor delay (a couple of hours) of the pink signs being erected on site on the first day of exhibition.

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

The development will allow refurbishment of an existing building, currently vacant, to facilitate the proposed use. The works involve minor physical changes to the existing building, with some landscaping works, and no concerns regarding the capability of the land or building have been identified. Conditions are included on the development permit in relation to stormwater management and any potential impacts on infrastructure within the surrounding road reserves. The effect of the development on the land and on other land is generally discussed as it relates to amenity in reason 8 below.

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

The application was circulated to the relevant authorities and comments received from these authorities are addressed by the inclusion of appropriate conditions and notes on the development permit.

8. Pursuant to section 51(n) of the *Planning Act 1999*, 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.

Amenity under Section 3 of the Act and Clause 3 of the NTPS is defined as:

“amenity” in relation to a locality or building, means any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable.

Further, Part 2, Clause 4 (Planning Principles and Framework) of the NTPS requires that the scheme be interpreted to have regard to the relevant framework drawings contained in Part 2. Clause 4.1 establishes principles relevant to the Northern Territory. Principle of particular relevance to the current proposal include sub-clause (f) which identify the administration of this Planning Scheme in relation to Northern Territory is to:

“ensure development does not unreasonably intrude on or compromise the privacy of adjoining residential uses and ensures its own amenity is not compromised in the future.”

The impact on amenity is considered in the following ways:

Impact on amenity due to the development on the site

The development will allow the refurbishment of an existing building to facilitate the proposed use. The visual amenity of the area is improved through the upgrading of the vacant building and maintenance once the use has commenced. The works involve minor physical changes to the existing building, with some landscaping works. Furthermore, the amenity of the site is heavily influenced by established mature vegetation, including large and medium-sized trees, hedges, shrubs and groundcovers. The addition of landscaping along street frontages as part of this development will contribute to the amenity of the area.

Impact on amenity due to the use of the site on the surrounding area

The development proposes a landscaping buffer and high screen fencing along the boundary of the residential area located on the southern boundary. In addition, various measures have been undertaken to maintain or improve the amenity of the nearby residential area, such as re-aligning the pathways within the development away from the residential area. A condition is included on the development permit to provide a schedule of the proposed landscaping and fencing details.

ITEM 5

WITHDRAWN

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

SUZANNE PHILIP
Chair

14 November 2019