



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 363 – FRIDAY 18 SEPTEMBER 2020

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

MEMBERS PRESENT: Suzanne Philip (Chair), Mark Blackburn, Marion Guppy, Simon Niblock (not present for Item 7) and Peter Pangquee (not present for Item 7)

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Breanna Lusty (A/Secretary), Dawn Parkes, Ann-Marie Reynolds, Julie Hillier and Amit Magotra (Development Assessment Services)

COUNCIL REPRESENTATIVE: Apology

Meeting opened at 10.00 am and closed at 12.30pm

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

**PA2020/0115 UNIT TITLE SCHEMES SUBDIVISION TO CREATE TWO UNITS AND COMMON PROPERTY AND A BUILDING ENVELOPE PLAN
LOT 12139 (2) DAVID STREET, MUIRHEAD, TOWN OF NIGHTCLIFF**
APPLICANT/S Earl James and Associates – Kevin Dodd

Kevin Dodd (Earl James and Associates) attended.

**RESOLVED
160/20**

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 12139 (2) David Street, Town of Nightcliff for the purpose of a unit title schemes subdivision to create two units and common property and a building envelope plan, at the request of and to enable the applicant to provide the following additional information the Authority considers necessary to enable proper consideration of the application:

- a written statement considering the application of Zone SD23 (Specific Use Zone Darwin No. 23) of the Northern Territory Planning Scheme to the present proposal specifically addressing paragraph 4(b).

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 2007 (NTPS) applies to the land. The land is within Zone SD23 (Specific Use Zone Darwin No. 23) of the NTPS. The purpose of Zone SD23 is to facilitate the subdivision, use and development of the land as a residential estate that provides for housing choice through a range of lot sizes and housing types. The zone contains specific development requirements and a plan endorsed by the consent authority designates those sites within the zone to be developed for multiple dwellings. The requirements for the development of multiple dwellings are those that would otherwise apply were the land within Zone MD (Multiple Dwelling Residential). The purpose of sub-clause 4 is to ensure residential subdivisions contain lots of a size, configuration and orientation suitable for residential purposes.

The application proposes a subdivision of Lot 12139 Town of Nightcliff for the purpose of a Unit Title Scheme (UTS) subdivision to create two units and minimal common property. The proposed UTS subdivision will facilitate new ownership arrangements by means of the sale of an existing vacant block of land in two units. The application also proposes a setback plan which establishes a setback distance between the two future dwellings of 3m.

As per Section 44(b) of the *Planning Act 1999*, a development permit is required, 'if the proposed development is the subdivision or consolidation of land', therefore planning consent is required for the proposed subdivision.

When considering a UTS subdivision of land that will be vacant at the time titles issue, Part 5 clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme) sub-clause 7 requires that the land area of individual units should be consistent with clause 11.1.1 (Minimum Lot Sizes and Requirements) and clause 11.1.2 (Lots intended for Zone SD in Greenfield areas). The purpose of clause 11.1.1 is to ensure that unzoned land and lots in Zones SD, MD, MR, HR, RR, RL, R, LI, GI, DV, FD, RD, H, WM and T will be of a size capable of accommodating potential future uses. Sub-clause 2 of the requirements state that land to which this clause applies should be subdivided in accordance with the minimum lot size and requirements specified in the table to this clause. Specific use zones, including Zone SD23, are not referenced in clause 11.1.1 and of particular relevance to this application is paragraph 4(b) of Zone SD23, which requires that the overall subdivision design should not include any lot with an area less than 450m².

Clause 2.4 (Specific Use Zones) gives context for the assessment of a development and states that land described in Schedule 1 (Specific Use Zones) may be used or developed as specified in the Schedule subject to any conditions specified in the Schedule and any further conditions imposed by the consent authority. Further sub-clause 2 states that the provisions of Parts 1, 2, 4, 5, 7 and 8 apply to development described in Schedule 1 except where they conflict with any conditions specified in that Schedule. The requirements of Part 5 in relation to the consideration of vacant land proposed to be developed for the purpose of a UTS subdivision are inconsistent with the conditions specified in Zone SD23.

The Authority notes that the NTCAT decision in *Bradley v Development Consent Authority & Kalhmera Pty Ltd* [2017] NTCAT 922 found that clause 2.5(4) of the NTPS does not expressly or impliedly empower a consent authority to give consent to a use or development of land that does not comply with a requirement of a specific use zone.

The Authority considers that the proposed arrangement may result in the creation of multiple vacant unit lots less than 450m² which conflicts with both the design philosophy of Zone SD23 and the specific requirement in paragraph 4(b) of that zone and seeks clarification from the applicant as to why the specific requirement of paragraph 4(b) of Zone SD23 should not apply to this application for subdivision.

The applicant, Mr Kevin Dodd (Earl James and Associates) attended the meeting and requested the opportunity to prepare a further response to the matters raised by the consent authority. To enable the proper consideration of the application the Authority notes the applicants request and defers its consideration until the applicant is satisfied that all relevant material is before the Authority to consider.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Deferral

ITEM 2

PA2020/0109 UNIT TITLE SCHEMES SUBDIVISION TO CREATE TWO UNITS AND COMMON PROPERTY AND A BUILDING ENVELOPE PLAN

LOT 12104 (5) STANLEY STREET, MUIRHEAD, TOWN OF DARWIN

APPLICANT/S Earl James and Associates – Kevin Dodd

Kevin Dodd (Earl James and Associates) attended.

**RESOLVED
161/20**

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority consent to defer consideration of the application to develop Lot 12104 (5) Stanley Street, Town of Nightcliff for the purpose of a unit title schemes subdivision to create two units and common property and a building envelope plan, at the request of and to enable the applicant to provide the following additional information the Authority considers necessary to enable proper consideration of the application:

- a written statement considering the application of Zone SD23 (Specific Use Zone Darwin No. 23) of the Northern Territory Planning Scheme to the present proposal specifically addressing paragraph 4(b).

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 2007 (NTPS) applies to the land. The land is within Zone SD23 (Specific Use Zone Darwin No. 23) of the NTPS. The purpose of Zone SD23 is to facilitate the subdivision, use and development of the land as a residential estate that provides for housing choice through a range of lot sizes and housing types. The zone contains specific development requirements and a plan endorsed by the consent authority designates those sites within the zone to be developed for multiple dwellings. The requirements for the development of multiple dwellings are those that would otherwise apply were the land within Zone MD (Multiple Dwelling Residential). The purpose of sub-clause 4 is to ensure residential subdivisions contain lots of a size, configuration and orientation suitable for residential purposes.

The application proposes a subdivision of Lot 12104 Town of Nightcliff for the purpose of a Unit Title Scheme (UTS) subdivision to create two units and minimal common property. The proposed UTS subdivision will facilitate new ownership arrangements by means of the sale of an existing vacant block of land in two units. The application also proposes a setback plan which establishes a setback distance between the two future dwellings of 3m.

As per Section 44(b) of the *Planning Act 1999*, a development permit is required, 'if the proposed development is the subdivision or consolidation of land', therefore planning consent is required for the proposed subdivision.

When considering a UTS subdivision of land that will be vacant at the time titles issue, Part 5 clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme) sub-clause 7 requires that the land area of individual units should be consistent with clause 11.1.1 (Minimum Lot Sizes and Requirements) and clause 11.1.2 (Lots intended for Zone SD in Greenfield areas). The purpose of clause 11.1.1 is to ensure that unzoned land and lots in Zones SD, MD, MR, HR, RR, RL, R, LI, GI, DV, FD, RD, H, WM and T will be of a size capable of accommodating potential future uses. Sub-clause 2 of the requirements state that land to which this clause applies should be subdivided in accordance with the minimum lot size and requirements specified in the table to this clause. Specific use zones, including Zone SD23, are not referenced in clause 11.1.1 and of particular relevance to this application is paragraph 4(b) of Zone SD23, which requires that the overall subdivision design should not include any lot with an area less than 450m².

Clause 2.4 (Specific Use Zones) gives context for the assessment of a development and states that land described in Schedule 1 (Specific Use Zones) may be used or developed as specified in the Schedule subject to any conditions specified in the Schedule and any further conditions imposed by the consent authority. Further sub-clause 2 states that the provisions of Parts 1, 2, 4, 5, 7 and 8 apply to development described in Schedule 1 except where they conflict with any conditions specified in that Schedule. The requirements of Part 5 in relation to the consideration of vacant land proposed to be developed for the purpose of a UTS subdivision are inconsistent with the conditions specified in Zone SD23.

The Authority notes that the NTCAT decision in *Bradley v Development Consent Authority & Kalhmera Pty Ltd* [2017] NTCAT 922 found that clause 2.5(4) of the NTPS does not expressly or impliedly empower a consent authority to give consent to a use or development of land that does not comply with a requirement of a specific use zone.

The Authority considers that the proposed arrangement may result in the creation of multiple vacant unit lots less than 450m² which conflicts with both the design philosophy of Zone SD23 and the specific requirement in paragraph 4(b) of that zone and seeks clarification from the applicant as to why the specific requirement of paragraph 4(b) of Zone SD23 should not apply to this application for subdivision.

The applicant, Mr Kevin Dodd (Earl James and Associates) attended the meeting and requested the opportunity to prepare a further response to the matters raised by the consent authority. To enable the proper consideration of the application the Authority notes the applicants request and defers its consideration until the applicant is satisfied that all relevant material is before the Authority to consider.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Deferral

ITEM 3

PA2020/0110 UNIT TITLE SCHEMES SUBDIVISION TO CREATE TWO UNITS AND COMMON PROPERTY AND A BUILDING ENVELOPE PLAN

LOT 12075 (18) PATRICK STREET, MUIRHEAD, TOWN OF NIGHTCLIFF

APPLICANT/S Earl James and Associates – Kevin Dodd

Kevin Dodd (Earl James and Associates) attended.

**RESOLVED
162/20**

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 12075 (18) Patrick Street, Town of Nightcliff for the purpose of a unit title schemes subdivision to create two units and common property and a building envelope plan, at the request of and to enable the applicant to provide the following additional information the Authority considers necessary to enable proper consideration of the application:

- a written statement considering the application of Zone SD23 (Specific Use Zone Darwin No. 23) of the Northern Territory Planning Scheme to the present proposal specifically addressing paragraph 4(b).

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 2007 (NTPS) applies to the land. The land is within Zone SD23 (Specific Use Zone Darwin No. 23) of the NTPS. The purpose of Zone SD23 is to facilitate the subdivision, use and development of the land as a residential estate that provides for housing choice through a range of lot sizes and housing types. The zone contains specific development requirements and a plan endorsed by the consent authority designates those sites within the zone to be developed for multiple dwellings. The requirements for the development of multiple dwellings are those that would otherwise apply were the land within Zone MD (Multiple Dwelling Residential). The purpose of sub-clause 4 is to ensure residential subdivisions contain lots of a size, configuration and orientation suitable for residential purposes.

The application proposes a subdivision of Lot 12075 Town of Nightcliff for the purpose of a Unit Title Scheme (UTS) subdivision to create two units and minimal common property. The proposed UTS subdivision will facilitate new ownership arrangements by means of the sale of an existing vacant block of land in two units. The application also proposes a setback plan which establishes a setback distance between the two future dwellings of 3m.

As per Section 44(b) of the *Planning Act 1999*, a development permit is required, 'if the proposed development is the subdivision or consolidation of land', therefore planning consent is required for the proposed subdivision.

When considering a UTS subdivision of land that will be vacant at the time titles issue, Part 5 clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme) sub-clause 7 requires that the land area of individual units should be consistent with clause 11.1.1 (Minimum Lot Sizes and Requirements) and clause 11.1.2 (Lots intended for Zone SD in Greenfield areas). The purpose of clause 11.1.1 is to ensure that unzoned land and lots in Zones SD, MD, MR, HR, RR, RL, R, LI, GI, DV, FD, RD, H, WM and T will be of a size capable of accommodating potential future uses. Sub-clause 2 of the requirements state that land to which this clause applies should be subdivided in accordance with the minimum lot size and requirements specified in the table to this clause. Specific use zones, including Zone SD23, are not referenced in clause 11.1.1 and of particular relevance to this application is paragraph 4(b) of Zone SD23, which requires that the overall subdivision design should not include any lot with an area less than 450m².

Clause 2.4 (Specific Use Zones) gives context for the assessment of a development and states that land described in Schedule 1 (Specific Use Zones) may be used or developed as specified in the Schedule subject to any conditions specified in the Schedule and any further conditions imposed by the consent authority. Further sub-clause 2 states that the provisions of Parts 1, 2, 4, 5, 7 and 8 apply to development described in Schedule 1 except where they conflict with any conditions specified in that Schedule. The requirements of Part 5 in relation to the consideration of vacant land proposed to be developed for the purpose of a UTS subdivision are inconsistent with the conditions specified in Zone SD23.

The Authority notes that the NTCAT decision in *Bradley v Development Consent Authority & Kalhmera Pty Ltd* [2017] NTCAT 922 found that clause 2.5(4) of the NTPS does not expressly or impliedly empower a consent authority to give consent to a use or development of land that does not comply with a requirement of a specific use zone.

The Authority considers that the proposed arrangement may result in the creation of multiple vacant unit lots less than 450m² which conflicts with both the design philosophy of Zone SD23 and the specific requirement in paragraph 4(b) of that zone and seeks clarification from the applicant as to why the specific requirement of paragraph 4(b) of Zone SD23 should not apply to this application for subdivision.

The applicant, Mr Kevin Dodd (Earl James and Associates) attended the meeting and requested the opportunity to prepare a further response to the matters raised by the consent authority. To enable the proper consideration of the application the Authority notes the applicants request and defers its consideration until the applicant is satisfied that all relevant material is before the Authority to consider.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Deferral

ITEM 4

PA2020/0111

**UNIT TITLE SCHEMES SUBDIVISION TO CREATE TWO UNITS AND COMMON PROPERTY AND A BUILDING ENVELOPE PLAN
LOT 12135 (13) SAUNDERS STREET, MUIRHEAD, TOWN OF NIGHTCLIFF**

APPLICANT/S

Earl James and Associates – Kevin Dodd

Kevin Dodd (Earl James and Associates) attended.

**RESOLVED
163/20**

That, pursuant to section 53(a) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 12135 (13) Saunders Street, Town of Nightcliff for the purpose of a unit title schemes subdivision to create two units and common property and a building envelope plan, at the request of and to enable the applicant to provide the following additional information the Authority considers necessary to enable proper consideration of the application:

- a written statement considering the application of Zone SD23 (Specific Use Zone Darwin No. 23) of the Northern Territory Planning Scheme to the present proposal specifically addressing paragraph 4(b).

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 2007 (NTPS) applies to the land. The land is within Zone SD23 (Specific Use Zone Darwin No. 23) of the NTPS. The purpose of Zone SD23 is to facilitate the subdivision, use and development of the land as a residential estate that provides for housing choice through a range of lot sizes and housing types. The zone contains specific development requirements and a plan endorsed by the consent authority designates those sites within the zone to be developed for multiple dwellings. The requirements for the development of multiple dwellings are those that would otherwise apply were the land within Zone MD (Multiple Dwelling Residential). The purpose of sub-clause 4 is to ensure residential subdivisions contain lots of a size, configuration and orientation suitable for residential purposes.

The application proposes a subdivision of Lot 12135 Town of Nightcliff for the purpose of a Unit Title Scheme (UTS) subdivision to create two units and minimal common property. The proposed UTS subdivision will facilitate new ownership arrangements by means of the sale of an existing vacant block of land in two units. The application also proposes a setback plan which establishes a setback distance between the two future dwellings of 3m.

As per Section 44(b) of the *Planning Act 1999*, a development permit is required, 'if the proposed development is the subdivision or consolidation of land', therefore planning consent is required for the proposed subdivision.

When considering a UTS subdivision of land that will be vacant at the time titles issue, Part 5 clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme) sub-clause 7 requires that the land area of individual units should be consistent with clause 11.1.1 (Minimum Lot Sizes and Requirements) and clause 11.1.2 (Lots intended for Zone SD in Greenfield areas). The purpose of clause 11.1.1 is to ensure that unzoned land and lots in Zones SD, MD, MR, HR, RR, RL, R, LI, GI, DV, FD, RD, H, WM and T will be of a size capable of accommodating potential future uses. Sub-clause 2 of the requirements state that land to which this clause applies should be subdivided in accordance with the minimum lot size and requirements specified in the table to this clause. Specific use zones, including Zone SD23, are not referenced in clause 11.1.1 and of particular relevance to this application is paragraph 4(b) of Zone SD23, which requires that the overall subdivision design should not include any lot with an area less than 450m².

Clause 2.4 (Specific Use Zones) gives context for the assessment of a development and states that land described in Schedule 1 (Specific Use Zones) may be used or developed as specified in the Schedule subject to any conditions specified in the Schedule and any further conditions imposed by the consent authority. Further sub-clause 2 states that the provisions of Parts 1, 2, 4, 5, 7 and 8 apply to development described in Schedule 1 except where they conflict with any conditions specified in that Schedule. The requirements of Part 5 in relation to the consideration of vacant land proposed to be developed for the purpose of a UTS subdivision are inconsistent with the conditions specified in Zone SD23.

The Authority notes that the NTCAT decision in *Bradley v Development Consent Authority & Kalhmera Pty Ltd* [2017] NTCAT 922 found that clause 2.5(4) of the NTPS does not expressly or impliedly empower a consent authority to give consent to a use or development of land that does not comply with a requirement of a specific use zone.

The Authority considers that the proposed arrangement may result in the creation of multiple vacant unit lots less than 450m² which conflicts with both the design philosophy of Zone SD23 and the specific requirement in paragraph 4(b) of that zone and seeks clarification from the applicant as to why the specific requirement of paragraph 4(b) of Zone SD23 should not apply to this application for subdivision.

The applicant, Mr Kevin Dodd (Earl James and Associates) attended the meeting and requested the opportunity to prepare a further response to the matters raised by the consent authority. To enable the proper consideration of the application the Authority notes the applicants request and defers its consideration until the applicant is satisfied that all relevant material is before the Authority to consider.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Deferral

ITEM 5

PA2020/0112

UNIT TITLE SCHEMES SUBDIVISION TO CREATE TWO UNITS AND COMMON PROPERTY AND A BUILDING ENVELOPE PLAN LOT 12103 (7) STANLEY STREET, MUIRHEAD, TOWN OF NIGHTCLIFF

APPLICANT/S

Earl James and Associates – Kevin Dodd

Kevin Dodd (Earl James and Associates) attended.

**RESOLVED
164/20**

That, pursuant to section 46(4(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 12103 (7) Saunders Street, Town of Nightcliff for the purpose of a unit title schemes subdivision to create two units and common property and a building envelope plan, at the request of and to enable the applicant to provide the following additional information the Authority considers necessary to enable proper consideration of the application:

- a written statement considering the application of Zone SD23 (Specific Use Zone Darwin No. 23) of the Northern Territory Planning Scheme to the present proposal specifically addressing paragraph 4(b).

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 2007 (NTPS) applies to the land. The land is within Zone SD23 (Specific Use Zone Darwin No. 23) of the NTPS. The purpose of Zone SD23 is to facilitate the subdivision, use and development of the land as a residential estate that provides for housing choice through a range of lot sizes and housing types. The zone contains specific development requirements and a plan endorsed by the consent authority designates those sites within the zone to be developed for multiple dwellings. The requirements for the development of multiple dwellings are those that would otherwise apply were the land within Zone MD (Multiple Dwelling Residential). The purpose of sub-clause 4 is to ensure residential subdivisions contain lots of a size, configuration and orientation suitable for residential purposes.

The application proposes a subdivision of Lot 12103 Town of Nightcliff for the purpose of a Unit Title Scheme (UTS) subdivision to create two units and minimal common property. The proposed UTS subdivision will facilitate new ownership arrangements by means of the sale of an existing vacant block of land in two units. The application also proposes a setback plan which establishes a setback distance between the two future dwellings of 3m.

As per Section 44(b) of the *Planning Act 1999*, a development permit is required, 'if the proposed development is the subdivision or consolidation of land', therefore planning consent is required for the proposed subdivision.

When considering a UTS subdivision of land that will be vacant at the time titles issue, Part 5 clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme) sub-clause 7 requires that the land area of individual units should be consistent with clause 11.1.1 (Minimum Lot Sizes and Requirements) and clause 11.1.2 (Lots intended for Zone SD in Greenfield areas). The purpose of clause 11.1.1 is to ensure that unzoned land and lots in Zones SD, MD, MR, HR, RR, RL, R, LI, GI, DV, FD, RD, H, WM and T will be of a size capable of accommodating potential future uses. Sub-clause 2 of the requirements state that land to which this clause applies should be subdivided in accordance with the minimum lot size and requirements specified in the table to this clause. Specific use zones, including Zone SD23, are not referenced in clause 11.1.1 and of particular relevance to this application is paragraph 4(b) of Zone SD23, which requires that the overall subdivision design should not include any lot with an area less than 450m².

Clause 2.4 (Specific Use Zones) gives context for the assessment of a development and states that land described in Schedule 1 (Specific Use Zones) may be used or developed as specified in the Schedule subject to any conditions specified in the Schedule and any further conditions imposed by the consent authority. Further sub-clause 2 states that the provisions of Parts 1, 2, 4, 5, 7 and 8 apply to development described in Schedule 1 except where they conflict with any conditions specified in that Schedule. The requirements of Part 5 in relation to the consideration of vacant land proposed to be developed for the purpose of a UTS subdivision are inconsistent with the conditions specified in Zone SD23.

The Authority notes that the NTCAT decision in *Bradley v Development Consent Authority & Kalhmera Pty Ltd* [2017] NTCAT 922 found that clause 2.5(4) of the NTPS does not expressly or impliedly empower a consent authority to give consent to a use or development of land that does not comply with a requirement of a specific use zone.

The Authority considers that the proposed arrangement may result in the creation of multiple vacant unit lots less than 450m² which conflicts with both the design philosophy of Zone SD23 and the specific requirement in paragraph 4(b) of that zone and seeks clarification from the applicant as to why the specific requirement of paragraph 4(b) of Zone SD23 should not apply to this application for subdivision.

The applicant, Mr Kevin Dodd (Earl James and Associates) attended the meeting and requested the opportunity to prepare a further response to the matters raised by the consent authority. To enable the proper consideration of the application the Authority notes the applicants request and defers its consideration until the applicant is satisfied that all relevant material is before the Authority to consider.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Deferral

ITEM 6

PA2020/0113

UNIT TITLE SCHEMES SUBDIVISION TO CREATE TWO UNITS AND COMMON PROPERTY AND A BUILDING ENVELOPE PLAN LOT 12067 (5) ALBERT STREET, MUIRHEAD, TOWN OF NIGHTCLIFF

APPLICANT/S

Earl James and Associates – Kevin Dodd

Kevin Dodd (Earl James and Associates) attended.

**RESOLVED
165/20**

That, pursuant to section 46(4(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 12067 (5) Albert Street, Town of Nightcliff for the purpose of a unit title schemes subdivision to create two units and common property and a building envelope plan, at the request of and to enable the applicant to provide the following additional information the Authority considers necessary to enable proper consideration of the application:

- a written statement considering the application of Zone SD23 (Specific Use Zone Darwin No. 23) of the Northern Territory Planning Scheme to the present proposal specifically addressing paragraph 4(b).

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 2007 (NTPS) applies to the land. The land is within Zone SD23 (Specific Use Zone Darwin No. 23) of the NTPS. The purpose of Zone SD23 is to facilitate the subdivision, use and development of the land as a residential estate that provides for housing choice through a range of lot sizes and housing types. The zone contains specific development requirements and a plan endorsed by the consent authority designates those sites within the zone to be developed for multiple dwellings. The requirements for the development of multiple dwellings are those that would otherwise apply were the land within Zone MD (Multiple Dwelling Residential). The purpose of sub-clause 4 is to ensure residential subdivisions contain lots of a size, configuration and orientation suitable for residential purposes.

The application proposes a subdivision of Lot 12067 Town of Nightcliff for the purpose of a Unit Title Scheme (UTS) subdivision to create two units and minimal common property. The proposed UTS subdivision will facilitate new ownership arrangements by means of the sale of an existing vacant block of land in two units. The application also proposes a setback plan which establishes a setback distance between the two future dwellings of 3m.

As per Section 44(b) of the *Planning Act 1999*, a development permit is required, 'if the proposed development is the subdivision or consolidation of land', therefore planning consent is required for the proposed subdivision.

When considering a UTS subdivision of land that will be vacant at the time titles issue, Part 5 clause 11.1.5 (Subdivision for the Purposes of a Unit Title Scheme) sub-clause 7 requires that the land area of individual units should be consistent with clause 11.1.1 (Minimum Lot Sizes and Requirements) and clause 11.1.2 (Lots intended for Zone SD in Greenfield areas). The purpose of clause 11.1.1 is to ensure that unzoned land and lots in Zones SD, MD, MR, HR, RR, RL, R, LI, GI, DV, FD, RD, H, WM and T will be of a size capable of accommodating potential future uses. Sub-clause 2 of the requirements state that land to which this clause applies should be subdivided in accordance with the minimum lot size and requirements specified in the table to this clause. Specific use zones, including Zone SD23, are not referenced in clause 11.1.1 and of particular relevance to this application is paragraph 4(b) of Zone SD23, which requires that the overall subdivision design should not include any lot with an area less than 450m².

Clause 2.4 (Specific Use Zones) gives context for the assessment of a development and states that land described in Schedule 1 (Specific Use Zones) may be used or developed as specified in the Schedule subject to any conditions specified in the Schedule and any further conditions imposed by the consent authority. Further sub-clause 2 states that the provisions of Parts 1, 2, 4, 5, 7 and 8 apply to development described in Schedule 1 except where they conflict with any conditions specified in that Schedule. The requirements of Part 5 in relation to the consideration of vacant land proposed to be developed for the purpose of a UTS subdivision are inconsistent with the conditions specified in Zone SD23.

The Authority notes that the NTCAT decision in *Bradley v Development Consent Authority & Kalhmera Pty Ltd* [2017] NTCAT 922 found that clause 2.5(4) of the NTPS does not expressly or impliedly empower a consent authority to give consent to a use or development of land that does not comply with a requirement of a specific use zone.

The Authority considers that the proposed arrangement may result in the creation of multiple vacant unit lots less than 450m² which conflicts with both the design philosophy of Zone SD23 and the specific requirement in paragraph 4(b) of that Zone and seeks clarification from the applicant as to why the specific requirement of paragraph 4(b) of Zone SD23 should not apply to this application for subdivision.

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. This permit is not an approval to undertake building work. You are advised to contact a Northern Territory registered building certifier to seek a building permit as required by the *Northern Territory Building Act 1993* before commencing any demolition or construction works.

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 site is located in Zone OR (Organised Recreation) of the Northern Territory Planning Scheme 2020 (NTPS 2020) of which the purpose is to provide for the development of community and commercial facilities for organised recreation activities. The zone outcomes provide the following:

- Development primarily for sport and recreation, leisure and recreation and community centre that caters for the organised active recreation needs of the community, including supporting infrastructures such as amenities blocks, outbuildings, spectator stands and lighting infrastructure.
- Other development that is complimentary to and supports organised recreational activities, such as car park, club, food premises-restaurant and shop may also be established, where they do not compromise or conflict with the primary use of the land.

In addition to the above, the zone outcomes also provide for temporary or periodic uses, such as markets or outdoor entertainment events having regard to the amenity and character of the surrounding area.

The site forms part of the Gardens Oval complex which is developed as a sporting facility for football and cricket. The site comprises of Gardens Oval one, grandstands, toilets/change rooms and sporting club. The sporting club is leased to Waratahs Football Club.

The current application proposes to establish an ancillary education establishment use within the existing Waratah Football Club located at the site. The proposed education establishment use comprises the subleasing of 335m² of floor space within the existing clubroom to SEDA to deliver education programs in sports and physical education to Years 10, 11 and 12 students. The development of an education establishment is prohibited in Zone OR (Organised Recreation).

In accordance with Clause 1.9(c) of the NT Planning Scheme 2020 (NTPS 2020), "*an ancillary use or development not specified in the definition of the primary use requires consent and the level of assessment that applies to the ancillary use is 'Impact Assessable' if the ancillary use is prohibited in the zone.*"

The Authority noted that determination of the present application required, firstly, to determine whether the proposed education establishment is ancillary to the primary use of the land, and secondly, appraisal of the proposed use as Impact Assessable.

Turning to the first matter, the Authority notes that the Development Assessment Services (DAS) assessment concludes that the proposed education establishment is ancillary to the existing sports and recreation use of the land due to the following:

- The proposed education establishment use shall provide Certificate IV course for football, AFL and Rugby League sports which is the primary use of the land.
- The nature of the facility and the specific provision of education for the purpose of sport and recreation is consistent with the primary use of the site.
- The proposed use is located entirely within the existing building and has no impact on existing or approved building heights.
- The proposal will not alter the outward appearance of the subject land, and the land is not adjacent to existing residential use.

The definition of 'ancillary' as provided by NTPS 2020 means "*associated with, but auxiliary and subordinate to the primary land use*".

The Authority notes that the primary use of the site is consistent with the definitions of Leisure and Recreation and Sport and Recreation within Schedule 2 of the NTPS 2020. The Authority also noted that the proposed education establishment use shall provide NTCET and Certificate IV Sport and Recreation VET course to students which will provide an in-depth look at the industry to follow career pathways in the field of sports and recreation. The course will be provided by SEDA, a sporting / community education provider, which provides sports programmes in cricket, football, AFL, Rugby League, basketball, tennis and netball, and partners with the sports' governing bodies to offer work and industry experience (including coaching and officiating).

At the hearing, Mr Brad Cunnington, Northern Planning Consultants Pty Ltd (the applicant) gave an overview of the proposed education establishment use and why the proposed use is ancillary to the primary use of the site. Mr Cunnington explained to the Authority that he proposed education establishment is entirely subordinate (i.e. lower in rank or position) to the primary use. Furthermore, the proposed use is auxiliary in nature as it will provide general benefits to both AFL and Cricket sports and to specific uses (Waratah Football Club and Cricket Club) existing on the site. Mr Cunnington further added that majority of students in the proposed education establishment would come from existing uses and the aim is then to provide through the education process qualified people back to existing uses and to AFL and cricket sports.

The Authority at the hearing asked the applicant regarding conditioning the operating hours for the proposed use from 8:30 AM to 3:00 PM Monday to Friday (provided in the application) to keep the proposed use subordinate to the primary use of the land including existing club

building. The applicant confirmed to the Authority that the use shall only operate during school term from 8:30 AM to 3:00 PM Monday to Friday and was amenable to the inclusion of a condition to this effect.

The Authority taking into account the application material and applicant's comments provided at the hearing is satisfied that the proposed use is ancillary to the primary use (sport and recreation) of the site. The Authority noted that the broad definition of the education establishment could allow other education establishment uses to operate from the proposed use. The Authority was mindful that the proposed education establishment use should be limited to sports and recreation use (ancillary to the primary use) and determined that the permit issued should reflect the description of specific use of the education establishment.

The Authority at the hearing questioned the applicant on whether the operation of proposed use would require any alterations to the liquor licence conditions of the existing licensed club. The applicant explained that there is no need to do alterations to the existing licence conditions as; however, the relevant authority would be informed regarding proposed changes. The applicant further added that the existing licensed area will be closed out, and no club activities will take place during the operation of the use. The Authority noted the applicant's comments, but is of the opinion that the operation of proposed use would require changes to the liquor license conditions, and as such encourages the applicant to contact the relevant authority regarding this.

Turning to the second matter, under Clause 1.10.4 (Exercise of Discretion by the Consent Authority) *"In considering an application for consent for a use or development identified as Impact Assessable the consent authority must take into account all of the following:*

- a) the relevant requirements, including the purpose of the requirements, as set out in Part 5;*
- b) any Overlays and associated requirements in Part 3 that apply to the land;*
- c) the guidance provided by the relevant zone purpose and outcomes in Part 4 relevant to a variation of requirements in Part 4; and*
- d) any component of the Strategic Framework relevant to the land set out in Part 2".*

In relation to the relevant Part 5 requirements, the DAS assessment against the relevant clauses of the NTPS 2020 indicates that the proposed development complies with a number of clauses including Clauses 5.2.1 (General Height Control), 5.2.4 (Vehicle Parking) and 5.5.3 (Commercial and Other Developments in Zone CB).

The Authority notes that the DAS assessment identified a non-compliance exists against Clause 5.8.2 (Education Establishment) as the proposed use being a tertiary education is not located within designated education precincts or adjacent to activity centres that are connected to public transport. The Authority however considers that, the proposed use is not a tertiary education as it will deliver education

programs in sports and physical education to Years 10, 11 and 12 students (Senior Secondary Education).

The Authority noted that the subject site is affected by both primary and secondary storm surge, with the extent of inundation during a primary and secondary event.

According to Clause 3.7, sub-clause 5, the development in the PSSA (Primary Storm Surge Area) should be limited to uses such as open space, recreation, non-essential public facilities (wastewater treatment works excepted) and short-stay tourist camping/ caravan areas. The requirements of sub-clause 7 is residential uses, strategic and community services (such as power generation, defence installations, schools, hospitals, public shelters and major transport links) should be avoided in both primary and secondary storm surge areas (underline emphasis added).

The Authority notes that the primary use of the site is recreation, and the proposal seeks approval for the use of an existing club building (within site) for the purpose of ancillary education establishment which will provide course specifically focused on sports and recreation education. No new building or changes to the existing is proposed as part of this proposal (means no increase in net floor area) as such there will be no discernible risk to people, damage to property or costs to the general community as a result of the proposal. Students / staff will not be present during cyclone warning and/or periods of high risk for storm surge events.

In relation to Part 2 (Strategic Framework), the Authority noted that the proposed use aligns with the Planning Principles and Objectives of the Darwin Inner Suburbs Area Plan as there will be no net loss of organised recreational land. The Authority also noted that the proposed use is consistent with the objective of Key Community Facilities of Darwin Regional Land Use Plan which encourages the co-location of recreation facilities with other community uses particularly schools to maximise potential for multi-use.

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

The subject site is affected by both primary and secondary storm surge, with the extent of inundation during a primary and secondary event. The proposal comprises establishing an ancillary use (education establishment) ancillary to an existing recreational facility, and as such is suitable within both the PSSA and SSSA as stated under Overlays

3.7 of the NTPS 2020. The proposed ancillary use utilises the existing clubhouse building and students / staff will not be present during cyclone warning and/or periods of high risk for storm surge events. Service authority requirements have been addressed by the inclusion of relevant conditions and notes on the development permit.

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

The proposed use is located entirely within existing buildings and has no impact on existing or approved building heights. The built form and design of the clubhouse building is not altered as no additional facilities, or building works are proposed to accommodate the proposed use. The proposal will not alter the outward appearance of the subject land, and the land is not adjacent to existing residential use. The proposal will increase the duration of use of the premises, providing some benefit to activity and passive surveillance during daytime hours.

FOR: 3

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

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

SUZANNE PHILIP

Chair

24 September 2020