DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 344 – FRIDAY 4 OCTOBER 2019

BROLGA ROOM
NOVOTEL DARWIN ATRIUM
100 THE ESPALANADE
DARWIN

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

APOLOGIES: Peter Pangquee

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

COUNCIL REPRESENTATIVE: James Whyte and Brian Sellers

Meeting opened at 10.30 am and closed at 11.25am
ITEM 1
PA2019/0321
APPLICANT/S
NORTHERN PLANNING CONSULTANTS

ADDITION OF 2 x FOOD VANS AND ALRESCO DINING AREAS
LOT 627 (85) MITCHELL STREET, DARWIN CITY, TOWN OF DARWIN

Brad Cunningham (Northern Planning Consultants) attended.

Nick Halkitis (Landowner) and Anthony Fotiades attended.

Dennis Burke and Reagan Anderson (Submitter) attended.

RESOLVED
166/19

That, pursuant to section 53(a) of the Planning Act 1999, the Development Consent Authority consent to the application to develop Lot 627 (85) Mitchell Street, Town of Darwin for the purpose of addition of 2x food vans and alfresco dining areas, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the 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 the addition of landscaping within the paved area.

2. Prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.

3. Prior to the commencement of works (including site preparation), the applicant is to prepare an Environmental and Construction Management Plan (ECMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The ECMP is to address how construction will be managed on the site, and is to include details of waste management, traffic control and haulage routes, stormwater drainage, and the use of City of Darwin land during construction. The ECMP is also to address the protection of existing assets, the protection of public access, and include a risk assessment.

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

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 drainage and electricity services to the development shown on the endorsed plan in accordance with the authorities’ requirements and relevant legislation at the time.

8. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.

9. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or site is to be created.

10. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to the City of Darwin, to the satisfaction of the consent authority.

11. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.

12. Before the use or occupation of the development starts, the area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
   a) constructed;
   b) properly formed to such levels that they can be used in accordance with the plans;
   c) surfaced with an all-weather-seal coat;
   d) drained;
   e) line marked to indicate each car space and all access lanes; and
   f) clearly marked to show the direction of traffic along access lanes and driveways to the satisfaction of the consent authority.

   Car spaces, access lanes and driveways must be kept available for these purposes at all times.

13. Before the use 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.

14. 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.
1. Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and the Power Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of one month prior to construction works commencing to determine servicing requirements and the need for upgrading of infrastructure.

2. There are statutory obligations under the Waste Management and Pollution Control Act 1998 (the Act), that require all persons to take all measures that are reasonable and practicable to prevent or minimise pollution or environmental harm and reduce the amount of waste. The proponent is required to comply at all times with the Act, including the General Environmental Duty under Section 12 of the Act. There is also a requirement to obtain an authorisation prior to conducting any of the activities listed in Schedule 2 of the Act. Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority website at http://ntepa.nt.gov.au/waste-pollution/guidelines/guidelines.

The proponent is advised to take notice of the schedule of environmental considerations provided by DENR.

The Act, administered by the Northern Territory Environment Protection Authority, is separate to and not reduced or affected in any way by other legislation administered by other Departments or Authorities. The Environment Operations Branch of the Environment Division may take enforcement action or issue statutory instruments should there be non-compliance with the Act.

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. City of Darwin advises that all street trees shall be protected at all times during construction. Any tree on a footpath, which is damaged or removed during construction, shall be replaced, to the satisfaction of the General Manager Infrastructure, City of Darwin. A Tree Protection Zone (TPZ) shall be constructed for all existing trees to be retained within the development, in accordance with Australian Standards – AS 4970-2009 “Protection of Trees on Development Sites”. Copies of AS 4970-2009 “Protection of Trees on Development Sites” can be obtained from the Australian Standards website.

5. 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.

6. Any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin Policy Number 042 – Outdoor Advertising Signs Code.
7. The development and use hereby permitted should be designed, constructed, registered and operate in accordance with the National Construction Code of Australia, the Public and Environmental Health Act 2011 and Regulations, the Food Act 2004 and National Food Safety Standards.

REASONS FOR THE DECISION

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

The land is located in Zone CB (Central Business), the purpose of which is to provide for a diversity of activities including administrative, judicial, professional, office, entertainment, cultural, residential and retail and other business activities with a commitment to the separation of incompatible activities.

The proposed use of the vacant subject site is expected to enhance the pedestrian environment by activating the street frontage which is currently empty. This will add passive surveillance to the area when the proposed food vans are open for business. As such the proposal is considered to be in accordance with the zone purpose.

As the proposed use of the site for 2x food vans is a use not listed under the scheme or table of Clause 6.5.1 (Parking Requirements) the number of car parking spaces required for the use is to be determined by the consent authority. Development Assessment Services (DAS) considered that the operation of 2x food vans on the site will not generate any car parking demand from customers as customers are more than likely to all be foot traffic during various times of the day, given the inner city locality. The Authority agreed with the DAS assessment and considered it appropriate that no on-site customer car parking is required to be provided for the use. It is however noted that the on-site car parking shown on the plan is approved as being associated with the use of the site for 2x food vans and may be open for use by food van customers at the property owners’ discretion.

2. The Authority asked the applicant at the meeting whether Crime Prevention through Environmental Design Principles (CPTED) had been considered in regard to the use of the carpark at the rear of the site, given the absence of lighting. The applicant responded that the on-site carpark would only be open for use while the food vans were operating, therefore ensuring that there was passive surveillance of the area at all times that the carpark was potentially open for use by food van customers.

The applicant was questioned by the Authority as to whether the inclusion of on-site landscaping was considered acceptable, given that the proposed plans did not provide any. In response the applicant questioned whether this was necessary and if it would actually add any amenity to the proposal, given the absence of any buildings on the plans and the existence of a large tree adjacent to the site in the street verge. However the applicant conceded that he was happy to leave the
decision to the Authority as to whether any landscaping should be required as a condition of any development approval granted. The Authority considered that the inclusion of landscaping within the paved area would in fact enhance the amenity of the proposed development and therefore determined to include a condition on the development permit to require amended plans that show the provision of landscaping within the paved area.

The applicant was also asked by the Authority as to whether or not the food vans or related umbrellas, tables and chairs etc. would be stored anywhere on the site outside of trading times. The applicant confirmed that food vans would only be present on the site while they were open for business and that they would take all umbrellas, tables, chairs etc. and rubbish away from the site each time they leave the site.

When questioned by the Authority as to whether or not the owner intended to apply for a liquor licence in association with the proposed use, the applicant confirmed that there were no intentions to pursue an application for a liquor licence on the site.

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.

Three identical submissions were received under section 49 of the Act from the owner of 1103/102 Esplanade, Darwin; the owner of 1201/79 Smith Street, Darwin; and the Body Corporate for C2 Apartments, 102 Esplanade, Darwin.

The applicant provided a written response to the matters raised by the submissions. The Authority considered this response to satisfactorily and adequately address the concerns raised. A number of points raised by the submissions have been dealt with as a result of service authority comments and amended plans being provided by the applicant, as follows:

- Removal of the alfresco dining component which was in the City of Darwin road reserve (footpath). The applicant intends to apply to the City of Darwin in the future for an alfresco dining licence over this area; and
- Additional details provided on plans in relation to bins and bin collection areas.

In terms of amenity concerns raised by the submissions, the anticipated impact of the proposal is considered acceptable, given the central business district locality. As detailed by the applicant's response, there are many other outdoor dining and licensed venues in the immediate vicinity which create far more noise than can be expected from the proposed use. The nature of the proposed use being unlicensed, with no music or amplification, and short-stay with limited capacity.
Mr Reagan Anderson and Mr Dennis Burke both attended the meeting and addressed the Authority with their concerns in relation to the proposed development. The primary concerns raised by both submitters were that the current residential uses which exist within the vicinity of the subject site were sensitive to the potential noise generated by the proposal, particularly late at night. Subsequently the submitters requested that the Authority limit the operating times of the food vans to no later than between 10pm or 12am, in accordance with other outdoor dining spaces at nearby restaurants.

In response to these comments, the applicant argued that the only restrictions on hours of trade for nearby restaurants and entertainment facilities are a result of liquor licence conditions, which were not relevant to this application. The Authority upheld the applicant’s response to the submitters’ concerns and further stated that neither of the two residential properties represented by the submitters were adjoining or within immediate proximity of the development on the subject site and were therefore unlikely to be directly impacted by the proposal. It was also noted by the Authority and the applicant that the proposal would be required to operate within the noise restrictions imposed by the NT EPA Noise Guidelines and the Waste Management and Pollution Control Act 1998. A notation is included on the development permit referring to the schedule of environmental considerations provided by the Department of Environment and Natural Resources.

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

The proposal comprises the addition of 2x food vans and alfresco dining areas. There are no concerns with regards to the capability of the land. The land is not affected by flooding, storm surge or aviation constraints.

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

Given the range of existing uses and buildings within the immediate area, and the specific nature of proposed use, the proposal is unlikely to affect existing amenity. As detailed above in reason 4 in relation to the public submissions made, the Authority does not believe that the proposal is likely to impact on the amenity of residential uses within the area, specifically given the distance between the subject site and the two residential properties represented by the submitters. It was also noted that a broad range of food vans are expected to frequent the site.
and may not necessarily be limited to evening trading. Morning trade may also take place through offerings such as coffee or if there is demand, there could be food vans that cater to the weekday lunch trade through offerings such as fast food takeaway. In summary the proposal is expected to make a positive contribution to the subject area of the CBD. A condition is included on the development permit requiring the provision of landscaping within the paved area of the site as the Authority determined this would further improve the amenity of the area and the site of the food vans in particular.

ACTION: Notice of Consent and Development Permit

ITEM 2
PA2019/0245

RECONSIDERATION: ALTERATIONS AND ADDITIONS TO AN EXISTING SINGLE DWELLING WITH REDUCED FRONT AND SIDE SETBACKS LOT 3784 (14) PACKARD STREET, LARRAKEYAH, TOWN OF DARWIN

APPLICANT/S NEVILLE JONES SERVICES

Neville Jones (Neville Jones Services) and Hully Liveris (Architect) attended.

RESOLVED 167/19

That, the Development Consent Authority vary the requirements of Clause 7.3 (Building Setback Requirements for Residential Buildings and Ancillary Structures) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the Planning Act 1999, consent to the application to develop Lot 3784 (14) Packard Street, Town of Darwin for the purpose of alterations and additions to an existing single dwelling with reduced front and side setbacks, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the commencement of works (including site preparation), a schematic plan demonstrating the on-site collection of stormwater and its discharge into the local stormwater drainage system shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of surface flow direction, downpipe direction and any connection to Council connection points.

2. Prior to the commencement of works (including site preparation), the applicant is to prepare an Environmental and Construction Management Plan (ECMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The ECMP is to address how construction will be managed on the site, and is to include details of waste management, traffic control and haulage routes, stormwater drainage, and the use of City of Darwin land during construction. The ECMP is also to address the protection of existing assets, the protection of public access, and include a risk assessment.

3. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.
4. Prior to the commencement of works (including site preparation), the applicant is to prepare designs and specifications for landscaping of the road reserve adjacent to the property, to the requirements of City of Darwin, to the satisfaction of the consent authority.

GENERAL CONDITIONS

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

6. The owner of the land must enter into agreements with the relevant authorities for the provision of drainage and electricity services to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

7. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.

8. 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.

9. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to the City of Darwin, to the satisfaction of the consent authority.

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. 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.

12. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.

Notes

1. Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and the Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of one month prior to construction works commencing to determine servicing requirements and the need for upgrading of infrastructure.

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. 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.

4. This development permit does not grant building approval. You are advised to contact a NT registered private Building Certifier to ensure that you have attained all necessary approvals before commencing construction works.

REASONS FOR THE DECISION

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

The Northern Territory Planning Scheme (NTPS) applies to the land. Lot 3784 Town of Darwin is identified within Zone SD (Single Dwelling Residential) of the NTPS and is surrounded by lots predominantly developed as single dwellings. The primary purpose of Zone SD is to provide for single dwellings on individual lots. The proposal is for alterations and additions to the existing single dwelling, and as such the development is considered consistent with the purpose of the zone.

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 development proposes a pool terrace at the rear, a separate main bedroom with an ensuite bathroom and walk-in robe oriented to the pool terrace, ground-level open plan kitchen and living room connecting existing patio, kitchenette with three bedrooms and family room at first floor, covered stairway to the second floor on the eastern boundary, double garage with bathroom at the rear on the western boundary; landscaping and trellis in the front yard, an entry gatehouse, and timber deck arising from an external balcony with decorative steel balustrading. The original application demonstrates non-compliance with front, side and rear setbacks for various components proposed in the development. The original application was considered by the Authority at its meeting on 09 August 2019 and it was determined that the application demonstrated the following special circumstances justifying the granting of consent for the gatehouse, trellis and toilet located on the front, side (west) and side (east) boundaries:

- Due to the angled placement of the garage, the setback distance ranges from 3.98m at the western corner to 8.0m at the eastern corner, with most of the garage exceeding 6m. The non-compliant aspect of the garage setback relates to approximately 3m length of the garage (10% of the front boundary length). The dwelling setback exceeds the minimum requirement of 6m.
- The gatehouse acts as an extended feature of the front fence and adds to the streetscape by providing a varied and aesthetic feature to the front fence line. The gatehouse structure proposed is not considered excessive and can be considered compatible with the streetscape.
- The trellis structure is a landscape feature in the front yard; therefore, its reduced front setback will not detract from the streetscape. It is a non-habitable open structure which means there will be no issues of overlooking or breeze penetration.
- The non-compliant toilet structure located on the side boundary is partly obscured by the colourbond boundary fence. The structure has an opening at sill height of 1.6m, causing no issue of overlooking adjoining properties.

At the same time, the Authority also determined that no special circumstances existed for reduced setbacks associated with the pool deck shade structure, bedroom, laundry, stairway and kitchenette (at level 1). The Authority determined to defer the consideration of the application for the applicant to provide the following additional information that the Authority considered necessary to enable proper consideration of the application:

- Demonstration as to why the proposed side and rear boundary setbacks cannot be increased or the size of the development cannot be reduced to achieve greater compliance with the requirements of Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures). Further justification for any continued non-compliance should also be provided and presented in the context of special circumstances which justify the giving of consent; and
- Any amendments to the application that arise as a result of the above information request.

In response to the Notice of Deferral, the applicant provided further information and amended plans to address the points of deferral above.

An assessment of the amended plans noted that the pool deck roof structure proposed side (west) and rear boundary setbacks that complied with Clause 7.3. The columns of the roof structure are setback 1.5m, and the outer face of the gutter is setback 1.1m from the side (west) and rear boundaries. The block wall provided along the side and the rear boundary is considered a fence structure which has no setback requirements.

A variation to Clause 7.3 (Building Setbacks of Residential structures) associated with the bedroom/laundry, stairway and kitchenette (at level 1) is supported for reduced setbacks along the eastern side boundary due to the following reasons:
- The provision of steel screen infills in the wall (under the Kitchenette) provides relief to the blank wall when viewed from the adjoining lot.
- The addition of landscaping within the 1m setback along the boundary will also screen the impact of building massing when viewed from the adjoining lot.
- The siting of the bedroom/laundry against the solid block masonry wall of the shed constructed on the common side boundary eliminates the building massing impact on the subject site.
• A written confirmation from the affected neighbour that the
design is satisfactory is considered as a justification that an
appropriate level of amenity is achieved.

The above is considered to demonstrate that special circumstances
exist for the proposal and that those circumstances warrant the
acceptance of the setback variations proposed for bedroom/ laundry,
stairway and kitchenette (at level 1). The variation meets the clause
purpose in minimising any adverse effects of building massing when
viewed from the adjoining land and the street, avoiding undue
overlooking of adjoining properties, and encouraging breezë
penetration through and between buildings.

3. Pursuant to section 51(j) of the Planning Act 1999, the consent
authority must take into consideration the capability of the land to which
the proposed development relates and 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 issues were identified during the assessment of this
application. The scale of the proposed development is consistent with
the SD (Single Dwelling Residential) zoning and is consistent with
surrounding development.

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

The development is consistent with the purpose of Zone SD (Single Dwelling Residential), providing for a single dwelling and ancillary
structures on an individual lot. The overall scale of the development is
similar to that which may be anticipated in the zone, and the impact of
amenity should be considered as such. It is noted that the majority of
dwellings in this location comprise larger single dwellings on single lots,
and the character of the dwelling is consistent with the surrounding
area.

The reduced front setback of the garage and gatehouse is unlikely to
detract from the visual amenity of the streetscape. The impact on
amenity on the neighbouring lot (Lot 3783) relates to the adverse effect
of building massing and visual impact of the blank wall when viewed
from neighbouring properties. These impacts are minimised through
the use of architectural features like steel screen infills in the wall
(under the Kitchenette) and landscaping (tall Indian Mast trees) along
the effected boundary. Also providing bedroom/ laundry against the
shed wall constructed on the common boundary provides a focus of
the main bedroom to the western pool court rather than to a blank wall
of the shed. The development, besides having reduced side and front
setbacks, does not create an issue of overlooking to adjacent
properties.

ACTION: Notice of Consent and Development Permit
ITEM 3
PA2019/0266       RECONSIDERATION: ALTERATIONS AND ADDITIONS TO AN EXISTING HOSTEL RESULTING IN 30 BEDS IN 2 X 2 STOREY BUILDINGS
LOT 1245 (133) SMITH STREET, LARRAKEYAH, TOWN OF DARWIN

APPLICANT/S
ONE PLANNING CONSULT

Israel Kgosiemang (One Planning Consult) and Saavas Saavas (Architect) attended.

RESOLVED
168/19

That, the Development Consent Authority reduce the car parking requirements pursuant to Clause 6.5.2 (Reduction in Parking Requirements), and vary the requirements of Clause 6.5.3 (Parking Layout), Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and Clause 7.3.1 (Additional Setback Requirements for Residential Buildings longer than 18m 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 1245 (133) Smith Street, Town of Darwin for the purpose of alterations and additions to an existing hostel resulting in 30 beds in 2 x 2 storey buildings, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the 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) The location of the pergola columns no greater than 1m from the front (Smith Street) boundary.
   (b) An optional increase to the size of the ground floor meals room (up to 1m from the front (Smith Street) boundary subject to achieving minimum compliance with the requirements of Clause 7.6 (Communal Open Space) and Clause 7.7 (Lanscaping for multiple Dwellings, Hostels and Supporting Accommodation).

2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council’s stormwater drain connection point/s and connection details.

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), the applicant is to prepare designs and specifications for landscaping of the road reserve adjacent to the property, to the requirements of City of Darwin, to the satisfaction of the consent authority.
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, to the satisfaction of the consent authority. The ECMP is to address how construction will be managed on the site, and is to include details of waste management, traffic control and haulage routes, stormwater drainage, and the use of City of Darwin land during construction. The ECMP is also to address the protection of existing assets, the protection of public access, and include a risk assessment.

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

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 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 use and/or development as shown on the endorsed plans must not be altered without the further consent of the consent authority.

10. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage and electricity facilities and telecommunication networks to the development shown on the endorsed plan in accordance with the authorities’ requirements and relevant legislation at the time.

11. 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.

12. 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.

13. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin, to the satisfaction of the consent authority.

14. 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.

15. 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.

16. 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, to
the satisfaction of the consent authority.

17. 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.

18. Storage for waste disposal bins is to be provided to the requirements of City
of Darwin to the satisfaction of the consent authority.

19. Before the use 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. 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.

22. No more than 30 guests are permitted to be accommodated on the premises
at any one time 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) 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. 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.

3. Notwithstanding the approved plans, all signage is subject to City of Darwin
approval, at no cost to Council.
4. All 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.

5. The development and use hereby permitted should be designed, constructed, registered and operate in accordance with the National Construction Code of Australia, the NT Public Health Act and Regulations, the NT Food Act and National Food Safety Standards.

6. 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.

7. The Northern Territory Environment and Protection Authority has advised that the proponent must comply with their General Environmental Duty provided by section 12 of the Waste Management and Pollution Control Act.

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 applicant is advised to engage a building certifier, within the meaning of the Building Act, as to whether the building/s comply with the Building Act and associated Regulations.

REASONS FOR THE DECISION

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

The application has been assessed against the relevant clauses of the Northern Territory Planning Scheme (NTPS) and complies with Clause 2.7 (Reference to Policy), Clause 5.4 (Zone HR – High Density Residential), Clause 7.6 (Communal Open Space), Clause 7.7 (Landscaping for Multiple Dwellings, Hostels and Supporting Accommodation), and Clause 7.8 (Building Design for Multiple Dwellings, Hostels and Supporting Accommodation).

Non-compliances have been identified with Clause 6.5.1 (Parking Requirements), Clause 6.5.3 (Parking Layout), Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures), and Clause 7.3.1 (Additional Setback Requirements for Residential Buildings Longer Than 18m and for Residential Buildings Over 4 Storeys in Height) of the NTPS. Non-compliances, where applicable, have been justified with special circumstances in accordance with...
Clause 2.5 (Exercise of Discretion by the Consent Authority) and are discussed below.

2. Clause 6.5.1 (Parking Requirements) sets out the parking requirements for the development. Table to Clause 6.5.1 stipulates that a hostel requires the following number of car parking spaces: 1 for every 5 persons plus 1 for every staff member plus 1. The proposal comprises 30 rooms and the applicant confirms that only 1 person will be permitted per room. The application also states that the facility will be self-catered and that no permanent staff will be on site. The occasional cleaner and gardener are expected to visit the site, and as such Development Assessment Services (DAS) has determined that 1 car parking bay should be provided for a staff member. The site is therefore required to provide 8 car parking spaces.

The proposal provides 7 car parking spaces and therefore has a shortfall of 1 car parking space. A reduction to the parking requirements of Clause 6.5.1 has been requested by the applicant and thus assessment was undertaken with consideration to Clause 6.5.2 (Reduction in Parking Requirements).

In accordance with the provisions of this Clause 6.5.2, the Authority may approve a development with fewer car parking spaces than required by Clause 6.5.1 if it is satisfied that a reduction is appropriate for the development, having considered the zoning of the land, the use or development, the provision of car parking spaces in the vicinity of the land, the availability of public transport in the vicinity of the land or whether the proposal relates to a Heritage place.

Given the constraints of the site and siting of the building, the provision of 10 bike racks as part of the design, the proximity of the site to the CBD and access to public transport, a reduction to the parking requirements of the proposed development from 8 car parking spaces to 7 car parking spaces is supported. A condition is included on the development permit to ensure that no more than 30 guests are accommodated on the premises at any one time.

3. Clause 6.5.3 (Parking Layout) sets out the parking layout requirements for the development. Whilst the application generally complies with the provisions of this clause, there is a minor non-compliance with the driveway width. Subclause 3(i) requires driveways have a minimum width of 6m for two way traffic. The proposal provides a driveway width of 5.34m. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority), the proposal is required to exhibit special circumstances to justify the granting of consent.

The application exhibits a number of unique circumstances:
- The car parking layout design provides for wider bays than required under the NTPS (2.7m rather than 2.5m).
- The proposal utilises the structure of the existing building (circa 1950s), which does not provide any car parking and is centred on the site.
- The proposed car parking area provides for 7 bays only. Two-way traffic manoeuvring is therefore unlikely to occur regularly.
• The applicant has advised the car parking layout meets the Australian Standards (AS2890.1).

The points made above, when viewed holistically in combination with one another, are considered to create a situation which gives rise to special circumstances. The proposed car parking layout is considered to be in accordance with the purpose of the clause, which is to ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose and to further ensure this, a condition is included on the development permit requiring written confirmation from a qualified traffic engineer that the parking layout complies with the relevant Australian Standards.

4. Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures) outlines the setback requirements for the development. In accordance with the definitions of the NTNS, Smith Street is considered the primary street and Malabar Court is considered the secondary street. Three of the four sides of the building exceed 18m in length, triggering the requirement for additional setbacks in accordance with Clause 7.3.1 (Additional Setback Requirements for Residential Buildings Longer Than 18m and for Residential Buildings Over 4 Storeys in Height).

In accordance with the provisions of clause 7.3.1, an additional setback of 0.5m should be provided for each additional 3m or part thereof building length exceeding 18m.

The proposal does not comply with the setback requirements for the primary street (2.5m proposed where 7.5m is required) or secondary street (1m proposed where 3.5m is required). In this instance, special circumstances, in accordance with Clause 2.5 (Exercise of Discretion by the Consent Authority) are required to justify consent for a variation to the primary and secondary street boundaries.

Justification relating to the width of the Smith Street road reserve, limitations of the existing building and positioning of the lot on the cul-de-sac may not, individually, be special circumstances. However, when viewed holistically in combination with one another, they are considered to create a situation which gives rise to special circumstances.

At the meeting the Authority noted the changes that had taken place to the design to increase setbacks to the primary street frontage and improve compliance with communal open space and landscaping. The Authority sought confirmation from the applicant on the proposed setback to the pergola columns as it was not clear on the current plans. The applicant confirmed that the pergola columns were setback 1m from the Smith Street boundary. A condition is included on the development permit for submission of amended plans to clearly show this setback.

The Authority also considered that while the setback to the ground floor meals room/kitchen had been increased from 1m to 2.5m, this was at the detriment to the size of the room and overall function and amenity that it would provide to hostel guests. The Authority determined that

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These minutes record persons in attendance at the meeting and the resolutions of the Development Consent Authority on applications before it. Reliance on these minutes should be limited to exclude uses of an evidentiary nature.
the setback to the meals room/kitchen could be decreased from 2.5m to 1m to enable an increase to the size of the room given its limited width (5.34m) in comparison to the overall length of the front boundary (28m), and noting that substantial landscaping is proposed around the front perimeter of the site which will assist in screening this particular part of the building from the street. The option to increase the size of the kitchen/meals room through decreasing the setback to the front boundary from 2.5m to 1m is subject to the design still being able to achieve minimum compliance with Clause 7.6 (Communal Open Space) and Clause 7.7 (Landscaping for Multiple Dwellings, Hostels and Supporting Accommodation) as the Authority has not granted a variation to either of these clauses.

5. The application does not comply with the setback requirements for the southern side boundary (1.5m where 2.5m is required) pursuant to Clause 7.3.1 (Additional Setback Requirements...). The Authority may approve a development that does not comply with the additional setback requirements if it is satisfied that the design of the development adequately mitigates the adverse effects of building massing and visual bulk that may arise from nonconformity with subclause 2. The following building features have been considered:

- The use of light materials and varying colours to break up wall areas.
- The varying roofline and articulation to create visual interest and decrease building bulk.
- The provision of a 2m high good neighbour fence to the southern boundary as requested by the submitter.
- The zoning allows for up to 8 storeys yet the proposal is only for 2 storeys.

These building features are considered to appropriately mitigate against the adverse effects of building massing and visual bulk to the southern boundary.

6. Pursuant to Section 51(e) of the Planning Act 1999, the consent authority must take into consideration any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application.

One public submission was made during the application’s public exhibition period. The submission was made by FYFE on behalf of Ms Anna Lymbouras who is the owner of the neighbouring property to the southern side.

At the meeting on 23 August 2019, the submitter advised of concerns around overlooking from the stairway along the southern side of the building. The submitter also requested appropriate fencing along the southern boundary and the provision of a Facility Management Plan.

The amended drawings provide 45 degree angled aluminium slat screening to the subject stairway. Sheet 16 of the amended drawings demonstrate the screening, in combination with the 2m fence provided, will adequately screen the development.
The submitter provided further comments upon reviewing the amended drawings and while acknowledging the changes that had taken place, reiterated their preference for a Facility Management Plan and their opinion that special circumstances were not present in the applications.

The submitter’s comments are noted and are considered to have been addressed in part through the provision of a 2m high fence and screening of the stairway as requested. The request for a Facility Management Plan to be required through a condition on the development permit is not considered appropriate as the management of the facility is not considered to be a planning issue. The operator is encouraged however to develop such a document and make it available to local residents so expectations are clear. Special circumstances in relation to the non-compliances with the NTPS exhibited in the application are discussed in reasons 2-4 above. Clause 7.3.1 (Additional Setback Requirements…) is not subject to special circumstances and instead has its own test for a variation to be granted and this is discussed in reason 5 above.

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

The original application was circulated to the City of Darwin, the Department of Infrastructure, Planning and Logistics (Transport Planning, Policy and Reform), the Power and Water Corporation, the Department of Environment and Natural Resources, NT Fire and Rescue Services, the Department of Health (DoH), Telstra and NBN co. Comments received were included in the original DAS report to the DCA.

Whilst the application was placed on deferral the Authority sought further advice from the DoH in relation to the requirements for ‘Commercial Visitor Accommodation (CVA)’. DoH advised that regardless of the planning approval issued over the site, if the business operates as a hotel/back packers or any other accommodation facility which falls under the CVA definition then they will be required to comply with the requirements of the Public and Environmental Health Guidelines for Public Accommodation (the Guidelines). It is understood that the applicant has commenced discussions with the DoH in relation to its requirements and that the current design is capable of complying with the necessary guidelines.

Conditions precedent have been included on the development permit for the submission of a stormwater plan, access arrangements and landscaping provision within the road reserve, all to the requirements of the City of Darwin, to ensure that these elements can be approved without altering the design of the proposed development. All other issues raised by service authorities have been addressed through the inclusion of relevant conditions and notations on the development permit.
8. Pursuant to Section 51(n) of the Planning Act 1999, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated.

The application proposes to redevelop the existing, dilapidated hostel on site. The proposed building features and design will all create visual interest. Furthermore, the introduction of landscaping as proposed will contribute to beautifying the site and improving the visual amenity of the area.

Although the application exhibits a number of non-compliances with the NTPS in relation to the parking requirements, parking layout and setback requirements, they have all been appropriately justified. As such, the proposal is not expected to negatively impact on the existing or future amenity of the area.

ACTION: Notice of Determination

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

Suzanne Philip
2019.10.10
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SUZANNE PHILIP
Chair
10 October 2019