

## **DEVELOPMENT CONSENT AUTHORITY**

### **DARWIN DIVISION**

### **MINUTES**

**MEETING No. 400 – FRIDAY 18 NOVEMBER 2022**

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

**MEMBERS PRESENT:** Marion Guppy (Presiding Member), Mark Blackburn, Mick Palmer and Morgan Rickard

**APOLOGIES:** Peter Pangquee and Suzanne Philip  
**LEAVE OF ABSENCE:** Nil

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), Ann-Marie Reynolds, and Monica Pham (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Conneil Brown, Brian Sellers, Suzi Bee and Robert Taylor

**Meeting opened at 10.15 am and closed at 10:45 am**

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.

That, pursuant to section 101(3) of the *Planning Act 1999*, in the Chair's inability to act the members of the Darwin Division of the Development Consent Authority elect Marion Guppy to preside at the hearing of Item 1 at the DCA Meeting on 18 November 2022.

#### ITEM 1

PA2022/0280 RE-ADVERTISED - DWELLING-GROUP (4 X 4 BEDROOM) IN 2 X 2 STOREY BUILDINGS

LOT 133 (26) PANDANUS STREET, NIGHTCLIFF, TOWN OF NIGHTCLIFF

APPLICANT Concept Designs NT

Pursuant to section 97 of the *Planning Act 1999*, Suzanne Philip, Chair, Development Consent Authority disclosed an interest and was not present during, contributed to or took part in the deliberation or decision of the Division in relation to Item 1.

Applicant: George Savvas (Concept Designs NT) attended.

Submitters: Mark and Alex Kersemakers, Elizabeth Morris (via videolink) and Helen Tobin attended.

Submitters who sent their apology: Hon Natasha Fyles MLA, Kirrily Chambers and Dale Bennett, and Nathan Tobin.

#### RESOLVED 77/22

That, the Development Consent Authority vary the requirements of Clause 5.4.3.1(Additional Setback Requirements for Residential Buildings longer than 18 metres and for Residential Buildings over 4 storeys in Height) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 133 (26) Pandanus Street, Nightcliff, Town of Nightcliff for the purpose of dwelling-group (4 x 4 bedroom) in 2 x 2 storey buildings, 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 generally in accordance with the plans submitted with the application but modified to show:
  - o Screening of air conditioner units on the first floor, to the satisfaction of the consent authority.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the applicant is to provide written confirmation

from the Water Services division of the Power and Water Corporation that any intrusion over the sewer easement has been approved or removed, to the satisfaction of the consent authority.

3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the crossover and driveway to the site from the City of Darwin road reserve, to the satisfaction of the consent authority.
4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a waste management plan addressing the City of Darwin's Waste Management Guidelines must be prepared, to the requirements of the City of Darwin, to the satisfaction of the consent authority.
5. Prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Darwin stormwater drainage system shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels and Council's stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council's system.
6. Prior to the commencement of works (including site preparation), the applicant is to prepare a Site Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP should specifically address the impact to Council owned public spaces and include a waste management plan for disposal of waste to Shoal Bay, traffic control for affected City of Darwin roads, haulage routes, storm water drainage & sediment control, use of City of Darwin land, and how this land will be managed during the construction phase.
7. 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**

8. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
9. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, electricity and telecommunication networks to the development/each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.  
Please refer to notations 1 and 2 for further information.

10. 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.
11. 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.
12. 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.
13. The owner shall:
  - a. remove disused vehicle and/ or pedestrian crossovers;
  - b. collect stormwater and discharge it to the drainage network; and
  - c. 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.
14. 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.
15. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
16. Upon completion of any works within or impacting upon existing road reserves, the road reserves shall be rehabilitated to the standards and requirements of the City of Darwin and returned to the condition as documented in the dilapidation report.
17. Prior to new titles being issued for the units shown on the endorsed drawings, confirmation shall be provided to Development Assessment Services (in the form of an email addressed to the Power and Water Corporation) from a suitable qualified professional confirming that all new number labels have been correctly installed at the Customer's Metering Panel(s) and water meters (where applicable). Please provide a copy of an email addressed to both [landdevelopmentnorth@powerwater.com.au](mailto:landdevelopmentnorth@powerwater.com.au) and [powerconnections@powerwater.com.au](mailto:powerconnections@powerwater.com.au)
18. 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, 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.
19. 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.



20. 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.
21. The private open space areas of each dwelling shall be screened on each boundary by:
  - (a) the erection of a solid wall or screen fence not less than 1.8 metres high: or
  - (b) fenced to a height not less than 1.8 metres high and planted with dense vegetation.
22. All pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the consent authority.

## NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section ([waterdevelopment@powerwater.com.au](mailto:waterdevelopment@powerwater.com.au)) and Power Network Engineering Section ([powerdevelopment@powerwater.com.au](mailto:powerdevelopment@powerwater.com.au)) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. If you choose nbn to service your development, you will need to enter into a development agreement with nbn. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered nbn will be in contact to discuss the specific requirements for the development. Nbn requires you to apply at least 3 months before any civil works commence. All telecommunications infrastructure should be built to nbn guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/builders-designers.html>
3. This development permit is not an approval to undertake building work. You are advised to contact a Northern Territory registered building certifier to seek a building permit as required by the *Northern Territory Building Act 1993* before commencing any demolition or construction works.
4. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* 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](mailto:info@ntbuild.com.au)) or by phone on 08 8936 4070 to determine if the proposed works are subject to the Act.
5. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on 08 8995 5356 ([surveylandrecords@nt.gov.au](mailto:surveylandrecords@nt.gov.au)).

6. City of Darwin also requires a further application on the relocation of the school speed sign, which is located in the proposed vehicle access location. Upon City of Darwin's approval, the sign may be relocated to an approved location, at the cost of the developer.
7. 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.
8. Designs and specifications for landscaping of the road verges adjacent to the property shall be submitted for approval by City of Darwin and all approved works shall be constructed at the applicant's expense, to the requirements of City of Darwin.
9. In accordance with City of Darwin By-Laws, prior to occupation, the applicant shall ensure that a building number is displayed in a position clearly visible from the street. The number must be visible against the background on which it is placed, to the satisfaction and at no cost to City of Darwin.

### REASONS FOR THE DECISION

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

The NT Planning Scheme 2020 applies to the land and dwelling-group (4 x 4 bedroom) in 2 x 2 storey buildings requires consent under Clause 1.8 (When development consent is required). It is identified as *Merit Assessable* under Clause 4.3 Zone LMR (Low-Medium Density Residential), therefore Clauses 5.2.4 (Vehicle Parking), 5.2.6 (Landscaping), 5.4.1 (Residential Density Limitations), 5.4.2 (Residential Height Limitations), 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), 5.4.3.1 (Additional Setback Requirements for Residential Buildings longer than 18 metres and for Residential Buildings over 4 storeys in Height), 5.4.6 (Private Open Space) and 5.4.8 (Building Design for Dwelling-Group, Dwelling-Multiple, Rooming Accommodation and Residential Care Facility), need to be considered.

These clauses have been considered and it is found that the proposal complies with the relevant requirements of the Planning Scheme except for Clause 5.4.3.1.

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NT Planning Scheme 2020, the consent authority may consent to a proposed development which is not in accordance with a requirement set out in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:
  - (a) The purpose and administration clauses of the requirement; and
  - (b) The considerations listed under Clause 1.10(3) or 1.10(4).

The proposal has been found not to be in accordance with Clause 5.4.3.1 (Additional Setback Requirements for Residential Buildings longer than 18 metres and for Residential Buildings over 4 storeys in Height), because the proposal will result in:

- 1.5m to the side (southeast) boundary, where 3.5m (ground floor) and 3m (first floor) is required; and
- 1.5m to the side (northwest) boundary, where 3.5m (ground floor) and 3m (first floor) is required.

The Authority considers that a variation to this clause is appropriate in this instance because:

- (a) The proposal is consistent with the purpose of Clause 5.4.3.1 in that despite the non-compliant setbacks, the building elevations facing the affected boundaries have been designed to minimise visual bulk where possible, employing deliberate design features such as building recesses and steps, varied roof heights (with the roof at its most prominent closest to the road and at the rear of the site and at its lowest towards the middle of the site), integrated awnings, the inclusion of a 5.4m gap between the two units along the first floor breaks up the building's visual bulk. The use of different window heights and styles contributes to the visual interest to the development when viewing the development from adjoining properties. A 1.8m high fence is proposed as well as the central opening in the building (drying court) which breaks up the building's bulk along the ground floor. A gradual stepping of the building length from the ground floor to first floor further mitigates adverse impacts caused by building mass.

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

The proposal is considered to have provided an adequate response to the requirements of the NT Planning Scheme. The identified departure from the standards is assessed as appropriate given the additional design treatments that have been applied to minimise adverse impacts that might have otherwise occurred without their inclusion, and variation to the requirements of Clause 5.4.3.1 is considered acceptable.

- (b) The considerations listed under Clause 1.10(3) have been given regard to and it has been found that the proposal complies with all relevant requirements of the NT Planning Scheme 2020, except for Clause 5.4.3.1, as identified above.
3. 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.



Eight public submissions were received during the exhibition period under Section 49 of the *Planning Act 1999* with respect to the proposal.

Concerns regarding the impact on the character and amenity of the area, building massing, visual bulk, breezeways, the proposed dwelling density and its impact on the existing streetscape, land capability and servicing, privacy and overlooking, noise generated from private open space areas and from air-conditioning units, concerns regarding light spill, landscaping and screening, errors in the application advertised and car parking and traffic impact generated by the development were raised in the submissions received.

At the hearing, Mr George Savvas from Concept Designs (applicant) spoke to the application. Regarding the additional setback non-compliance, Mr Savvas reiterated that the proposal achieves the intent of the clause and a 1.8m high fence will be provided at ground level. To alleviate concerns raised by submitters regarding building massing and visual bulk, an amended design was provided which includes a 5.4m gap between the two buildings to assist in reducing building massing.

The Authority queried Mr Savvas in relation to matter raised in relation to light spill and traffic.

In response, Mr Savvas advised that in his opinion the light spillage was not an issue as no balconies or external lighting is proposed on the first level and the ground level lighting was no different to any other dwelling.

Mr Savvas also stated that an independent traffic study was undertaken and included as part of the application however understood that further discussions would need to take place with City of Darwin (Council) to ensure that any upgrades required as a result of this development would be to Council's requirements.

The Authority also heard from submitters present at the hearing.

Ms Elizabeth Morris spoke to her submission and advised that the revisions were a slight improvement on the original development and the visual bulk had, to some extent, been addressed however noted the level of compliance didn't necessarily mean that there's not an unreasonable impact on amenity on surrounding properties. Ms Morris requested the Authority consider the amenity impacts of this proposal noting it is surrounded by single dwelling residential development.

Ms Morris also stated that the lighting would be different than that of a typical dwelling as there are four dwellings proposed as part of this development not one.

Ms Morris outlined her concerns regarding privacy being a neighbour located to the rear of the subject site and stated that there has been ongoing issues maintaining privacy given the location of the easement



at the rear of the subject site and the limited screening options as a result.

Ms Morris also queried whether the good neighbour fencing proposed as part of the development would be at the developers cost or whether affected neighbours would be expected to pay 50% of the cost.

Mr Savvas responded and advised that the associated development costs would be borne by the developer.

An adjoining neighbour, Ms Helen Tobin, spoke to her written submissions and noted the proposal includes Indian Mast trees along the south eastern boundary. Ms Tobin indicated that Indian Mast trees are notoriously slow growing, and therefore queried whether any screening was proposed to the upper levels as it currently appears there will be four windows that will have unobstructed views into Ms Tobin's alfresco and pool area. Ms Tobin queried whether a higher sill height could be included to mitigate over-looking if no screening is proposed.

Ms Tobin noted that while amendments to the proposal had occurred to reduce the bulk of the buildings on the upper level, building massing would still occur at ground level when viewed from the adjacent property as a 3-3.5m high wall is proposed which would only be screened by a 1.8m high fence.

Ms Tobin also noted that this is a new development on a vacant block of land and while develop is anticipated, it's not a renovation and should therefore comply with the planning provisions in place.

Ms Alex Kersemakers spoke to her submission and raised concerns regarding impact on amenity of the area and the increased traffic. Ms Kersemakers stated that the intersection at Pandanus Street and Cunjevoi Crescent is a busy intersection, with a high number of motorists and cyclists, including school children, who use it.

Ms Kersemakers noted the potential for these four bedroom dwellings to be rented and the potential for four vehicles per house and queried where the vehicles would park given the development proposed only two spaces per dwelling.

Ms Kersemakers reiterated her main concern regarding pedestrian and cyclist safety and also queried how the development allows for natural cooling and breeze penetration.

Mr Mark Kersemakers also spoke and noted that the development does not suit the character of the immediate area.

In response, Mr Savvas advised that lighting would not be dissimilar to a large single dwelling which is not uncommon in the locality.

In terms of screening Mr Savvas indicated that he believed the matter of overlooking has been addressed by re-designing the development and that the location of the bathroom windows was not necessarily an issue as one would have to step into the bath to look out to the adjacent property. Nevertheless, Mr Savvas advised that the two bedroom windows on the uppers levels could be screened if required.

In relation to traffic issues raised, Mr Savvas again referred to the traffic study undertaken and noted that traffic issues would be addressed through further discussions with Council to ensure any infrastructure upgrades required will be to its requirements.

The Authority has taken all comments into account and carefully considered the submitter's concerns and the applicant's response to the matters raised. The Authority notes that the current proposal is considered in the context of its present zoning and compliance with the NTPS 2020. Aside from the variation sought to the additional side setbacks the proposed development is compliant with the requirements of the NT Planning Scheme 2020 (NTPS 2020). The level of compliance achieved with the requirements of the NTPS 2020 is considered to demonstrate that unreasonable amenity impacts on the surrounding area are unlikely as a result.

The Authority notes that the proposed development meets the car parking and dwelling density requirements listed under Clause 5.2.4 (Vehicle Parking) and Clause 5.4.1 (Residential Density Limitations). Clause 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR) related to non-residential development abutting residential land, as such the clause is not applicable for the proposed development.

Regarding overlooking, the Authority notes that the proposed development exceeds the rear setback requirement of 1.5m and the development proposes a 1.8m high fence which will provide adequate screening from the ground level. Along the sides of the development landscaping is proposed. A condition is included that requires landscaping as per the endorsed landscape plan and a requirement to maintain the landscaping for the life of the development. The Authority notes that in response to submissions received, revised plans were submitted, which included changes to the upper floor layout as well as to the window sizes to minimise overlooking and therefore considers further changes unnecessary.

The application was re-advertised from 14 October 2022 to 28 October 2022 and included "setbacks" as a key variation on the sign. It is noted that the re-advertised application included an amended Statement of Effect which clarifies the application is for four dwelling-group.

The Authority notes that the applicant has provided a Stage 3 Road Safety Audit as requested by City of Darwin, who did not raise any

concerns with the information detailed in the report. The recommendations from the City of Darwin in its further comments are addressed through conditions and notes on any development permit issued. Concerns relating to traffic congestion and on-street parking are a Council matter and City of Darwin have not raise any concerns in its comments. City of Darwin representatives were in attendance and indicated that they did not have any further comments beyond Councils written submission.

Regarding building massing and visual bulk, the Authority considers the non-compliance with 5.4.3.1 (Additional Setback Requirements for Residential Buildings longer than 18 metres and for Residential Buildings over 4 storeys in Height) is assessed as appropriate given the additional design treatments that have been applied to minimise adverse impacts, these design features include building recesses and steps, varied roof heights, integrated awnings and a gradual stepping of the building length from the ground floor to first floor and the inclusion of a 5.4m gap between the two units along the first floor which will facilitate breeze penetration throughout the site.

Regarding land capability and servicing, the application was circulated to the relevant service authorities for comments and no land capability issues were identified by service authorities. With regards to service upgrades, Power and Water (Water Services) have indicated that the developer will need to upgrade the existing water and sewer service to the site. These are addressed through conditions and notes on any development permit issued.

Regarding the noise issue, the Authority considers any noise generated from ground level private open space and air conditioner condensers would likely be limited to noise typical of a residential setting.

The Authority considers the applicant has taken reasonable measures to minimise the light spill

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

No land capability concerns were identified as part of consideration of the application. Additionally, no service authority raised any concerns regarding the capacity of existing infrastructure to support the development.

5. Pursuant to Section 51(1)(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 as required.

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

The potential impact on the existing and future amenity of the area in which the land is situated was considered in the rezoning process; when Lot 0133 was rezoned from Zone LR (Low Density Residential) to LMR (Low-Medium Density Residential). The site was determined by the then Minister for Lands and Planning to be appropriate for infill development for dwellings-group.

The current proposal is considered in the context of its present zoning and compliance with the NTPS 2020. The assessment found that development achieves most minimum standards and exceeds them in some respects. Where the development does not comply with the relevant clauses of the NTPS 2020, the impact on existing and future amenity has been considered and a variation has only been supported in cases where this amenity will not unduly be impacted upon.

FOR: 4

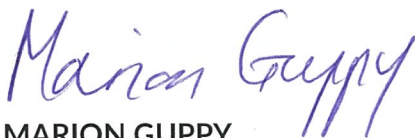
AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

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



MARION GUPPY  
Delegate

23 November 2022