



# **DEVELOPMENT CONSENT AUTHORITY**

## **DARWIN DIVISION**

### **MINUTES**

**MEETING No. 329 – FRIDAY 8 FEBRUARY 2019**

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

**MEMBERS PRESENT:** Suzanne Philip (Chair, not item 2), Doug Phillips and John Gleeson, Mick Palmer and Simon Niblock (Items 1-3 only)

**APOLOGIES:** Sherry Cullen

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), Dawn Parkes, Amit Magotra, Adelle Godfrey and Richard Lloyd (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Nil

**Meeting opened at 10.15 am and closed at 1.15 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**                      **4 X 3 BEDROOM MULTIPLE DWELLINGS IN 4 X 2 STOREY BUILDINGS**  
**PA2018/0478**           **LOT 1964 (6) WINSTON AVENUE, TOWN OF DARWIN**  
**APPLICANT**           **RAW DESIGNS**

Mr Rob Watt (Raw Designs) and Israel Kgosiemang (One Planning Consult) attended.

**RESOLVED**              That, the Development Consent Authority vary the requirements of Clause 7.3  
**18/19**                      (Building Setbacks of Residential Buildings and Ancillary Structures) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act*, consent to the application to develop Lot 1964, (6) Winston Avenue, Town of Darwin for the purpose of 4 x 3 bedroom multiple dwellings in 4 x 2 storey buildings, subject to the following conditions:

#### **CONDITIONS PRECEDENT**

1. Prior to the endorsement of plans and prior to commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Darwin's 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.
2. Prior to the commencement of works (including site preparation), the applicant is to prepare an Environmental and Construction Management Plan (ECMP) to the requirements of the City of Darwin. The ECMP is to address how construction will be managed on the site, and is to include details of waste management, traffic control and haulage routes, stormwater drainage and the use of City of Darwin land during construction. The ECMP should include details of the location of the crane and any holding areas.
3. 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**

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, drainage, 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. 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.
8. 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) & [powerconnections@powerwater.com.au](mailto:powerconnections@powerwater.com.au)
9. Before the use commences the owner must, in accordance with Part 6 of the *Planning Act*, pay a monetary contribution to the City of Darwin for the upgrade of local infrastructure, in accordance with its Development Contribution Plan for Stormwater Drainage – Stuart Park CP 2014/04 SWD – Policy Area D.
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. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
13. Prior to the use/occupation of the development and connection of services (i.e. power and water), the owner of the land must apply for street addressing from the Surveyor-General of the Northern Territory. This will form the legal address and will be required to be placed on the meters within the development in accordance with the allocation. An Occupancy Permit will not be able to be granted until such time as addressing is obtained.
14. Soil erosion control and dust control measures must be employed throughout the construction stage of the development to the satisfaction of the consent authority.
15. 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 1.8m high; or
  - (b) fenced to a height not less than 1.8m high and planted with dense vegetation.



16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. All balconies are to be internally drained and discharge is to be disposed of at ground level and in a manner consistent with stormwater disposal arrangements for the site to the satisfaction of the consent authority.

**NOTES:**

1. Power and Water Corporation advises that the Water and Sewer Services Development Section ([landdevelopmentnorth@powerwater.com.au](mailto:landdevelopmentnorth@powerwater.com.au)) and the Power Network Engineering Section ([powerconnections@powerwater.com.au](mailto: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.
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.

The Authority also advises that should any off-site fill be required, only Virgin Excavated Natural Material (VENM) is accepted or if fill is to be relocated from the site, waste classification assessment must be undertaken in accordance with the *NSW EPA Waste Classification Guidelines, Part 1: Classifying Waste 2014* and associated waste classification guidelines, and such material must be disposed of at a licenced waste facility.



3. 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.
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 demolition or construction works.
5. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
6. 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.
7. 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](mailto:info@ntbuild.com.au)) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
8. 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>
9. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5362 ([surveylandrecords@nt.gov.au](mailto:surveylandrecords@nt.gov.au)).

## REASONS FOR THE DECISION

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

The proposal comprises the construction of 4 x 3 bedroom multiple dwellings in 4 x 2 storey buildings on the site and is a form of development anticipated in Zone MD (Multiple Dwelling), of which the purpose is to provide for a range of housing options to a maximum height of two storeys above ground level.

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

The proposal seeks a variation to the standards outlined by clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures). The variation is required for parts of the eastern wall of Unit 1 and western wall of Unit 4. Both walls have a setback of 1 metre, however both contain a door that opens which does not meet the criteria of clause 7.3 in that the subject walls do not include openings that cannot be opened. The walls otherwise meet the 1 metre setback criteria in that the walls do not extend beyond a maximum height of 3.5m or a maximum length of 9m.

A 1.8m colourbond fence is proposed along the property boundary opposite the opening doors, which will extend to 2 metres in height as it will be erected on a 200mm kerb required for the retention of stormwater on the site. As such, the fence's height will screen the opening doors from the neighbouring properties to a great extent.

When questioned by the Authority at the meeting as to whether or not the doors could be relocated to the northern walls of the units, the applicant explained that having the doors in that location would intrude on the privacy of adjoining units 2 and 3, and the current location was therefore preferred.

The Authority noted and accepted the applicant's comments and determined that sufficient special circumstances exist in this instance to vary the requirements of clause 7.3, as the height and type of fence to be constructed will avoid undue overlooking of adjoining properties from the doors in question, and the privacy of adjoining units 2 and 3 is also maintained.

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

One submission was received in relation to the application with concerns regarding stormwater, the capacities of power, water and sewer, and visitor parking. The issues concerning stormwater and the capacities of power, water and sewer are addressed through consent conditions. Visitor parking is not anticipated for the development and its provision is not obligatory under the NT Planning Scheme, therefore such parking cannot be required.

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

No land capability concerns were identified as part of the assessment. The proposal complies with the anticipated density in this location. Conditions on the development permit require submission of a construction management plan and a dilapidation report as requested by the City of Darwin. The requirements of the service authorities are also addressed through the conditions of consent.

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

The land is zoned to accommodate the proposed development, in that the land is identified for the development of multiple dwellings, and the proposal is consistent with the required dwelling density, height and building setbacks from the adjoining streets and properties. No undue amenity impacts are anticipated.

**ACTION:** Notice of Consent and Development Permit

**ITEM 2**  
**PA2018/0491**

**THREE-STOREY SINGLE DWELLING EXCEEDING 8.5M IN HEIGHT WITH  
REDUCED FRONT AND SIDE SETBACKS  
LOT 5937 (28) CULLEN BAY CRESCENT, TOWN OF DARWIN  
NORTHERN PLANNING CONSULTANTS PTY LTD**

**APPLICANT**

That, pursuant to section 97 of the *Planning Act*, Ms Suzanne Philip, Chair, of the Development Consent Authority declared an interest and was not present during and did not take part in any deliberation or decision of Item 2.

That, pursuant to section 100(3)(c) of the *Planning Act*, the members of the Darwin Division of the Development Consent Authority elect Doug Phillips as the presiding member for the hearing of Item 2.

Mr Brad Cunnington (Northern Planning Consultants), Hully Liveris (Design Co. Pty Ltd - Architect), Mr Anthony Pearce and Ms Samantha Miles (landowners) attended.

Submitter: Mr Beat Erismann and Ms Helena Jackson attended.

**RESOLVED**  
**19/19**

That, the Development Consent Authority vary the requirements of Clause 7.1.2 (Residential Height Limitations) and Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act*, consent to the application to develop Lot 5937 (28) Cullen Bay Crescent, Town of Darwin for the purpose of a three storey single dwelling with reduced front and side setbacks, 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:
  - (a) written approval for any works within the City of Darwin road reserve.
2. Prior to the endorsement of plans and prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the stormwater drainage system shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels and Council's stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council's system or an alternate approved connection.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the crossover and driveway design shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.
4. 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.
5. Prior to the commencement of works (including site preparation), the applicant is to prepare an Environmental and Construction Management Plan (ECMP) to the requirements of the City of Darwin. The ECMP is to address how construction will be managed on the site, and is to include details of waste management, traffic control and haulage routes, stormwater drainage and the use of the City of Darwin land during construction.

## 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 and electricity facilities 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 of 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 the 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. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
13. 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 City of Darwin advises that building identification will be required prior to occupation in accordance with the City of Darwin by-laws.
3. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
4. A "Permit to Work Within a Road Reserve" is required from the City of Darwin before commencement of any work within the road reserve.
5. 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](http://www.austieca.com.au) and the NTG website <https://nt.gov.au/environment/soil-land-vegetation>.
6. The Northern Territory Environment Protection Authority advises that construction work should be conducted in accordance with the Authority's Noise Management Framework Guideline September 2018. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sundays and Public Holidays. For

construction activities outside these hours refer to the guidelines for further information.

7. 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.
8. The Department of Environment and Natural Resources has advised that the proponent must comply with their General Environment Duty provided by section 12 of the *Waste Management and Pollution Control Act*. The proponent should carefully consider how ongoing compliance will be achieved and potential options to achieve compliance may include the use of an environmental management plan to prevent environmental impacts occurring as a result of the activities undertaken under the development permit.
9. The Department of Environment and Natural Resources has advised that during excavation, the basement has the potential to accumulate turbid, sediment laden stormwater and the proponent should ensure that any pit-water to be discharged from the development is sufficiently treated to ensure any receiving waterway is not polluted.
10. The Department of Environment and Natural Resources has advised that the construction activity has the potential to generate fill and any fill material being relocated offsite must undergo waste classification assessment in accordance with NSW EPA's *Waste Classification Guidelines, Part 1: Classifying Waste*. Any contaminated fill must be disposed at a licenced waste facility.
11. The Department of Environment and Natural Resources has advised that any fill to be imported and used on site must undergo waste classification in order to determine its suitability and the proponent must only accept clean fill (virgin excavated natural material) at the premises.
12. 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.

## REASONS FOR THE DECISION

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

The land is located in Zone SD (Single Dwelling Residential) and the development for a three storey single dwelling with reduced front and side setbacks is consistent with the primary purpose of the zone, being to provide for single dwellings on individual lots.



2. The development includes a variation to Clause 7.1.2 (Residential Height Limitations). The purpose of Clause 7.1.2 is to ensure that residential development is of a height that (a) is compatible with adjoining or nearby development or development reasonably anticipated, and (b) does not unduly overlook adjoining properties. Zone SD allows for a maximum number of 2 storeys and a maximum height of 8.5m above natural ground level for residential buildings. The development was originally 3 storeys and exceeded 8.5m above natural ground level, however was revised during assessment to comply with the 8.5m height limitation.

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.

With regards to the 3 storey component, the site characteristics identified include the slope of the land towards the marina, to which the basement is partly proposed to be constructed into, and also the location adjacent to the marina being unique to the Cullen Bay area, which is notably different to other lots zoned SD in the Darwin area. The existence of other 3 storey dwellings in this location is also unique and contributing to the character of the area. The dwelling appears as 2 storeys when viewed from the street and the modified design is within the 8.5m maximum height limit. The upper storey is located towards the rear of the site and covers around 25% of the building footprint only. Given the design of the roof and the location of windows, the 3 storey component is not clearly identifiable from the two neighbouring properties and no overlooking is anticipated with windows being limited or otherwise suitably setback. The most obvious views of the 3 storey component are directed towards the marina where overlooking is not of concern. The above is considered to demonstrate that special circumstances exist for the proposal, and that those circumstances warrant the acceptance of the additional storey proposed. Despite the additional storey, the purpose of the clause in providing a building height that is compatible with adjoining or nearby development and that does not unduly overlook adjoining properties is considered met.

3. The development varies Clause 7.3 (Building Setbacks of Residential Buildings), of which the purpose is to ensure residential buildings and ancillary structures are located so:
- they are compatible with the streetscape and surrounding development including residential buildings on the same site;
  - as to minimise any adverse effects of building massing when viewed from adjoining land and the street;
  - as to avoid undue overlooking of adjoining properties; and
  - as to encourage breeze penetration through and between buildings.

The clause provides different setback requirements for 2 and 3 storey buildings. As the building presents as 2 storeys from the street, the 2 storey setbacks are applied to Cullen Bay Crescent and the 3 storey setbacks are applied to the side and rear boundary setbacks. The

application includes variations to the primary street including to the residential building, gatehouse and arbour, the setback to part of the building and roof along the northern side boundary, plus the setback to part of the roof along the southern side boundary.

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.

The front setback includes a setback of 4.115m proposed for the residential building with 6m required, and 0m is proposed to the gatehouse and arbour with 4.5m required for ancillary structures without external walls. The streetscape in this location is characterised through the historic application of the previous planning policy for the Cullen Bay Estate, which was superseded in 2007 by the NT Planning Scheme. This policy allowed buildings with reduced setbacks to those prescribed in Zone SD under those currently required under the Planning Scheme. The development includes front setbacks consistent with the adjacent dwellings which appear to have reduced setbacks as permitted by the previous planning policy. The front boundary is angled with the degree of non-compliance varying, and the part of the dwelling where the non-compliance occurs is single storey only and will also be partly obscured by the front boundary fence. In this way, the design is considered to have minimised any adverse impacts of building massing when viewed from the street. By proposing a basement level, the design also reduces the impact of parking structures on the streetscape and together with the arbour with landscaping which provides softening of the appearance of the building. The gatehouse is expected to add interest to the streetscape, with the style proposed not considered excessive and still compatible with the streetscape.

The variation to the northern side boundary occurs for a portion of the 5m length of wall with no windows, with 1.5m required and 1.415m provided at minimum. The setback of this wall portion ranges from a non-complying 1.415m setback to a complying 1.57m setback due to the angled side boundary, and also a minimum setback of 0.985 at the sub-basement level to an enclosed genset. This component is considered to not significantly impact the neighbouring property beyond that which a complying design would incur, given the scale of non-compliance, and the location of the genset at sub-basement level. The bulk of the building is setback a minimum of 3m from the northern boundary, with limited windows, minimising the potential for overlooking. The reduced setback to the eave with 0.2m proposed and 0.6m required is also limited to the 5m section of wall. Also, the land to the south includes a solid wall along the boundary where the variation to the setback of the dwelling eave of 0.3m and 0m to the gutter/downpipe occurs, with 0.6m required, with no impacts anticipated to the adjoining lot. Overall the two side boundary setbacks are not expected to impact the amenity of the neighbouring properties due to the scale of non-compliance, and the presence of existing boundary walls.



The above demonstrates that special circumstances exist, and that those circumstances warrant the setback variations proposed. The setbacks meet the clause purpose in being compatible with the streetscape, minimising any adverse effects of building massing when viewed from the adjoining land and the street, avoiding undue overlooking of adjoining properties, and encouraging breeze penetration through and between buildings.

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

No concerns have been raised with regards to the capability of the land. The City of Darwin has requested a number of conditions that are required prior to any development works commencing. The City of Darwin also noted that there were stairs proposed within the road reserve however the applicant has confirmed this is pedestrian paving only. A condition is included requiring approval for any works within the road reserve prior to works commencing.

Concerns were originally raised by the Water Services division of the Power and Water Corporation regarding the inclusion of ground level encroachments within the sewer easement to the rear of the land, including the pool wet edge and stairway, however these have been removed in the amended design, with advice that the high level eave encroachment still remaining, is accepted.

The Department of Environment and Natural Resources has advised that separate responsibilities apply under the *Waste Management and Pollution Control Act*, including relating to construction noise, fill, and stormwater quality, and have been included as notes on the development permit as required. Other requirements including erosion and sediment control during construction have been reflected as standard conditions.

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

The overall scale of the development is considered similar to that which may be anticipated in Zone SD and the impact of amenity is considered as such. An assessment against the relevant clauses of the Planning Scheme in relation to height and setbacks has found that the proposal is consistent with the purposes of those clauses and it is considered that the development will not adversely impact on the amenity of the surrounding area.



6. Pursuant to section 51(e), 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*. The submission was received from a neighbour at 27 Cullen Bay Crescent and raises concerns with the building height impacting on marina views, the impact on light and amenity, and the impact on breezes. Concerns were also raised regarding the use of the previous planning policy affecting Cullen Bay being included as part of the considerations for reducing front and side setbacks, and that the landscaping used within the side setbacks will further reduce the potential for breezes.

In response to the submission received, the applicant amended the building height to comply with the 8.5m maximum, which reduces any undue impact to marina views. The three storey component is situated towards the rear of the site and would not impact on views. The reduced setbacks are also not expected to impact views given the placement of the lots and surrounding lots, and given the scale of the setback reductions. The form of the development, including setbacks and building height, and the resulting impact on natural light on surrounding dwellings is consistent with that existing and reasonably anticipated in this location, and the reduced front setback and location of landscaping within side setbacks is not expected to unduly restrict breeze potential for nearby lots, beyond that of a compliant design. Other matters raised including property values, and concerns with consultation undertaken by the applicant in addition to that required under the *Planning Act*, are not considered to be relevant planning matters.

**ACTION:** Notice of Determination

**ITEM 3**  
**PA2018/0294**

**CONCURRENT APPLICATION - REZONE FROM ZONE SD (SINGLE DWELLING) TO ZONE MD (MULTIPLE DWELLING),  
CONVERSION OF THE EXISTING BUILDING (4 FLATS) TO 3 MULTIPLE DWELLINGS, PLUS ADDITION OF 2 X 2 BEDROOM MULTIPLE DWELLINGS IN A SINGLE STOREY BUILDING  
LOT 1799 (7) MACKILLOP STREET, TOWN OF DARWIN  
APPLICANT ONE PLANNING CONSULT**

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

Submitter Ms Noela Hall sent her apologies.

**RESOLVED**  
**20/19**

As required by section 30P(1)(a), the consent authority must make a preliminary decision that, if the Minister were to approve the amendment proposal to rezone Lot 1799 (7) Mackillop Street, Town of Darwin that it would be likely to determine to consent to the development under section 30W(1)(a) conditionally for the purpose of conversion of the existing building (4 flats) to 3 multiple dwellings, plus

the addition of 2 x 2 bedroom multiple dwellings in a single storey building, 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:
  - (a) changes to the carport to demonstrate compliance for car parking bay number 7 with Clause 6.5.3 (Parking Layout), and to provide additional separation to the pedestrian access for safety purposes for proposed dwellings 1 & 2; and
  - (b) the inclusion of clotheslines for all units.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the applicant is to seek the following written consents:
  - (a) of Power Networks division of the Power and Water Corporation for the inclusion of a 1m x 1m distribution pillar at the frontage of the site; and
  - (b) of the Water Services division of the Power and Water Corporation for the inclusion of the 600mm mowing strip within the sewer easement at the rear of the site.The above is to occur 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 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 stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected to the underground system.
4. 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.
5. Prior to the commencement of works (including site preparation), the applicant is to prepare an Environmental and Construction Management Plan (ECMP) to the requirements of the City of Darwin. The ECMP is to address how construction will be managed on the site, and is to include details of waste management, traffic control and haulage routes, stormwater drainage and the use of City of Darwin land during construction. The ECMP should include details of the location of the crane and any holding areas.

### **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 and electricity facilities 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 of site is to be created.
10. Prior to the use/occupation of the development and connection of services (i.e. power and water), the owner of the land must apply for unit/street addressing from the Surveyor-General of the Northern Territory. This will form the legal address and will be required to be placed on the doors and meters within the development in accordance with the allocation. An Occupancy Permit will not be able to be granted until such time as addressing is obtained.
11. 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 (being the Licensed Surveyor in most instances) confirming that all new UTS 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).
12. Written confirmation from a qualified traffic engineer that the car parking spaces and access lanes associated with the development comply with the relevant Australian Standards for car parking must be provided in instances where the car parking does not comply with the minimum requirements of Clause 6.5.3 (Parking Layout) of the Northern Territory Planning Scheme,
13. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the City of Darwin, to the satisfaction of the consent authority.
14. 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.
15. Before the occupation of the development starts, the areas set aside for the parking of vehicles and access lanes 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) drained;
  - (d) line marked to indicate each car space and all access lanes; and
  - (e) 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.
16. 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.
  17. 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.
  18. All air conditioning condensers for the new building (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. All pipes, fixtures, fittings and vents servicing the new building must be concealed in service ducts or otherwise hidden from view to the satisfaction of the consent authority.
  20. 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.
  21. 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.
  22. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
  23. 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. 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.
3. 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.
4. This development permit does not grant building approval. You are advised to contact a registered private Building Certifier to ensure that you have attained all necessary approvals before commencing construction works.
5. 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 Department of Environment and Natural Resources.
6. 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>.
7. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5362 ([surveylandrecords@nt.gov.au](mailto:surveylandrecords@nt.gov.au)).

## REASONS FOR THE DECISION

1. Pursuant to sections 30P(2)(a) and (b) of the *Planning Act*, the consent authority must take into account any planning scheme that applies to the land to which the application relates and the amendment proposal contained within the application.

The Northern Territory Planning Scheme applies to the land. The development proposal is considered to align with the purpose of Zone MD, which is to provide for a range of housing options to a maximum height of 2 storeys above ground level. Zone MD provides that the scale, character and architectural style of infill development should be compatible with the streetscape and surrounding development. The 2 additional dwellings are proposed to be constructed towards the rear of the site and are a compatible infill development without impact on the streetscape. If the amendment proposal was to be approved, the development proposal would be consistent with the purpose of Zone MD.



The development proposal including the conversion of the existing building allows the proposal to align with the maximum dwelling density in Zone MD. With a site area of 1,530m<sup>2</sup>, and 5 dwellings proposed, a density of 1 unit per 306m<sup>2</sup> would comply with the proposed zone. The development is also assessed as complying with the requirements of Clauses 6.5.1 (Parking Requirements), 7.1.2 (Residential Height Limitations), 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures), 7.3.1 (Additional Setback Requirements for Residential Buildings longer than 18m...), 7.6 (Communal Open Space), 7.7 (Landscaping for Multiple Dwellings...), and 7.8 (Building Design for Multiple Dwellings...).

Clause 6.5.3 (Parking Layout) ensures that a car parking area is appropriately designed, constructed and maintained for its intended purpose. Originally, car parking bay 7 was proposed to include a 0.9m aisle extension rather than the 1m required adjacent to spaces at the end of the row. The consent authority has required through condition precedent the submission of amended plans with changes to the existing carport containing car parking bay 7 to ensure the design provides for adequate access to all car parking spaces and for pedestrian separation to the adjacent dwellings for safety purposes. At the hearing, the applicant suggested this can occur by relocating the existing carport posts.

The other variations proposed include the retention of the existing gravel driveway only when the requirement is for car parking areas to be sealed, car parking with a setback of 2.5m from the front boundary rather than the required 3m, and the main driveway width is 5m rather than the required 6m.

Despite the variations, the existing gravel driveway is proposed to be improved, and will service the same number of vehicles to be parked at the rear of the site. The variation to the driveway width allows the provision of 1m landscaping width along the northern boundary of the site which has the benefit of providing a privacy and visual screen to the adjoining property, and also is more in keeping of the character of the development. A condition has been included requiring demonstration that the car park design meets the relevant Australian Standards. The plans demonstrate dense screening landscaping will be provided within the 2.5m setback from the front boundary, which will meet the requirement to lessen the visual impact of the car parking area to a similar degree to that of a complying 3m setback. The information presented demonstrates special circumstances to justify the extent of the variations sought pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority).

Clause 7.5 (Private Open Space) ensures that each dwelling has private open space that is of an adequate size to provide for domestic purposes, is appropriately sited, permeable and open to the sky, and inclusive of areas of deep soil for shade tree planting. Multiple dwellings (for each dwelling with direct ground level access) are to include a minimum private open space area of 45m<sup>2</sup> (exclusive of driveways and car parking areas) but inclusive of an area with minimum dimensions of 5m x 5m. All dwellings were found to meet the minimum

required private open space with the exception of dwelling 1 towards the rear of the site. This dwelling meets the minimum of 45m<sup>2</sup>, however provides a dimensioned area of 4m x 5m of private open space rather than the 5m x 5m required. In accordance with Clause 2.5 of the Planning Scheme, the consent authority may vary this clause provided it is satisfied that special circumstances can be identified to justify the variations sought. The special circumstances identified include the location of existing decorative rocks and landscaping which are intended to be retained, the provision of communal open space which is not normally required for multiple dwellings with access to private open space at ground level, plus the ability of the living areas of the dwelling provide a connection to the open space areas.

2. Pursuant to Section 30P(2)(f) of the *Planning Act*, the consent authority must take into consideration any information received as a result of consultations carried out, submissions received, or evidence given at a hearing.

One public submission was received during exhibition of the proposal raising concerns with the potential loss of trees, a desire for retaining mature trees for shade and amenity, for stormwater impacts and flooding risk, the design of the car park, and that the internal fences are unnecessary and reduce amenity, airflow and community interaction. Concerns are also raised with the reduced communal open space area for the existing dwellings, that there is no demand for new dwellings in the current residential market, and that no clothesline facilities have been considered.

The assessment has noted that the proposal exceeds the landscaping and communal open space requirements for developments of this type. The City of Darwin have requested a stormwater management plan to address the collection and discharge to Council's infrastructure, including confirmation that it is technically feasible to collect water on site. The land is not identified as being constrained by flooding. A condition is recommended for inclusion on any permit issued with confirms the design of the car park meets the relevant Australian Standards. Clause 7.5 (Private Open Space) includes a requirement for either screen fencing, or fencing combined with dense landscaping to provide a visual barrier and the design has responded to this requirement.

The consent authority has included additional conditions requiring that the design of car parking bay 7 be reviewed and also that clotheslines be provided for future residents of the development.

3. Pursuant to Section 30P(2)(j) of the *Planning Act*, the consent authority must take into consideration the capability of the land to support the development proposal and the effect of the proposal on other land, and on any other land, the physical characteristics of which may be affected by the proposal. Also, pursuant to Section 30P(2)(l), the consent authority must take into consideration the capability of the public utilities or infrastructure provided in the area in which the land is situated and any requirement for public facilities and services to be



connected to the land; and facilities, infrastructure or land to be provided by the applicant.

No concerns with land capability have been identified for this development and all requests by service authorities have been appropriately addressed through conditions and notes to be included on any development permit issued.

4. Pursuant to section 50P(2)(m) of the *Planning Act*, the consent authority must take into consideration the potential impact of the existing and future amenity of the area in which the land is situated.

Measures to nullify impacts associated with the development include, siting, modest single storey multiple dwelling design, additional landscaping measures and service authority requirements, all contribute to reducing amenity impacts to the neighbourhood.

The site has exceeded Zone SD density controls over three decades, however has kept the appearance of its higher density relatively low key, with little impact to the neighbourhood. This is mainly due to the design of the existing buildings and landscaping, which is largely mature and quite dense and provides significant screening from the street. Given the increase in the number of dwellings is relatively minor (+1), with the new dwellings located at the rear of the lot, the proposal is considered to meet the objectives of DISAP (which identifies areas for sustainable growth in existing inner suburbs) with minimal impact to adjoining neighbours and the immediate neighbourhood.

**RESOLVED  
21/19**

That under section 30Q of the *Planning Act*, the consent authority report to the Minister for Infrastructure, Planning and Logistics advising of the likely decision in relation to the development proposal, issues raised in the submissions, issues raised at the hearing and any other matters it considers the Minister should take into account when considering the amendment proposal.

**RESOLVED  
22/19**

That, pursuant to section 86(1) of the *Planning Act*, the Development Consent Authority delegates its powers to the Chair or in the absence of the Chair any member of the Darwin Division of the Authority to:

- determine pursuant to Section 30W(1)(a) to consent to the development proposal contained in the concurrent application and consent to the concurrent application after receipt of a notice under Section 30U(1) that the Minister has approved the amendment proposal contained in the application;
- issue a development permit under section 54(1) in relation to the development proposal to develop Lot 1799 (7) Mackillop Street, Town of Darwin for the purpose of conversion of the existing building (4 flats) to 3 multiple dwellings, plus the addition of 2 x 2 bedroom multiple dwellings in a single storey building; and
- issue the relevant notices under Section 30Y.

**ACTION:** Report to the Minister

**ITEM 4**  
**PA2018/0489**  
**APPLICANT**

**ADDITION OF 4 X 32M HIGH LIGHT POLES TO AN EXISTING ORGANISED  
RECREATION FACILITY (GARDENS OVAL)  
LOT 3477 (66) GILRUTH AVENUE, TOWN OF DARWIN  
NORTHERN PLANNING CONSULTANTS PTY LTD**

That pursuant to section 97 of the *Planning Act*, Mr Mick Palmer and Mr Simon Niblock, members of the Darwin Division of the Development Consent Authority declared an interest and were not present during and did not take part in any deliberation or decision of Item 4.

Mr Brad Cunnington (Northern Planning Consultants), Mr Glen Ewers (Ecoz), Ms Cindy Robson, Mr Nik Klein and Mr Mathew Vitucci (City of Darwin), Mr Anthony Dent (NT Cricket) and Mr Tony McGovern (Waratah Cricket Club) attended.

Submitters in attendance: Mr Daniel Leather and Mrs Laurie Palfry.

Mr Leather tabled:-

- A photo taken from Darwin High School showing the units on the escarpment.
- A copy of the *Community Sporting Facility Lighting Guide for Australian Rules football, Football (Soccer) and Netball*.

Interested party in attendance:- Ms Patsy Hickey

Mr Garry Shipway (NT News) attended.

**RESOLVED**  
**23/19**

That, the Development Consent Authority vary the requirements of Clause 6.1 (General Height Control), of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act*, consent to the application to develop Lot 3477 (66) Gilruth Avenue, Town of Darwin for the addition of 4 x 32m high light poles to an existing organised recreation facility (Gardens Oval), subject to the following conditions:

**GENERAL CONDITIONS**

1. The works carried out under this permit shall be in accordance with the drawing numbered 2018/0489/01 endorsed as forming part of this permit.
2. The owner of the land must enter into agreements with the relevant authorities for the provision of electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
3. Any developments on or adjacent to any easements on site shall be carried out to the requirements and satisfaction of the relevant service authority at no cost to the relevant service authority.
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.



5. The use and development as shown on the endorsed plan must not be altered without the further consent of the consent authority.

#### NOTES:

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section ([landdevelopmentnorth@powerwater.com.au](mailto:landdevelopmentnorth@powerwater.com.au)) and Power Network Engineering Section ([powerconnections@powerwater.com.au](mailto: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 by the Agency's Noise Guidelines for Development Sites. The guidelines specify that on-site construction activities are restricted to between 7 am and 7 pm Monday to Saturday and 9 am to 6 pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.
3. 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](mailto:info@ntbuild.com.au)) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
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](http://www.austieca.com.au) and the NTG website <https://nt.gov.au/environment/soil-land-vegetation>.
5. The Department of Environment and Natural Resources has advised that the proponent must be made aware of the obligation to comply with the general environmental duty under section 12 of the *Waste Management and Pollution Control Act* (WMPC Act). The proponent should carefully consider how ongoing compliance will be achieved with section 12 in relation to the proposed development and its likely environmental impacts. Further guidance with regard to obligations under the WMPC Act is provided in DENR advice with regard to PA2018/0489, dated 21 December 2018.
6. The Department of Environment and Natural Resources has advised that the construction activity has the potential to generate fill and any fill material being relocated offsite must undergo waste classification assessment by NSW EPA's Waste Classification Guidelines, Part 1: Classifying Waste. Any contaminated fill must be disposed at a licensed waste facility.

#### REASONS FOR THE DECISION

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



The Northern Territory Planning Scheme (NTPS) applies to the land, and the site is within Zone OR (Organised Recreation) of the NTPS. The primary purpose of Zone OR is to provide areas for organised recreational activities. Further, the development is to be limited to that which is consistent with the recreational opportunities of the land.

The subject site forms part of the Gardens Oval Complex which comprises a full-size AFL and cricket playfields with associated facilities. The proposal is for the addition of four light poles around the perimeter of Gardens Oval One, to enable night matches and training sessions, and is seen to be furthering the recreational opportunities of the land as expressed in the zone purpose.

The development seeks a variation to Clause 6.1 (General Height Control). The purpose of Clause 6.1 is to ensure that the height of buildings in a zone is consistent with the development provided by that zone. The clause requires that the height of a building is not to exceed 8.5m above the ground level unless it is a flag pole, aerial, antenna; or for the housing of equipment relating to the operation of a lift. The development proposes four lighting poles which do not comply with this clause as the highest point of the proposed light poles is 32m, which exceeds the height limit by 23.50m.

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.

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 an 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 an 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.

Applying those principles, in an ordinary common-sense manner, to the present application the Authority considered that there are circumstances which collectively can be considered to be 'special circumstances' justifying consent. Those circumstances include:

- Zone OR is the only standard zone within the NTPS designed explicitly for land use and development to accommodate organised recreation activities, including facilities for sporting competition.
- It is evident that stadium and sports lighting is a reasonable expectation for sporting facilities in Zone OR.
- The height of the lighting poles is lower than other lighting poles installed at similar sporting facilities in Darwin, including 45m lighting poles installed at the TIO stadium (cricket and football), 35m lighting

- poles installed at the existing rugby stadium and 40m lighting poles proposed at the new rugby stadium in Marrara Sports complex.
- The extent of built form impact from four light poles, despite the additional height, is not comparable to a building of a similar height designed to accommodate people (for example a grandstand).

It is noted that the height restriction in Clause 6.1(4) is a broad restriction that applies to a number of zones, but some users are exempted from the height restriction if it is consistent with the development provided for by that zone. For example the height of buildings in Zone CP (Community Purpose) should not exceed 8.5m under the Clause; however, education establishments are exempted from the height restriction. This is because these uses contain structures which require heights exceeding 8.5m; like certain sporting facilities in the education establishment.

2. Pursuant to Section 51 (m) of the *Planning Act*, 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 notations on the development permit.

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

Lot 3477 is in Zone OR (Organised Recreation), and the immediate locality comprises various zones developed with a range of uses defined in the zone. These uses include the George Brown Botanical Gardens and Amphitheatre, Gardens Park Golf Links, Gardens Oval Two, Gardens Tennis Complex, Mindil Beach and Sky City Casino and Hotel. The broader locality of the subject site comprises of the residential areas of Larrakeyah, The Gardens and Darwin City, located atop the escarpment overlooking Gardens Oval. The residential properties of Larrakeyah commence approximately 645 metres to the south of the site and the high-rise residential development, adjacent Smith Street, Warrego Court and Houston Street, commences approximately 640 metres south-east of the site. The residential area of The Gardens which includes housing at medium densities is located 440 metres to the east of the site. The edge of the Gardens Oval One playing surface is approximately 530 metres (to the nearest residential property at Melville Street) and 440 metres (to the nearest residential property at Gardens Hill Crescent). The north-east, low-level residential development in The Gardens commences approximately 460 metres from the oval and high-rise residential development in the area of Buffalo Court and McMinn Street is commencing approximately 900 metres away.

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 potential impact on privacy and amenity by the proposed development on surrounding residential areas is considered in two components. Firstly, the visual impact from the proposed structures (the light poles and luminaires), and secondly any impact (such as glare or light spill) from the operation of the luminaires.

With regard to visual impact, it is noted that the location and direction of the lighting columns are well away from any residential uses. The assessment notes that the light poles will be visible during the day, but do not block views of the residential properties. The proposed poles will be a notable addition to the existing landscape; however, given the nature of the locality, this will not be the first intrusion. It is considered that the effect of the lighting poles on residential uses would be negligible. The Authority noted that existing similar facilities in Marrara Sports complex, Alawa and Malak are located 50m – 60m from the nearest residential area.

With regard to light spill on the surrounding residential areas, the application includes a design report which demonstrates that the luminaires are designed in accordance with ‘AS4282 – Control of Obstructive Effects of Outdoor Lighting’ which specifically requires that the vertical illuminance at the nearest residential property shall not exceed 10 Lux. The luminaires are designed to have zero direct upward light component and each fitting has a glare shield to minimise direct line of sight to the light source and a rear visor to ensure a tight cut off and to minimise light spill onto nearby roads and properties as seen in many sporting facilities around the city and its suburbs. The Authority noted that the design report also undertakes an assessment of the light spill extending along the eastern side (parallel to Gardens Road), southern side (parallel to Chin Quan Road), and along the western side (parallel to Gilruth Avenue) which confirms that all imagery boundaries comply with the requirements of ‘AS4282’ and any light spill is limited to areas immediately surrounding Gardens Oval.

The Authority noted that the visual impact assessment of the TIO stadium, provided in the Development Assessment Services report, is not comparable to the proposed facility as the lights at TIO stadium are designed to achieve a horizontal illuminance of 2500 Lux (at the centre of the playing surface) as compared to a maximum 500 Lux in the proposed application. Furthermore, the TIO stadium lighting poles are 45 metres high with no glare shields and visors and the luminaires project outward, rather than downwards (as proposed in this application).

The Authority also noted that the ground level of Smith Street, Houston Street and Warrego Court is generally 15-17 metres above the Gardens Oval playing surface and the residential areas of Melville Street and Gardens Hill Crescent are 15 metres above the playing



surface. This level difference along with the existence of dense landscaping and distance from the oval will minimise the direct glare impacts, if any.

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

Six public submissions were received during the exhibition period under Section 49 of the *Planning Act*. The submissions were received from residents of the residential properties surrounding the subject site. The submissions raised concerns about the height of the structures, glare impacts of the proposed lighting poles on surrounding properties, behavioural/ noise impacts from the night events and increase in traffic and parking problems. These written submissions were considered in detail by the Authority.

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

Mr Leather tabled a photograph taken from Darwin High School showing the units on the escarpment overlooking Gardens Oval. Mr Leather submitted that most of the units have their living rooms and balconies overlooking the Gardens Oval area and therefore any light spill from the proposed lighting poles will cause glare impacts to these properties.

Mr Leather tabled a document titled *Community Sporting Facility Lighting Guide for Australian Rules football, Football (soccer) and Netball* released by the Department of Planning and Community Development, State Government Victoria. Mr Leather referred to the document and submitted that the 500 Lux proposed is beyond the 100 – 200 Lux standard prescribed in the document for practice and semi-professional competitions. Furthermore, Mr Leather noted that the document provides for a pole height of 25-30 metres rather than the 32 metre height of the proposed lighting poles but confirmed that amenity impacts from any potential light spill/glare was the major concern rather than the height of the lighting poles.

Mr Leather stressed that he is not against the addition of lights at the oval but that a trial run of the proposed lighting poles (at 200 Lux) should be considered before granting approval on a permanent basis, to gauge the impact on surrounding residential properties and to ascertain if the 300-500 Lux proposed is really necessary.

Mr Leather noted that other concerns raised in his written submission had been addressed in the DAS report but that in relation to the handling of complaints being addressed by Council's complaint policy number 26, advised that he did not have a lot of confidence in the current policy and has had to take up complaints directly with the operators in the past as the current mechanism doesn't seem to work.

Ms Palfy shared many of the same concerns as Mr Leather in relation to the potential impact on the existing amenity of the surrounding residential areas as a result of any light spill/glare. Ms Palfy showed the Authority a picture taken from her balcony of the view towards the Gardens Oval and that the lighting from the Gardens Tennis Complex, which is located opposite the subject site, is visible. Ms Palfy added that while the height of the lighting poles at the Tennis Complex is much lower than the proposed lighting poles, the light can clearly be seen from surrounding residential areas which suggests that light from the proposed lighting poles will also be visible.

Ms Palfy echoed Mr Leather's comments in relation to a trial run of the proposed lighting poles and made reference to the proposal for lighting poles at the nearby Gardens Park Golf Links which was granted approval for a 12 month trial period and not extended. In relation to the development of lighting poles at the nearby Gardens Park Golf Links, the Authority notes that an application to extend the time period for the use of the lighting poles has not been received to date.

Ms Palfy noted that comments in the DAS report suggested that additional parking was not required but considers that car parking would be an issue and some consideration should be given to the traffic and parking implications resulting from the proposed lighting poles. In relation to the potential impact that the lighting poles would have on the existing landscape, Ms Palfy acknowledged that there are existing power poles in the vicinity of Gardens Oval but that they are mostly screened by existing vegetation whereas the proposed lighting poles will sit above the tree canopy.

Ms Hickey, whilst not a submitter under section 49 of the Act, addressed the Authority as the proposal had come to her attention after the exhibition period had ended. Ms Hickey raised concern in relation to the proposal contributing to the commercialisation/industrialisation of what many know as the 'Gardens Precinct' and suggested that the area should not be further developed.

Mr Dent of NT Cricket addressed the Authority to clarify matters relating to funding that were raised by submitters. Mr Dent also advised that he is an electrician and installs flood lights on sporting ovals and that there are strict requirements and standards to adhere to, to ensure that there are no adverse impacts on surrounding land.

The Authority has taken all comments into account and carefully considered the concerns of the submitters. In relation to the potential impact on amenity as a result of any light spill/glare, the Authority relies on its reasons listed in point three (3) above which concludes that the proposed lighting poles are designed to comply with Australian Standard 'AS4282- Control of Obstructive Effects of Outdoor Lighting' which specifically requires that the vertical illuminance at the nearest residential property shall not exceed 10 Lux. The Authority noted that the design report submitted with the application demonstrates that the luminaires are designed to have zero direct upward light component and each fitting has a glare shield to minimise direct line of sight to the



light source and a rear visor to ensure a tight cut off and to minimise light spill onto nearby roads and properties as seen in many sporting facilities around the city and its suburbs.

With reference to the standards prescribed by the document tabled by Mr Leather, the Authority noted that the standards refer to a minimum level only and do not provide any guidelines on the maximum levels. Furthermore, the Authority noted that the same document specifies that lighting towers greater than 20m from a property boundary will likely see less light spill.

In relation to the photo shown by Ms Palfy, the applicant clarified that the proposed lighting poles utilise metal halide lights, rather than LED lights in use at the Gardens Tennis Complex which differ considerably and due to the design of the lights there will be no light spill on the surrounding residential areas.

The applicant clarified that Darwin City Council has considered various options for the provision of lighting poles and based on the design report the current option being proposed is considered best as it did not cause light spill. Based on the research that has taken place and the confidence in the chosen option, a trial run is not considered necessary. The Authority were satisfied with the technical information provided in the design report that formed part of the application.

In relation to the potential for an increase in noise to be generated from the Gardens Oval as a result of the addition of light poles, the Authority noted that the use will need to comply (at any time of the day) with the Northern Territory Noise Management Framework Guidelines recently released by the Northern Territory Environment Protection Authority (NTEPA). Similarly, the Authority considered that there are appropriate mechanisms that are in place (event marshals, police etc.) to deal with any unsociable behaviour that may result from events held at the Gardens Oval.

The NTPS does not require additional parking to be provided as a result of the addition of lighting poles to an existing use. The car parking requirement for the use has previously been determined and addressed. The addition of lighting poles is not expected to significantly increase participation over and above existing rates, rather it will allow for extended hours of operation and/or will allow for rescheduling of existing uses to operate at a cooler time of the day. Notwithstanding this, the Authority noted that the Gardens Oval is in a fortunate position to accommodate large numbers as its location benefits from being opposite the Mindil Beach parking area (Lot 5772) which has a pedestrian connection to the subject site. Further, given that match times (which are expected to attract the largest audiences) are restricted to Friday and Saturday evenings between 6pm-9pm, there is no conflict with the Mindil Beach Markets which take place on a Thursday and Sunday evening.

5. Pursuant to section 51(p), the consent authority must take into consideration the public interest, including (if relevant) how the following matters are provided for in the application:



- (i) community safety through crime prevention principles in design;
- (ii) water safety; and
- (iii) access for persons with disabilities.

While the proposed development does not impact on the water safety and access for persons with disabilities, the Authority noted that the addition of lighting poles to the existing sporting facility would enable evening training sessions and matches to take place which will provide additional activation to the area; opportunities for passive surveillance; and improve community safety. It was also considered to be in the public interest to provide additional sporting facilities that have the capacity to operate in the evening when it is cooler and therefore safer to participate in sport.

**ACTION:** Notice of Consent and Development Permit

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



**DOUGLAS PHILLIPS**  
Delegate

15 February 2019