



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 341 – FRIDAY 23 AUGUST 2019

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

MEMBERS PRESENT: Suzanne Philip (Chair), Mark Blackburn, Marion Guppy, Mick Palmer and Peter Pangquee

APOLOGIES: Nil

OFFICERS PRESENT: Breanna Lusty (A/Secretary), Dawn Parkes, Emmet Blackwell, Stuart Harris and Alexander Deutrom (Development Assessment Services)

COUNCIL REPRESENTATIVE: James Whyte and Brian Sellers

Meeting opened at 10.15 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

**PA2019/0266 ALTERATIONS AND ADDITIONS TO AN EXISTING HOSTEL RESULTING IN 31 BEDS IN 2 X 2 STOREY BUILDINGS
LOT 1245 (133) SMITH STREET, TOWN OF DARWIN
APPLICANT/S One Planning Consult**

Israel Kgosiemang (One Planning Consult), Savvas Savvas (Savvas P Savvas Architects) and Michael Osborn (FYFE) attended.

**RESOLVED
135/19**

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 1245 (133) Smith Street, Town of Darwin for the purpose of alterations and additions to an existing hostel resulting in 31 beds in 2 x 2 storey buildings to require the applicant to provide the following information that the Authority considers necessary in order to enable the proper consideration of the application:

GENERAL CONDITIONS

1. An electronic copy of the amended plans tabled at the 23 August 2019 DCA meeting accompanied by a statement outlining the amendments and how they impact on compliance with the relevant requirements of the NT Planning Scheme (NTPS).
2. Demonstration of special circumstances in accordance with Clause 2.5 (Exercise of Discretion by the Consent Authority) of the NTPS to justify any remaining non-compliances.
3. A written response (and further amendments to the proposed plans if necessary) to address the concerns raised by the submitter at the 23 August 2019 DCA meeting.
4. Revised comments from the Department of Health (Development Assessment Services to obtain)

REASON 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 proposal was assessed against the relevant provisions of the Northern Territory Planning Scheme (NTPS) and did not comply with the following clauses; 6.5.1 (Parking Requirements); 6.5.3 (Parking Layout); 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures); 7.3.1 (Additional Setback Requirements for Residential Buildings Longer Than 18m and for Residential Buildings Over 4 Storeys in Height); 7.6 (Communal Open Space); 7.7 (Landscaping for Multiple Dwellings, Hostels and Supporting Accommodation). The Authority noted from the outset the large number of non-compliances exhibited in the application.

The applicant attended the meeting and acknowledged the Development Assessment Services (DAS) report, which recommended the application be

deferred to allow the applicant the opportunity to provide an amended design that achieves a greater level of compliance with the provisions of the NTPS.

The applicant tabled amended drawings at the meeting that included the removal of two ensuite extensions on the ground floor of the proposed development. The applicant advised the amended design achieved greater compliance with the NTPS in relation to setbacks, landscaping and communal open space provided. Given the intricate nature of these clauses, the Authority was unable to undertake a full assessment of the revised application at the meeting. The Authority determined to defer the application to allow for a new DAS assessment and subsequently a comprehensive consideration of the amended application.

Notwithstanding the above, the Authority raised significant concerns with the original proposal and the number of variations being sought. The Authority reminded the applicant that pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the NTPS the application must provide special circumstances to justify the granting of consent and that the reasons provided to date were questionable. The Authority will again consider any remaining non-compliances in the context of Clause 2.5 when the application is rescheduled for a subsequent meeting.

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 or information received under section 50, in relation to the development application.

One public submission was received during the exhibition period under Section 49 of the *Planning Act 1999* with respect to the proposal. The submission was made by Mr Michael Osborn of FYFE on behalf of Ms Anna Lymbouras, who is the owner of Lot 1246 (12) Malabar Court, which is directly adjacent to the south of the subject site. The submission raised a number of issues, most of which related to the non-compliances exhibited in the application.

Mr Osborn attended the meeting and made a further verbal submission. He advised that he was unable to comment on the amended design tabled at the meeting without having appropriate time to review it.

Mr Osborn advised that Ms Lymbouras's primary concern with the redevelopment of the site was privacy. Mr Osborn questioned the applicant on the finish material used for the door on the second storey that will overlook Ms Lymbouras's lot and whether any further screening would be included, particularly to the staircase which currently appears to be open. The applicant was unable to provide this detail but advised that they would, in the detailed design phase, work to address Ms Lymbouras's concerns.

Deferring the application will allow the applicant to respond to the submitter's request for further design information, and allow an opportunity for the submitter to comment on the amended design tabled at the meeting.

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

facilities, infrastructure or land to be provided by the developer for that purpose.

The application was circulated to service authorities for comment. The Department of Health (DoH) advised that because student accommodation does not fall under the category of a CVA (Commercial Visitor Accommodation), it had no further comment. DoH requested that if at any stage in the future the proposed facility is changed to that of a hostel or motel then the owners will be required to register as a CVA with the Environmental Health Branch.

The Authority noted, and the applicant agreed, that the proposed use falls under the NTPS definition for 'hostel', which includes boarding houses, guest houses lodging houses and other premises used to provide board or lodging with communal toilet, ablution, dining or cooking facilities but does not include home based visitor accommodation or a group home. The definition for hostel is broad and consent would allow the premises to operate in any manner that falls within this definition. This may include operating under DoH's category of a CVA. Based on these circumstances, the Authority requested that the application be re-circulated to DoH for revised comments to enable its proper consideration of the application.

ACTION: Notice of Deferral

ITEM 2

PA2019/0257

SUBDIVISION AND CONSOLIDATION TO CREATE FIVE LOTS AND A WAREHOUSE AND ANCILLARY OFFICE IN A SINGLE STOREY BUILDING EXCEEDING 8.5M IN HEIGHT

SECTIONS 7686, 7687 & 7688 (2, 4 & 6) PAK STREET & SECTIONS 7701, 7702, 7703 & 7704 (7, 5, 3 & 1) LEWFATT STREET, BERRIMAH, HUNDRED OF BAGOT

APPLICANT/S Northern Planning Consultants Pty Ltd

Brad Cunnington (Northern Planning Consultants Pty Ltd) attended.

**RESOLVED
136/19**

That pursuant to section 53(a) of the *Planning Act 1999*, the Development Consent Authority consent to the application to develop Sections 7686, 7687, 7688 (2, 4, 6) Pak Street, and Sections 7701, 7702, 7703, 7704 (1, 3, 5, 7) Lewfatt Street, Hundred of Bagot for the purpose of a subdivision and consolidation to create five lots, subject to the following conditions:

GENERAL CONDITIONS

1. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
2. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or site is to be created on the plan of subdivision submitted for approval by the Surveyor General.
3. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities and

electricity to each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

4. 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 the completion of works, 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 Northern Territory Environment Protection Authority advises that construction work should be conducted in accordance with the Authority's Noise Guidelines for Development Sites in the Northern Territory. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.
3. The Surveyor-General advises you should immediately make an application for unit/street addresses to the Survey and Land Records Unit on (08) 8995 5362 (surveylandrecords@nt.gov.au).
4. Professional advice regarding implementation of soil erosion control and dust control measures to be employed throughout the construction phase of the development are available from the Department of Environment and Natural Resources. Information can be obtained from the IECA Best Practice Erosion and Sediment Control Guidelines 2008 available at www.austieca.com.au and the NTG website <https://nt.gov.au/environment/soil-land-vegetation>.

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 land is located in Zone SD42 of which the purpose is to facilitate the development of the land for light industrial purposes that minimise the impacts from exposure to aircraft noise, and that does not inhibit the operation of the Darwin International Airport. Scheme provisions for Zone SD42 allow land to be subdivided if the minimum lot size is at least 1250m² and the average lot size for the area being subdivided is at least 2000m². The proposed lot sizes are a minimum of 1,454m² and average of 2,520m² which is in compliance with the relevant scheme requirements. Accordingly the proposal is considered consistent with the purpose of zone SD42 in accommodating the subdivision and consolidation of the land.

2. Pursuant to section 51(j) of the *Planning Act 1999*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development. Also, pursuant to section 51(m) of the *Planning Act 1999*, the consent authority must take into account the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

The capability of the land for the development has been previously considered through DP15/0813 issued for the creation of 89 industrial lots. This subdivision and consolidation proposal is simply a series of minor boundary realignments to facilitate a large scale warehouse application. The lots are serviced with reticulated water, power and sewerage and are not affected by riverine flooding or storm surge and heritage constraints. Standard conditions relating to easements and soil erosion and sediment controls are included on the permit.

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

No undue amenity impacts are expected as the subdivision will allow the future development and use of the land in accordance with the zoning of the land.

ACTION: Notice of Consent and Development Permit

**RESOLVED
137/19**

That, the Development Consent Authority vary the requirements of Clause 6.1 (General Height Control) and 9.1.1 (Industrial Setbacks) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Sections 7686, 7687, 7688 (2, 4, 6) Pak Street, and Sections 7701, 7702, 7703, 7704 (1, 3, 5,7) Lewfatt Street, Hundred of Bagot (Proposed Section B) for the purpose of a warehouse and ancillary office in a single storey building exceeding 8.5m in height, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.
2. Prior to the commencement of works (including site preparation), the applicant is to prepare designs and specifications for landscaping of the road reserve adjacent to the property, to the requirements of City of Darwin, to the satisfaction of the consent authority.
3. 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 and Transport and Civil Services, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority. 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 is also to address the protection of existing assets, the protection of public access, and include a risk assessment.

4. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Policy 054, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.
5. Prior to 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

6. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
7. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, electricity and telecommunication network services to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
8. 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.
9. 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.
10. 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.
11. 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.
12. Before the use or occupation of the development starts, the areas set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - (a) Constructed;

(b) Properly formed to such levels that they can be used in accordance with the plans;
(c) surfaced with an all-weather-seal coat;
(d) Drained;
(e) Line marked to indicate each car space and all access lanes; and
(f) Clearly marked to show the direction of traffic along access lanes and driveways;
to the satisfaction of the consent authority.
Car spaces, access lanes and driveways must be kept available for these purposes at all times.

13. 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.
14. The required loading bay must be provided (and clearly delineated) within the warehouse space, in accordance with the location and dimension requirements of clause 6.6 of the Northern Territory Planning Scheme, to the satisfaction of the consent authority.
15. The loading and unloading of goods from vehicles must only be carried out on the land and within the designated loading bays, to the satisfaction of the consent authority.
16. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
17. 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.
18. 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.
19. 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.
20. 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 to the requirements of the City of Darwin, to the satisfaction of the consent authority.
21. The development must be designed and constructed to comply with AS2021-2015 'Acoustics – Aircraft noise intrusion – Building siting and construction' (AS2021), and a statement from a suitably qualified acoustic engineer confirming compliance with AS2021-2015 must be submitted prior to occupation of the development, to the satisfaction of the consent authority.
22. External lights must be designed, baffled and located to the satisfaction of the consent authority to prevent any adverse effect on adjoining land, roads, and on the operation of the RAAF Base Darwin and Darwin International Airport.

23. A Certificate of Compliance will not be issued until Sections 7686, 7687, 7688 (2, 4, 6) Pak Street, and Sections 7701, 7702, 7703, 7704 (1, 3, 5, 7) Lewfatt Street, Hundred of Bagot have been subdivided and consolidated in accordance with Development Permit DP19/0225 and new titles to those lots have been issued, to the satisfaction of the consent authority.

Notes

1. 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.
2. Notwithstanding the approved plans, all signage is subject to City of Darwin approval, at no cost to Council.
3. City of Darwin advises that designs and specifications for landscaping of the road verges adjacent to the property shall be submitted for approval by the General Manager Infrastructure, City of Darwin and all approved works shall be constructed at the applicant's expense, to the requirements of City of Darwin.
4. 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.
5. The Department of Environment and Natural Resources advises that construction work should be conducted in accordance with the Northern Territory Environment Protection 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.
6. Professional advice regarding implementation of soil erosion control and dust control measures to be employed throughout the construction phase of the development are available from the Department of Environment and Natural Resources. Information can be obtained from the IECA Best Practice Erosion and Sediment Control Guidelines 2008 available at www.austieca.com.au and the NTG website <https://nt.gov.au/environment/soil-land-vegetation>.
7. The Northern Territory Environment Protection Authority has advised that the proponent must comply with their General Environmental Duty provided by section 12 of the *Waste Management and Pollution Control Act*. More information can be found on the Environment Protection Authority website at: <http://ntepa.nt.gov.au/waste-pollution>, by calling (08) 8924 4218 or emailing ntepa@nt.gov.au.
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. The site is subject to the 'Defence Areas Control Regulations (DACR)'. All structures, including temporary structures, higher than 15m above ground level, including, but not limited to, additional buildings, light poles, cranes used during construction, vegetation etc., require approval from the Department of Defence.
10. The applicant is advised that the provision of lighting at the site is required to be consistent with the CASA Manual of Standards (MOS-139) Aerodromes to minimise the potential for conflict with aircraft operations. The design of lighting is a developer responsibility and if it is later found that lights or glare endangers the safety of aircraft operations, the Department of Defence or the Civil Aviation Safety Authority may require the lighting to be extinguished or suitably modified.
11. Darwin International Airport advises that there must be no site activity which would attract birds and create a hazard for aircraft operations.
12. 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.
13. 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/newdevelopments/buildersdesigners.html>
14. 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.

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 land is located in Zone SD42 of which the purpose is to facilitate the development of the land for light industrial purposes that minimise the impacts from exposure to aircraft noise, and that does not inhibit the operation of the Darwin International Airport. The development of the land for a warehouse and ancillary office is consistent with the purpose of Zone SD42, and the development has addressed the aviation constraints associated with the proximity to the airport. The warehouse and office are suitably located within the policy areas of Zone SD42, to be developed with consent in accordance with the provisions of Zone LI (Light Industry). The development is located within Area B. Zone SD42 restricts the

location and size of offices in Area B, however the office component is ancillary and of an acceptable size under these restrictions and requirements.

Area B is located within the 25 – 30 ANEF contour and Area A is located within the 20 – 25 ANEF contour. A warehouse is considered “light industry”, which is ‘acceptable’ below 30 ANEF. Also, an office is considered “commercial”, which is ‘acceptable’ below 25 ANEF. A condition is included to ensure compliance with AS2021-2015 is achieved including any required internal noise levels. Advice has been received that height of the building is within the range accepted by the Department of Defence and Darwin International Airport given the controls in place for the safeguarding of airspace. Notes are included which provide advice to the developer regarding any separate approvals required for cranes, plus lighting controls which will need to be met, with these being a developer responsibility.

2. Clause 9 of Zone SD42 provides that the consent authority may exercise discretion under clause 3a and 4a, relating to the use of Areas A and B with consent in accordance with the provisions of Zone LI (Light Industry), with some exceptions.

The consent authority has the discretion to vary the relevant provisions of Zone LI if special circumstances are found in accordance with Clause 2.5 of the Planning Scheme. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority), the consent authority may consent to a development that does not meet the standard set out in Parts 4 or 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

Clause 6.1 (General Height Control) ensures that the height of buildings in a zone is consistent with development provided for by that zone. The clause provides that the height of any part of a building is not to exceed 8.5m above ground level, unless it is a flag pole, aerial or antenna, or for the housing of equipment relating to the operation of a lift. The building exceeds the 8.5m height limit. The building is proposed with a height of 11.08m.

In considering the height of the warehouse component, the circumstances identified are the additional height being sought to ensure the storage requirements of the intended tenant, including the storage of over-height equipment (e.g. equipment that exceeds 8.5m), and the need to accommodate adequate pallet racking. The visual impact of the building is, to some extent, offset by the additional height building being setback sufficiently, as required by Clause 9.1.1 (Industrial Setbacks). The surrounding industrial land and the future uses the zoning can accommodate is considered to have a low sensitivity to over height buildings, no sensitive uses in the surrounding area have been identified, and the building is also situated within a subdivision which is away from main transport routes. The ability for land further to the south in Zone SD31 to accommodate buildings taller than 8.5m is also noted, and influences the character and scale of development anticipated in the broader area. Overall, the circumstances provided in relation to the warehouse component are considered special and unique to warrant the height variation sought.

Clause 9.1.1 (Industrial Setbacks) ensures that buildings are sited to provide an adequate level of visual amenity in industrial zones. Buildings cited on Light Industrial zoned land in Darwin are required to have a minimum street setback of 3 metres, as well as being setback from at least one side boundary and to the rear boundary by 5m. The development includes two water storage tanks for fire-fighting purposes, situated 3 metres from the Vaughan Street boundary, and 4.49

metres from the site (shared) boundary. The water tanks therefore propose a setback variation (0.51m) to the required 5 metre setback.

This minor setback variation is considered to be acceptable, given the nature of the water tanks being circular, is limited to a single location on the tanks themselves, rather than a continuous setback along a wall. Furthermore, the proposed setback reduction is not expected to adversely impact amenity. These circumstances are considered satisfactory to warrant the setback variation sought for the development.

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

The capability of the land has been previously considered through the introduction of the Berrimah North Planning Principles and Area Plan, and the specific use zoning SD42 which requires for development to respond to the constraints of the Darwin Airport, including with regards to the range of uses anticipated, aircraft noise, building heights and lighting as previously discussed. The aircraft noise in this location was considered at the time the land was rezoned, including through the introduction of the Berrimah North Area Plan and Planning Principles and specific use zone. Zone SD42 limits the range of uses which can be developed to respond to the aviation constraints of the land including noise impacts. Comments were received from the Department of Defence and Darwin International Airport in relation to these impacts and conditions and notes included as required.

The lot is generally flat and cleared. The recently constructed subdivision ensured that all lots are situated above a 1% AEP flood event, and provide for the anticipated access, stormwater and servicing requirements for the land. Standard conditions relating to construction, waste, stormwater, access, and erosion and sediment controls are included on the permit.

4. 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 development will result in a change in the amenity of the area, as the land is currently undeveloped. The development however is broadly consistent with the zoning and Area Plan, and the anticipated future development of the area. No undue impact on the existing and future amenity of the area is anticipated as a result of the development including increased building height and a minor side setback variation.

ACTION: Notice of Consent and Development Permit

ITEM 3

PA2019/0235

CHANGE OF USE FROM OFFICE TO CHILD CARE CENTRE (GROUND FLOOR TENANCIES ONLY)

LOT 5396 (18) CAVENAGH STREET, DARWIN CITY, TOWN OF DARWIN

APPLICANT/S

Masterplan NT

Joseph Sheridan (Masterplan NT) attended.

**RESOLVED
138/19**

That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse to consent to the application to develop Lot 5396 (18) Cavenagh St, Town of Darwin for the purpose of part change of use from office to child care centre (ground floor tenancies only), for the following reasons:

REASONS FOR 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 within Zone CB (Central Business). As per Clause 5.7 (Zone CB – Central Business) of the NTPS, 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*. Furthermore, *building form and design is expected to be sensitive to the needs of pedestrian movement and facilitate the creation of safe and active street frontages and public places and a vibrant commercial precinct*.

The Authority acknowledged that child care centre is a discretionary use within Zone CB and may be suitable in some localities within the zone, however it regarded the subject site unsuitable for the proposed child care centre use due to the issues of non-compliance with the requirements Clause 8.1.5 and concern discussed in the reasons below.

Clause 8.1.5 (Child Care Centres) of the NTPS provides the criteria under which child care centres are to be assessed. The purpose of this clause is *to ensure that child care centres are appropriately and conveniently located, appropriately designed and do not detract from the amenity of the area*.

2. Sub-clause 8.1.5(2)(a)(i) requires a child care centre to provide 7m² of outdoor play space for each child, in addition to 3.25m² of indoor play space per child. Given the location of the proposed development within an existing high rise office building with no outdoor area available on-site, the application was unable to provide any outdoor play space. Instead the application proposed to provide the 7m² of outdoor play space indoors, as simulated outdoor play space. The Authority was of the opinion that the definition of 'outdoor play space' would not include a simulated outdoor play space provided indoors. There is nothing in the clear wording of the clause to suggest "outdoor" extends to a simulated outdoor space and this is particularly the case when the further requirement for "landscaping" referred to in Clause 8.1.5 is considered. Therefore the applicant would need to provide special circumstances in order for this requirement to be varied under Clause 2.5 of the NTPS. The special circumstances provided by the applicant were that the proposal was to be contained within an existing building with no available outdoor space, as well as the proposed site's CBD locality. The applicant provided a list of four other

child care centres, all of which were located in Sydney NSW, as examples of Australian child care centres which provide their required outdoor play space indoors, using design to simulate an outdoor environment. The Authority did not accept the circumstances of the existing building as “special” as required by Clause 2.5 of the NTPS, regarding that matter as going to the question of the appropriateness of the site as required by the purpose of Clause 8.1.5. Further the Authority considered that the existence of simulated outdoor play space in the NSW examples was dependant on the Planning laws applicable in NSW and the present application must comply with the NTPS. The provision of additional indoor play space over and above that required by the Clause 8.1.5 did not ameliorate the need for outdoor play space as required by the specific terms of Clause 8.1.5

The NT Department of Education are responsible for licencing child care centres in the NT, therefore the application was referred to the department for comment as part of the assessment process. In their response, the department indicated that their regulatory body Quality Education and Care NT (QECNT) would be assessing any subsequent application to the Department of Education for separate assessment under the *Education and Care Services National Law (NT)* and *Education and Care National Regulations*, with a view to granting a child care centre license to a prospective operator. However neither the Department of Education, nor QECNT provided any indication in their submission of whether the proposed simulated outdoor play space was considered by them to be acceptable or not. The department further stated that QECNT does not currently have a formal policy for interpreting the legislative requirements regarding outdoor play space being provided indoors. The department acknowledged that examples of this nature occur in some other jurisdictions, but are considered exceptional and contextual.

The Authority considered that the applicant's justification of special circumstances to vary the outdoor play space requirement of Clause 8.1.5 of the NTPS was inadequate. Calling into question the appropriateness of the location and design of the proposal in relation to the overall purpose of Clause 8.1.5 the Authority noted that the proposal lacked any access to natural light, as the glass along Cavenagh Street was to be obscured to provide privacy to the occupants of the building.

The Authority also discussed that the proposed child care centre would most likely be providing all-day day care for the majority of its clients children, as opposed to occasional care for an hour or two on an infrequent basis, resulting in children being kept indoors for the whole day while their parents are working full days of approximately 7 to 10 hours. Keeping a child indoors for this period of time was seen by the Authority as unhealthy for a child's development, physical and mental health. Also creating a situation where a child might be highly likely to run off from their parents at the end of the day upon exiting the centre out onto the street, due to the prolonged lack of outdoor stimulation throughout the day, causing a safety risk as the building is located on two busy streets with high levels of traffic.

3. Sub-clause 8.1.5(2)(a)(ii) requires a child care centre to be capable of accommodating associated vehicle access, parking and manoeuvring. This is a requirement over and above the general parking requirements contained in the NTPS. Because the entirety of the subject site is covered by the footprint of an existing building known as Energy House, there is no onsite car parking available. The application did not provide any on site car parking, or allocation of any of the 88 car parking bays to be provided to service Energy House within the future seven-storey car park on Lots 2396 (14) and 2367 (12) Litchfield Street as part of DP18/0298, although it is noted that during discussions at the meeting the

applicant suggested it may be possible to allocate parking to the child care centre within the above-mentioned carpark if the Authority considered it necessary.

The applicant argued that in terms of the NTPS car parking requirements stipulated by Clause 6.5.1 (Parking Requirements), the net floor area of the child care centre is 837m², which requires 17 car parking spaces. However the ground floor area of Energy House subject to this change of use application is currently approved as office, which requires a total 25 car parking spaces. Therefore under the car parking requirements contained within the table to Clause 6.5.1, the proposed use actually reduces the required number of car parking spaces from the site's currently approved office use, even though none of the 25 bays are actually provided at this time, given the convoluted history of the site's planning approvals concerning car parking supply.

The application proposed that car parking demands for the child care centre would instead be met by utilising existing on-street car parking located on Cavenagh and Litchfield Streets. An informal photographic car parking survey was submitted by the applicant with the aim of demonstrating sufficient on-street car parking on Cavenagh and Litchfield Streets at peak times. Additionally the applicant requested that an existing 28.5m long loading bay located at the rear of the building in Litchfield Street, be used for both a loading bay to service Energy House for office and food deliveries, as well as serving the child care centre as a dual use drop-off / pick-up zone for parents with children attending the child care centre.

The City of Darwin noted in their submission that the existing loading bay in Litchfield Street subject to the applicant's request to be utilised as a drop-off / pick-up zone, would be removed as part of upgrades to Litchfield Street in the near future. The road upgrades to also include the reduction of this section of Litchfield Street to one lane, making the accommodation of a drop-off / pick-up point in the sites vicinity unlikely. In response to these comments from Council, the applicant provided an email between himself and Council staff, stating that the City of Darwin does not object to the proposed use of the space as a child care centre and that the proposed drop-off / pick-up area located on Litchfield street could be resolved separately in conjunction with the proposed 12-14 Litchfield Street upgrades that are currently being designed and negotiated between City of Darwin and the land owner of both the subject site and 12-14 Litchfield Street (Sandran PTY LTD).

For the following reasons, the Authority considered that the application had failed to fulfil the requirements of sub-clause 8.1.5(2)(a)(ii) which requires that a child care centre should be capable of accommodating associated vehicle access, parking and manoeuvring. The availability of on-street car parking along Cavenagh Street and Litchfield Street was deemed insufficient, both streets being busy at peak times, without enough free car bays to serve the needs of a child care centre with approximately 54 children attending. The informal photographic car parking survey provided by the applicant was criticised by the Authority as being inaccurate and lacking substance, given the limited times that photos were taken (7:45am and 4:45pm) and the absence of any detailed car parking analysis or professional traffic study. The Authority also deemed the use of on-street parking bays in Cavenagh Street and Litchfield Street posed significant safety concerns in relation to children regularly entering and exiting cars in high volumes, being such busy roads at peak times throughout both the morning and afternoon.

The proposed use of loading bays in Litchfield Street as a drop-off / pick-up zone also raised child safety concerns given the narrow width of Litchfield Street. The Authority observed that the street is already difficult to navigate due to the high

volume of cars and trucks, with a high number of trucks coming throughout the day to take rubbish and make deliveries to the rear of buildings along Cavenagh Street, in particular the Cavenagh Hotel and bottle shop, Energy House and an assortment of cafes and retail shops backing onto Litchfield Street, between the subject site and Knuckey Street. Additionally, the car park currently under construction at 12-14 Litchfield Street which will accommodate some 300 car parking spaces, significantly increasing traffic flows in Litchfield Street. The above described traffic flows were seen as a major safety risk for small children and parents entering and exiting vehicles from on-street parking and loading bays along Litchfield Street. The Authority further criticised the concept of a child care centre pick-up / drop-off zone sharing loading bays, explaining that when dropping off or picking up a young child (0-5 years) from such a facility, it can often take an extended period to say goodbye and get them settled in the morning. In the afternoon at pickup, the same scenario exists, as parents will talk to centre staff about their child, see the child's art works and chat to other parents etc. Therefore it is not simply a quick 'kiss and go' school style arrangement, requiring significantly longer parking than that provided by a loading zone, particularly given that the proposal has a capacity of approximately 54 children at any time. Significant concerns were also raised about how children attending the centre would be transported to kindergarten on a daily basis, as most other centres do this using mini buses, when there is not a suitable kindergarten within walking distance, which is the case for the subject site. There was deemed to be inadequate storage and safe parking space for buses that will need to be used to transport young children to kindergarten on a regular basis.

During the meeting the Authority questioned the City of Darwin about the suitability of the car parking arrangement and utilisation of Litchfield Street loading bays as a drop-off / pick-up zone as proposed by the applicant. The Council representative conceded that he could not provide any specific detail concerning the appropriateness of the proposed use of Litchfield Street loading bays for a drop-off / pick-up zone, stating that this dual use arrangement of the loading bays would only be acceptable if it was proven to be the case that the loading bays were underutilised and therefore not required in their current capacity, of which there has been no formal assessment. Council also stated that the design of the future Litchfield Street upgrades was currently being negotiated at a higher level, between the City of Darwin and Sandran PTY LTD, as a result of the approved seven-storey car park on Lots 2396 (14) and 2367 (12) Litchfield Street (DP18/0298), which is about to commence construction. Based on the lack of detail and surety provided by the City of Darwin on the issue, and the absence of any conclusive traffic study on the matter, the Authority was not satisfied that there was capacity in Litchfield Street for loading bays to be utilised as a drop-off / pick-up zone for the child care centre, in their existing or future configuration following Litchfield Street upgrades. The Authority was of the opinion that the existing loading bays are already heavily utilised by trucks and delivery vehicles, and that current traffic issues in Litchfield Street are already problematic given the street's narrow width and high levels of traffic. Furthermore, the Authority considered that these existing difficulties would only worsen once the seven-storey car park became active which will provide over 300 car parking bays on Lots 2396 (14) and 2367 (12) Litchfield Street.

4. Sub-clause 8.1.5(2)(a)(iii) prescribes that a child care centre should be capable of accommodating landscaping and any necessary screening. As the proposal is contained within an existing building and does not provide any outdoor space, landscaping was limited to internal planting of species that can grow indoors. The application states that this would include green walls and planters, containing child friendly plant species and small trees.

The Authority was of the view that landscaping requirements under the NTPS require that landscaping is provided outdoors and such requirements are not met by the provision of indoor plants. Landscaping is generally dealt with in Clause 6.12 and states that the purpose of the clause is to ensure that landscaping on a site complements and enhances the streetscape, is attractive, water efficient and contributes to a safe environment. There is nothing in Clause 6.12 to indicate that landscaping requirements can be met by the use of indoor plants. Therefore special circumstances were required in order to vary this requirement, as the application did not include any outdoor landscaping. The Authority did not consider there were any special circumstances in this regard and the failure to meet the requirement also reflected on the appropriateness of the site for the purposes of Clause 8.1.5.

5. The Authority considered that the application's non-compliant aspects under Clause 8.1.5, as detailed in the reasons above, were not supported by special circumstances which would warrant the approval of variations to NTPS requirements under this clause. Furthermore, the number of variations sought to the specific requirements of Clause 8.1.5 confirmed to the Authority that the proposal did not meet the purpose of the Clause which is *to ensure that child care centres are appropriately and conveniently located, appropriately designed and do not detract from the amenity of the area.*
6. 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 potential impact on the existing and future amenity of the area in which the land is situated has been discussed in reason 3 above, specifically the issue of car parking and vehicular access to the subject site. In summary the Authority considered that the proposed use of a child care centre in this location would adversely impact on, and be adversely impacted by, the existing and future amenity of the area.

7. Pursuant to section 51(t) of the *Planning Act 1999*, the consent authority must take into account any other matters it thinks fit.

In reaching its decision to refuse the application, the Authority took a number of other matters into account. Firstly the social issues associated with the location of the proposed child care centre, directly adjacent to an existing bottle shop and hotel (The Cavenagh Hotel), particularly regarding the overlap of operations in the afternoon at the time of a child's pick-up. The second matter being safety concerns associated with the application's design and location in regard to fire evacuation. It was noted that the proposal only had a single entry/exit door, making it challenging to evacuate a large number of young children and staff quickly and safely. Additional safety concerns were raised about the lack of a suitable outdoor muster point proximate to the exit point in the case of evacuation, as a large group of young children would be at high risk if gathered on the footpath next to one of the busy roads surrounding the site.

ACTION: Notice of Refusal

NOTE

Authority member, Alderman Mick Palmer, voted to defer the application rather than to refuse the application, to allow the applicant to provide further information in relation to the traffic and parking issues and to seek further guidance from the Department of Education/QECNT in relation to the proposed simulated outdoor play space.

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

SUZANNE PHILIP
Chair

30 August 2019