



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES - SESSION 3

MEETING No. 378 – FRIDAY 6 AUGUST 2021

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

MEMBERS PRESENT: Suzanne Philip, Marion Guppy, Mark Blackburn, Peter Pangquee and Simon Niblock

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

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

COUNCIL REPRESENTATIVE: Brian Sellers, Conneil Brown, Cindy Robinson, Peter Heffernan

Meeting opened at 2.00 pm and closed at 4.30 pm

THE MINUTES RECORD OF THE EVIDENTIARY STAGE AND THE DELIBERATIVE STAGE ARE RECORDED SEPARATELY. THESE MINUTES RECORD THE DELIBERATIVE STAGE. THE TWO STAGES ARE GENERALLY HELD AT DIFFERENT TIMES DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.

ITEM 4

PA2021/0172 67 X 2 AND 34 X 3 BEDROOM MULTIPLE DWELLINGS AND GROUND LEVEL COMMERCIAL TENANCIES IN A SEVEN-STOREY BUILDING (COMPRISING TWO TOWERS) PLUS ONE LEVEL OF BASEMENT CAR PARKING LOT

APPLICANT June D'Rozario & Associates Pty Ltd

Ms June D'Rozario (June D'Rozario & Associates Pty Ltd), Mr Michael and Mrs Gina Makrylos (landowners and developers) attended.

Submitter who sent apologies: Mr Nick Di Candilo

Submitters in attendance: Mr Roger Harrison, Mr Allan Blow, Ms Patsy Hickey, Ms Carolyn Marriott, Ms Carol Phayer, Ms Sue Bradley, Ms Catherine McAlpine, Mr Henry Duncan, Mr Hugh Bradley, Mr John Plummer, Mr Rosi Plummer, Mr Stewart Labrooy, Ms Dorothy Fox, Ms Joy Norrish, Ms Janine Gibbett, Ms Darleen Chin and PPlan: The Planning Action Network (represented by Ms Margaret Clinch) attended.

Ms D'Rozario (applicant) tabled:

- A technical note titled – "Maintenance access to planting structures from roof"
- A technical note prepared by traffic engineer i3 Consultants in response to the submission received from Ms Ross Read (submitter).
- Advice from Building Engineering Services Technologies Consulting Engineers (BESTEC) regarding Acoustics.
- A technical note titled - "Solar data for assessment of shadowing"
- media release dated 21 July 2021 titled – "Electric Vehicle Charge ahead in the NT", Eva Lawler, Minister for Infrastructure Planning and Logistics
- Media release dated 13 May 2021 titled – "Improving Building Design for Vulnerable Territorians", Eva Lawler, Minister for Infrastructure Planning and Logistics
- 5 photographs showing podium landscaping within other development in the NT
- One photograph of a development showing high masonry wall in front of windows that open directly into the public corridor.

Submitters who tabled documents:

Mr Bradley - A copy of the Building Code of Australia on light and ventilation performance requirements in buildings.
A technical note titled – "Ventilation Update, NCC Compliance 2019".

Ms Gibbett - 13 photographs of the site and surrounding areas.
A photo of a 7 storey building 1.3km away from the proposed development site.

RESOLVED
69/21

That the Development Consent Authority vary the requirements of Clause 7.5 (Private Open Space) of the Northern Territory Planning Scheme and, pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 7820 (4) Blake Street, Town of Darwin for the purpose of 67 x 2 and 34 x 3 bedroom multiple dwellings and ground level commercial tenancies in a seven-storey building (comprising two towers) plus one level of basement car parking, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), approval is required for the awnings to the street frontages to the requirements of the City of Darwin, to the satisfaction of the consent authority.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the crossover and driveway to the site from the City of Darwin road reserve, to the satisfaction of the consent authority.
4. Prior to the commencement of works (including site preparation), the applicant is to prepare a Site and Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP 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 SCMP is also to address the protection of existing assets, the protection of public access, and include a risk assessment.
5. Prior to commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.
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.

GENERAL CONDITIONS

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

8. 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.
9. 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.
10. 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.
11. The kerb crossings 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.
12. The owner shall:
 - a) remove disused vehicle and/ or pedestrian crossings;
 - 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.
13. 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.
14. The car parking shown on the endorsed plans must be available at all times for the exclusive use of the occupants of the development and their visitors.
15. The loading and unloading of `goods from vehicles must only be carried out on the land within the designated loading bay and must not disrupt the circulation and parking of vehicles on the land.
16. 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 drivewaysto the satisfaction of the consent authority.
Car spaces, access lanes and driveways must be kept available for these purposes at all times.

17. The landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
18. 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.
19. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view, located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority.
20. All roof top plant equipment, equipment relating to the operation of the lift and any other equipment (such as any vents and ducting associated with requirements for stairwell pressurisation or other such ventilation purposes or similar) that will be placed on the rooftop of the development shall be appropriately screened, or designed to soften the visual impact of such equipment from view from neighbouring or nearby developments (or developments reasonably anticipated).
21. All balconies are to be internally drained and discharge is to be disposed of at ground level and in a manner consistent with stormwater disposal arrangements for the site to the satisfaction of the consent authority.
22. All pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the consent authority.
23. All substation, fire booster and water meter arrangements are to be appropriately screened to soften the visual impact of such infrastructure on the streetscape, to ensure that the infrastructure is sympathetic to and blends in with the design of the building. Details will need to be resolved to the satisfaction of the consent authority in consultation with the Power and Water Corporation, and NT Fire and Emergency Services.
24. External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the consent authority.
25. 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.
26. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
27. A Compliance Certificate under the *Swimming Pool Safety Act* issued by the Swimming Pool Safety Authority is required for the swimming pool/s prior to the commencement of the use/development, to the satisfaction of the consent authority.

28. Before an occupancy permit is issued and pursuant to section 34 of the *Land Title Act*, a Caution Notice shall be lodged with the Registrar General on Lot 7820 (4) Blake Street, Town of Darwin. The Caution Notice is to state that: "this dwelling is located in close proximity to the Darwin Amphitheatre and you may experience high levels of noise during events". Evidence of lodgement on the parcel shall be provided to the satisfaction of the consent authority.
29. Confirmation shall be provided to Development Assessment Services (in the form of an email addressed to the Power and Water Corporation) from a suitable qualified professional-confirming that all new number labels have been correctly installed at the Customer's Metering Panel(s) and water meters (where applicable). Please provide a copy of an email addressed to both landdevelopmentnorth@powerwater.com.au and powerconnections@powerwater.com.au
30. Prior to the use/occupation of the development and connection of services (i.e. power and water), the owner of the land must apply for street addressing from the Surveyor-General of the Northern Territory. This will form the legal address and will be required to be placed on the meters within the development in accordance with the allocation. An Occupancy Permit will not be able to be granted until such time as addressing is obtained.

NOTES

1. The City of Darwin has advised that the Traffic Impact Assessment (TIA) approval is only valid for the period of any Development Permit (DP) issued by the Authority. If the development does not commence within the time specified on the DP, the City of Darwin will require an updated TIA to be submitted prior to any extension of the DP being supported.
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. Notwithstanding the approved plans, any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin Policy Number 42 – Outdoor Advertising Signs Code.
4. Notwithstanding the approved plans, the demonstrated awning in the City of Darwin road reserve is subject to Council approval at no cost to Council.
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. 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.

7. City of Darwin advises that If the development involves an excavation that extends below the level of the base of the footings of a building and or footpath/road reserve on adjoining land, the developer must, at their own expense
 - protect and support the adjoining property and pedestrians from possible damage or injury from the excavation, and
 - where necessary, underpin the adjoining premises to prevent any such damage
8. 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.
9. Building Advisory Services (BAS) branch of the Department of Infrastructure, Planning and Logistics advises that the applicant obtain a review of the structural design of the proposed development by a structural engineer registered in the Northern Territory and provide the review to the building certifier. The building certifier may take this report into consideration when granting a building permit and if relied upon by the building certifier in granting the building permit, provide the report to the Director of Building Control. BAS can be contacted via email (bas@nt.gov.au) or by phone on 08 8999 8985.
10. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5362 (surveylandrecords@nt.gov.au).
11. 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>
12. 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 to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/ or surrounding infrastructure.
13. The permit holder is advised that it is an offence to disturb or destroy prescribed archaeological places without consent under the Heritage Act. Should any heritage or archaeological material be discovered during the clearing operation, cease operation and please phone Heritage Branch of the Department of Territory Families, Housing and Communities.

14. 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. Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority website at <http://ntepa.ntg.gov.au/publications-and-advice/environmental-management>.

The proponent is advised to take notice of Attachment A provided by the Environment Division on compliance with the General Environment Duty.

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 NTEPA may take enforcement action or issue statutory instruments should there be non-compliance with the Act.

15. The development and use hereby permitted must be in accordance with Northern Territory legislation including (but not limited to) the *Building Act 1993*, the *Public and Environmental Health Act 2011* and the *Food Act 2004*.
16. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.

REASONS FOR THE DECISION

1. The present application relates to Lot 7820 (4) Blake Street, Town of Darwin. Lot 7820 (4 Blake Street), which is zoned Specific use Zone SD46. That zone applies exclusively to 4 Blake Street and was created on 9 July 2015 when the then Minister for Lands and Planning amended the NTPS under section 25(2)(c) of the *Planning Act* (NT). The land had formerly been zoned CP - Community Purpose.

In July 2020, a substantial overhaul of the planning system for the NT came into effect which involved amendments to the NT *Planning Act 1999* (the Act) and the introduction of a new Northern Territory Planning Scheme 2020 (NTPS 2020) to replace the former NT Planning Scheme 2007 (NTPS 2007). The Act amendments introduced a new provision relating to Specific Use Zones, Section 215, which provides –

215 Specific use zone

- 1) *“If requested by the applicant, a development application in relation to a specific use zone, must be determined:*
 - a) *in accordance with this Act in force immediately before the commencement; and*

- b) *in relation to the elements of the planning scheme applicable immediately before the commencement.*
- 2) *This section is repealed on the day fixed by the Administrator by Gazette notice.*
- 3) *The date fixed under subsection (2) must be at least 5 years after the commencement.”*

The Authority considers that the phrase “*If requested by the applicant*” as used in section 215(1) refers to the making of a development application in relation to a specific use zone created under the NTPS 2007, to the effect that, when such an application is made, it is to be determined in accordance with the Act and the NTPS 2007 as in force in force immediately before 31st July 2020. In reaching its conclusion, the Authority relies upon section 62B of the *Interpretation Act 1978* and the Explanatory Statement which accompanied the Bill that introduced the provision into the Act. The Explanatory Statement indicates that the provision –

“establishes that for a period of at least 5 years after commencement, existing specific use zones will continue to apply in accordance with the Act and the Planning scheme prior to commencement. This timeframe will provide for the review and subsequent amendment of the specific use zones to reflect the revisions to the Act and the Scheme.”

In determining the application for development of 4 Blake Street the DCA considers that the applicable Act and Scheme are those in force immediately before 31st July 2020. The Authority further notes that the DAS Report, at pages 15 to 17, contains a comparative analysis of the current Act and NTPS 2020 with the Act and NTPS 2007 enforced up to 31 July 2020 and concludes that the changes have no implications.

2. 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 proposes a mixed-use development comprising commercial uses and multiple dwellings, which is consistent with the primary purpose of Zone SD46 (Specific Use Darwin No. 46) to facilitate the use and development of the land for predominately residential development and complementary commercial activities.

The Authority was satisfied with the technical assessment provided by Development Assessment Services (DAS) which concluded that the proposed development complies with the non-discretionary requirements of Zone SD46 and all discretionary requirements of Zone SD46, excepting minor variations sought to Clause 7.5 (Private Open Space) which are discussed further below.

While the Authority was satisfied with the DAS assessment, the Authority noted that the proposed development of 4 Blake Street has had a protracted, complex and controversial history evolved through the various decisions of the Northern Territory Civil and Administrative

Tribunal (the Tribunal) and the recent decision of the NT Supreme Court (the Court) on previous development proposals as follows –

Bradley v Development Consent Authority & Kalhmera Pty Ltd [2017] NTCAT 922 (the 2017 Decision)

Bradley v Development Consent Authority & Kalhmera Pty Ltd [2018] NTCAT 984 (the 2018 Decision)

Kalhmera Pty Ltd v Planning for People Inc & Development Consent Authority [2019] NTSC 85 (the 2019 Decision)

The development applications which were the subject of those decisions were almost identical in nature. While the current application is for a substantively different development, the decisions of the Tribunal and the Court provide valuable guidance as to the application and interpretation of the SD46. The Authority has considered the findings of these decisions and they are reflected in its decision detailed below.

Specific Use Zone Darwin No. 46

The most critical area of consideration is the performance of the proposed development against the requirements of Clause 3 of SD46 which requires – “development is to contribute to improving the amenity of the Blake Street Precinct as an inner-city mixed use area by:

- a) *creating a landmark development through high architectural quality and distinctive streetscapes;*
- b) *providing high levels of pedestrian amenity;*
- c) *designing buildings with active interfaces;*
- d) *designing buildings to take advantage of views while taking into account potential view corridors of future development reasonably to be expected in the surrounding precinct;*
- e) *designing buildings to ensure that all building services, plant rooms, elevator shafts, roof-top elements and the like are integrated in the design of the building.”*

The Authority notes that the principal requirement is the achievement of a landmark development; as the Appeal decisions made it clear, each of the other elements listed is integral to this and inseparable. In the 2018 Decision, the Tribunal found at paragraph 46

46. Accordingly, while clause 3(a) must be construed having regard to the other provisions of SD46, it remains unassailable that 3(a) is a discrete requirement that must be complied with. In our view clause 3(a) imports into the development of 4 Blake Street a level of quality control. It imposes a qualitative requirement that must be met over and above the more technical requirements of SD46.

The consideration of this clause, therefore, requires, firstly, determination of whether the proposed development meets the requirement of Clause 3(a) – “creating a landmark development through high architectural quality and distinctive streetscapes of SD46,” and secondly, the appraisal of the proposed development in terms of the requirements of paragraph 3(a) to 3 (e).

Turning to the first matter, there is no definition of “Landmark” or “Landmark Development” in the *Planning Act 1999*, *NTPS 2020* or *NTPS 2007*. In considering the ‘landmark development’ requirement, the Authority was guided by the Tribunal’s comments in the 2018 decision, which states that:

“While the parties to the matter use their various suggested definitions to come to different positions regarding what is and what is not a “landmark development”, we are of the view that there is some common ground between the definitions. A “landmark development” must have something about it that sets it apart from other developments. In our view the development needs to be “something special” or “remarkable”. Further, this defining characteristic must be achieved “through high architectural quality and distinctive streetscapes.” ([2018] NTCAT 984 paragraph 49).

The Tribunal, in its 2018 decision, settled on the definition of “landmark development” articulated by the architect Ian Mitchell, then Principal of Conrad Gargett Architects. In giving his opinion and advice, Ian Mitchell stated that a landmark building would –

- Achieve a significant presence on the street. This may be as a result of the building’s form, which is perhaps the most significant element in the reading of a ‘landmark’. It will be a reference point in its context.
- Exhibit a timeless quality consistent with high-quality architecture. This may, for instance, be an exemplar of design for its climate or context.
- Potentially include an element of the public realm or provision for community interaction.
- Contribute to street life, particularly by adopting active street frontages; open to and visually and physically accessible to the public.
- Provide transparency, both to and from the street, so that passers-by interact visually with activities in the site, and there is passive surveillance from the site to the public realm.

The Authority noted that the Tribunal agreed with the opinion and advice of Ian Mitchell and adopted these characterisations of a landmark building. The Tribunal decision states that –

“In our view these more aesthetic considerations are what is required by clause 3(a). The possibilities are endless but in our view the defining criteria will be whether or not high architectural quality and distinctive streetscapes are combined in such a way as to invest the development with a “landmark” quality” ([2018] NTCAT 984 paragraph 64)

The Authority notes that the application includes a Design Review Brief prepared by Ian Mitchell of Mitchell Design which provides a detailed review of the proposed development against every qualitative characteristic of the proposed development. The Design Review concluded that the proposed development addresses each of the elements of landmark development as below:

- The design establishes a site planning approach that defines and enhances the corner location and includes treatments that will reinforce the landmark quality in the evening.
- The pocket park 'Agostini Place', incorporating a public art piece by an internationally recognised artist, will emphasise the corner of Gardens Hill Crescent and Blake Street and reinforce the landmark aspect of the development.
- The proposal includes a 2-m high green wall, which will form the backdrop to the name of the proposed development, 'Elysium Green', and opportunities for indigenous artists to create a surface mosaic in the building's forecourt and a fence of crafted and decorated poles along part of the Gardens Hill Crescent alignment.
- The public realm spaces provided at ground level within the site boundaries will be accessible by the public at all times, including a public piazza, vegetable/herb garden, children's playground, public artwork and various pocket parks. These public realm spaces will act as a meeting place for residents and the wider community to participate, connect and interact.
- The entrance is clearly identifiable, and the café-restaurant and office are articulated from the main building to present a low-rise foreground and a relationship to the existing context.
- The treatment of the building facades acknowledges the tropical context with shade, screening, and significant greening.
- The design provides for transparency both to and from the street by creating public spaces along street frontages. The placing of Gym and Resident's Lounge overlooking the corner will also increase passive surveillance from the site to the public realm.
- The active interfaces embrace public safety, adopting CEPTD principles by providing passive surveillance, clear views to and from the street.
- The current design responds positively to the climate in terms of providing cross-ventilation and natural light, which are highlighted and times qualified in the various guidelines.

The Design Review states that – *“If a landmark is considered as something which provides a point of reference to or within a place, the revised design convincingly achieves this. The building form and the landscape contribute to this as does the public art and the lighting scheme.*

The Authority noted the Assessment of the Development Assessment Services (DAS) which concludes that the proposed development addresses the qualitative characterisation of a landmark development. The building's distinctive “green” architecture and the extensive high-quality public realm spaces at street level and corner public piazza reinforce the landmark aspect of the development. The addition of public art by Bruce Munro's “Tropical Bothy”, a 4-m high installation forming the centrepiece of Agostini Place at the corner of Blake Street and Gardens Hill Crescent, will enhance the visual amenity and reinforce the identity of the proposed development in the Blake Street Precinct. In their Assessment, DAS found that the building meets the requirement of high architectural quality and distinctive streetscape through the following:

- The building is designed as a green building and brings landscaping into the fabric of the building, with planting platforms at all levels to support vertical planting and a sky garden and green roofs to the commercial and retail elements.
- The building is designed to create a pedestrian scale at the street edges. This is achieved by the placing of single storey café-restaurant and office buildings, with green roofs, at the front of the street.
- The streetscape provides a high level of amenity by the provision of public open space with shade and shelter.
- Deep building setbacks and porous fencing for most of the alignment of Gardens Hill Crescent will allow visibility of activities at ground level.
- The greened façade of the building will reduce building temperatures and air conditioning costs and reduce reflected light and heat.
- The building achieves an energy rating based on the NatHERS rating system of an average of 8.5 stars.
- The apartment design exceeds the minimum design standards of natural ventilation, light, internal areas, balcony area and internal storage areas provided by NSW Apartment Design. While these are not mandatory in the Northern Territory, this provides a useful point of reference.
- The design provides adequate cross-ventilation, and with the adopted ceiling height, the efficiency of ceiling is enhanced. Overhangs and operable shading devices are provided to all apartments.

The Authority noted the Architect's Statement, Ian Mitchell's Design Review of the Revised Design Report, and the Landscape Architect's Statement, which are included within the Development Application Submission Package, which provides details regarding architectural components and the underpinning design philosophy of the proposed development.

The Authority was satisfied with the Technical Assessment provided by Development Assessment Services, which concluded that the proposed development addresses the qualitative characterisation of a landmark development. The Authority concluded that from a design perspective, the public realm spaces at ground level, landscaping scheme, and high-quality architecture design evidence those that will allow the development to be considered a 'landmark development' as required by the site's zoning. The inclusion of commercial uses at the Gardens Hill Crescent / Blake Street intersection, including landscaping (including road reserves adjacent to the site) and publicly accessible spaces, can achieve a distinctive streetscape. A combination of architectural embellishments, including vertical and horizontal landscaping, the use of varied paint treatments, building setbacks, variation in landscaping and vast expanses of communal areas create visual interest and an attractive building. Commercial tenancies to be located on the ground floor, including a café, are unique in the context of existing development in the area and create additional opportunities for the surrounding area, including to the businesses

located on the opposite side of Gardens Hill Crescent and the Channel 9 offices located to the rear of the site on Lot 7819. The development includes active interfaces, attractive facades, compliant site coverage and landscaping, and can contribute towards improved pedestrian amenity.

At the hearing, Ms D'Rozario further outlined the proposed development's integrated landscape architecture and streetscape features. Ms D'Rozario explained that the proposed development contributes to the community by providing public realm spaces at street level within the development and street improvement works which would be carried out as part of the development. Ms D'Rozario stressed that this makes the development unique and different from high rise development in Darwin. In response to the submitters' comment regarding the benefit of electric vehicle charging stations in the development, Ms D'Rozario told the Authority that these features align with the NT Government's recent Electric Vehicle (EV) Strategy and Implement Plan to address climate risks and create new business opportunities in the NT.

Ms D'Rozario told the Authority that the proposed development also addresses social sustainability. All apartments exceeded the national minimum accessibility standards and provided 19 apartments designed for adaptable living within the building. Ms D'Rozario noted that the submissions from the *Association of Independent Retirees* (late submission), *Council on the Ageing (Northern Territory) Inc.* and *National Seniors Top End Branch* had supported the proposed development highlighting that these apartments will facilitate elderly Territorians and those living with a disability, to stay in their homes longer. Ms D'Rozario stressed that this aligns with the NT Government's initiative to improve building design for Vulnerable Territorians. Ms D'Rozario further added that the proposed development includes disabled parking bays which would be allocated to these apartments.

Highlighting the other design features of the proposed development Ms D'Rozario stated that the proposed development would include artwork designed by the award winning world-renowned artist Bruce Munro located within the boundary of the site at the corner of Blake Street and Gardens Hill Crescent. In addition, a local indigenous artist will be commissioned to provide artwork representing flora and fauna found within the Botanic Gardens. The artwork will be located directly at the front of the development at ground level (where the pool is located at ground level), to be enjoyed by residents and the public.

Ms D'Rozario concluded that the proposed development includes significant features to achieve a landmark level of development.

For the reasons above, the Authority was satisfied that the proposal will result in the development of high architectural quality with distinctive streetscapes. The Authority agreed with DAS' and the applicant's view that the development is unique and would be readily identifiable.

The second matter the Authority considered is the performance of the proposed development against the requirements of Clause 3 of SD46, which requires – *“development is to contribute to improving the amenity of the Blake Street Precinct as an inner-city mixed use area by:*

- a) creating a landmark development through high architectural quality and distinctive streetscapes;*
- b) providing high levels of pedestrian amenity;*
- c) designing buildings with active interfaces;*
- d) designing buildings to take advantage of views while taking into account potential view corridors of future development reasonably to be expected in the surrounding precinct;*
- e) designing buildings to ensure that all building services, plant rooms, elevator shafts, roof-top elements and the like are integrated in the design of the building.”*

In applying this clause, the Authority, must determine whether the proposed development meets the requirement of paragraphs 3(a) to 3 (e). However as an initial point in relation to the interpretation of the requirements of clause 3, the question arises as to whether the introductory words to the clause import an additional requirement, over and above those listed under subclause 3(a) to 3(e), that the development contribute to improving the amenity of Blake Street Precinct as an inner-city mixed use area. The Authority noted that in the 2019 Decision, the Court affirmed that compliance with sub-clause 3(a) to 3(e), of SD46 ensure the development will contribute to improving the amenity of the Blake Street Precinct, as an inner-city mixed use area. The decision clearly indicates that if (a) – (e) are achieved, then the development automatically is considered to improve the amenity of the Blake Street Precinct.

Paragraph 10 of [2019] NTSC 85 provided that –

“Clause 3 should therefore be interpreted such that it is to be taken for granted that a development will contribute to improving the amenity of the precinct if the criteria in paragraphs (a) to (e) are satisfied. The requirements which the applicant had to satisfy were set out in those five paragraphs. The introductory sentence does not contain any additional “essential overriding requirement”.

Turning to the first matter, the requirements of subclause 3(a) and 3(b) have been discussed above and concludes that the proposed development is a landmark development and provides high level of pedestrian amenity through its high architectural quality, distinctive streetscape and public realm spaces at ground level. There is currently no footpath in Blake Street, and the footpath in Gardens Hill Crescent adjoining the site is in poor condition. Also, there is very little vegetation in the Blake Street verge adjoining the site and virtually none in Gardens Hill Crescent. The proposed development will improve existing conditions for pedestrians in Blake Street and Gardens Hill Crescent by providing new pedestrian crossings, footpaths, street trees, public art, gardens, feature paving, seating, waterpoint, and visible activity of interest to pedestrians.

The Authority noted that the requirement of subclause (c) is achieved by public realm spaces at ground level within the site boundaries, which will be accessible by the public at all times, including a public piazza, vegetable/herb garden, children's playground, public artwork and various pocket parks. These public realm spaces have been designed to meet residents and the wider community needs to participate, connect, and interact. Furthermore, commercial and retail spaces along street frontages also contribute to this. There is passive surveillance from the site to the public realm from apartments overlooking the street and the resident's lounge and gym overlooking the corner.

Regarding the requirement of subclause 3(d) the Authority noted the proposal includes a view analysis as part of site analysis and urban design study, which shows that collectively the dwellings in the proposed building will have 360-degree views. Views from individual dwellings will have a reasonably wide view depending on their location in the building. The development is likely to take advantage of views in the area, including Mindil Beach and the George Brown Darwin Botanic Gardens. The Authority considered that views from any future development reasonably anticipated in the area are unlikely to be affected.

Regarding the requirement of subclause 3(d) the Authority considered that the relevant conditions relating to screening are included on the permit would ensure compliance with this clause.

The Authority noted that a question was raised by a submitter (Mr Hugh Bradley) as to whether 'high architectural quality' should apply to the internal design of the building as well. In raising this question, the submitter referred to the poor design of some apartments which will not receive any direct light and ventilation. The submitter noted that the DAS report did not address this particular concern.

In considering this question, the Authority found no reason to re-assess the internal layout design. The NT Planning Scheme requirements relating to internal layout/design are appropriately dealt with through the provisions of clause 7.8 (Building Design for Multiple Dwellings, Hostels and Supporting Accommodation), which seeks to promote site-responsive designs which are pleasant for the occupants. Clause 7.8 requires (amongst other things) that building design allows breeze penetration and circulation; concealment of service ducts, pipes, air conditioners, air conditioning plant etc.; location of bedrooms and private open spaces away from noise sources; and internal drainage.

The Authority noted that the application material includes a detailed analysis of each apartment addressing the light and ventilation requirements, concluding that the apartments in the proposed building achieve higher compliance with these requirements.

Paragraph 4 of SD46 requires that a development application for a permissible development is to include:

4 (g). a traffic study by qualified traffic engineering consultants, to the requirements and satisfaction of the City of Darwin, including identification of any upgrade to vehicular, cycle and pedestrian infrastructure required to service the proposed development.

A traffic study, conducted by traffic engineer's i3 Consultants was provided with the application. However, it was found that the study is the same as the one previously lodged for the site, which generally met City of Darwin's requirements, although given the study was completed some time ago. In its original comments, the City of Darwin advised that it required an updated Traffic Impact Assessment to reflect current traffic volumes and distribution. Following the completion of the exhibition period, the applicant provided an addendum to the traffic study with current traffic volumes and distribution. Further comments were received from the Council on the addendum to the traffic study, which states that it is satisfied with the addendum to the traffic study, updated to 2021 as the reference year, which confirms that there will be no adverse traffic impact on the surrounding road network. Therefore a condition relating to updated traffic study is not required on any permit to be issued for the development.

The Authority noted that most submitters in their submissions and at the hearing raised concerns with the traffic study provided, including that the study ignores existing issues on Melville Street and issues regarding sightlines and the difficulties faced when entering Geranium Street from the Stuart Highway. It was also submitted that the proposed development will create a significant parking issue within the neighbouring area due to visitors to residents and commercial tenancies.

The applicant provided a detailed response to all traffic concerns raised by the submitters and tabled further information at the hearing. The response concludes that the traffic study findings are based on the 'worst case' scenario, which determined that all local streets and intersections will continue to perform at a very good level with plenty of space capacity. The response also provides that Melville Street was not considered in the traffic study due to the low traffic volumes at the time of preparation of the TIA and re-assigning traffic to Melville Street will reduce the impact further on other streets as the traffic is dispersed across the network. Regarding on-street parking issues resulting from the proposed development, the response states that sufficient parking is provided on site to accommodate the additional parking requirements.

The Authority notes that the traffic study requirement under Clause 4(g) is to the requirements and satisfaction of the City of Darwin. Given that the City of Darwin has raised no concerns with the addendum to the traffic study, the requirement of the clause is satisfied. The Authority notes that the proposal includes a surplus of 11 parking bays, to accommodate visitors parking in the proposed development.

3. Paragraph 13 of SD46 requires that, *unless provided for specifically in this zone, the provisions of the NT Planning Scheme applicable to Zone HR (High Density Residential) apply to development in this zone.* The Authority notes that the proposal has been assessed against the relevant clauses of the NTPS2007 applicable to Zone HR, and the proposal was found fully compliant with the development requirements of Zone HR. There was an issue, however, in relation to the requirement contained in Clause 7.5 of NTPS 2007 relating to Private Open Space.

The purpose of Clause 7.5 (Private Open Space) is to “*extend the function of a dwelling and enhance the residential environment*” by ensuring that each dwelling has private open space that is of an adequate size to provide for domestic purposes; appropriately sited, permeable and open to the sky; and inclusive of areas of deep soil for shade tree planting.

Sub-clause 3 further provides that if a dwelling within a multiple dwelling development has no direct access at ground level to private open space, compliant permeability, open to the sky and areas of deep soil for shade tree planting is not required providing the multiple dwelling development incorporates communal open space.

While the assessment notes that the development complies with the dimensional requirements of this clause, the private open space provided for the ground level unit is not permeable due to its location above the basement slab and does not provide a 5m² area for deep soil planting.

In considering a variation to this clause the Authority noted that the applicant proposes a raised planter at least 1000mm deep and a minimum length of 26.5m will be provided along the side of the outdoor space, facing the ground level pool to accommodate deep soil planting. The planter will have dimensions ((10m x 2.0m) + (2.5m x 0.5m) + (6m x 1.5m) + (2m x 8.0m)) and will provide 46.25m³ volume of “deep soil” planting area and 46.25m² of soil area, that will support viable planting of small trees within the planter. The response from the Landscape Architect provided in the application states that the deep soil volume and area for tree planting is in excess of the NSW Apartment Design Guidelines objective 4P, Table 5, which states that for a “small tree”, the NSW Apartment Guidelines recommends a soil volume of 9m³, with a soil depth of a minimum of 800mm, and a soil area of 12.25m² or equivalent.

To meet the requirement of permeability, the raised planter will include drainage at the bottom of the planter to allow for infiltration (the permeability) of rainwater into the City of Darwin street stormwater drainage system.

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.

In *White & Ors v Development Consent Authority & Tomazos Property Pty Ltd ATF Tomazos Property Discretionary Trust* [2015] NTCAT 010 President Bruxner states that:

The meaning of subclause 3 of clause 2.5 of the NTPS is well understood. In *Phelps v Development Consent Authority* [2009] NTSC 54 Kelly J relevantly noted:

- that 'special circumstances' are circumstances that are 'unusual, exceptional, out of the ordinary and not to be expected';
- that an holistic approach to the question is necessary, with each case to be considered on its merits, and with the decision maker alert to the fact that circumstances which by themselves might not be 'special' can, in combination with other circumstances, create a situation which overall gives rise to 'special circumstances';
- that there is also the need to determine, in an ordinary common-sense manner, whether there are circumstances which either individually or collectively can be considered to be 'special circumstances' justifying consent.

President Bruxner (*White & Ors v Development Consent Authority & Tomazos Property Pty Ltd ATF Tomazos Property Discretionary Trust* [2015] NTCAT 010) further discusses that:

- the need for an holistic approach to the application of clause 2.5 applies not only to the identification of circumstances said to constitute 'special circumstances' but also to the respects in which a proposed development does not comply with the NTPS. In other words, it is important to avoid an approach to clause 2.5 that involves piecemeal consideration of non-complying aspects of a development against particular 'special circumstances'. Although there will often be circumstances that are especially relevant to particular instances of non-compliance, the ultimate question must always be whether, in all the circumstances, there are special circumstances justifying the giving of consent to a development proposal that does not meet the requirements of Parts 4 and 5 of the NTPS.

In the context of special circumstances discussed above, it is considered unusual and out of the ordinary for a multiple dwelling development of this scale to include a dwelling with direct ground level access, which is the trigger for this specific requirement. The dwelling is likely positioned at ground level to optimise its position and surveillance of the site. Furthermore, the above design features demonstrate that the requirement of the clause can be achieved.

Multiple dwelling developments of this scale, including ground-level commercial tenancies, usually provide all dwellings above ground level, which triggers Clause 7.6 (Communal Open Space) rather than Clause 7.5 (Private Open Space). Clause 7.6 does not contain such a requirement for spaces to be permeable, and therefore the current non-compliance is a little unusual. A compliant area of communal open space is provided in the development.

The Authority concluded that the abovementioned reasons are considered to collectively amount to special circumstances and justify granting consent to vary the requirements of Clause 7.5 (Private Open Space).

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

The application was advertised online from 28 May 2021, and exhibition signs were displayed on-site for a period of four weeks. In total, 53 objecting submissions and 10 supporting submissions (individually written) were received during the exhibition period under Section 49 of the Act. Two Pro-forma/ petitions, one supporting the development with 490 signatures and the other in opposition with 20 signatures, were also received during the exhibition period. One late submission, individually written (in support), was received after the completion of the exhibition period.

The Authority notes that issues in relation to the adequacy of the signage as required by Section 16 of the *Planning Act 1999* were raised by one of the submitters, Ms McAlpine, in particular the legibility of the sign which is required to be "*clearly legible to a person from a location on the public road nearest to the land*". The Authority is satisfied that the signage was appropriate and correctly displayed.

Two additional submissions were received in response to the applicant's response and additional information circulated to the public members that made a submission in relation to the application. The main concerns raised by the submitters in their submissions are:

- Not a "landmark development";
- Loss of amenity (privacy/overlooking/noise/light);
- Out of character;
- Improper rezoning;
- Increase in traffic and parking issues;
- Non-compliance with the NTPS and SD46 (technical issues);
- Issues with the Darwin Inner Suburb Area Plan (DISAP);
- Issues with landscaping and deep soli planting;
- Poor apartment design;
- Disruption during construction;
- Issues with Compact Urban Growth Policy (CUGP);
- Financial gain at the expense of residents amenity; and
- Other issues like; pressure on existing infrastructure and market demand etc.

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

At the hearing, Ms D'Rozario (applicant) stressed that comprehensive responses to issues raised by the submitters were provided, which is included in the application material. Ms D'Rozario told the Authority that the traffic concerns raised by many submitters was addressed

through the addendum to the traffic study, which the City of Darwin has accepted. In response to the concern raised by Ms Rosalind Read regarding traffic impact assessment not dealing with Melville Street and issue of loading bay not able to accommodate a removalist truck, Ms D'Rozario told the Authority that the addendum to the traffic study and further response from the traffic engineer provides details regarding the Melville Street matter which concludes that the findings of the traffic study are based on the 'worst case' scenario which determined that all local streets and intersections will continue to perform a very good level with a plenty of capacity. Regarding the issue of the size of the loading bay not being adequate to accommodate a medium rigid vehicle or removalist vehicle, Ms D'Rozario told the Authority that that loading bay is provided to serve the commercial component in the development. Furthermore, there are no requirements in the NTPS for a loading bay to be provided for the residential component. Ms D'Rozario stressed that it is a common and accepted practice for removalist vehicles to serve from the street as it is not a common occurrence. Ms D'Rozario further added that due to traffic restrictions, it is a common practice that the cargo is broken down at the depot and then further transported to the site in SRV vehicle. The addendum to the traffic report identifies that the size of the loading bay is adequate for an SRV truck.

In response to the issue raised by Ms Read in her written submission regarding landscaping maintenance and missing reference to palms in sky garden in the landscape plan, Ms D'Rozario tabled an amended landscape plan and schedule of sky garden showing Foxtail Palm species within sky garden. Regarding the issue of maintenance access to planting, Ms D'Rozario told the Authority that the building would include anchor hooks in the roof and mounting brackets at points along the building façade to attach safety harness and hook to enable high rope access. Furthermore, the bylaws within the scheme statement will address the maintenance of landscaping by the body corporate and unit owner.

In relation to the issue of external noise ingress into buildings, Ms D'Rozario tabled advice from Acoustic engineer, which states that the National Construction Code (NCC) does not contain any provisions in regard to external noise ingress into buildings.

The Authority also heard from submitters present at the hearing.

Ms Bradley, Chair of Planning for People Inc., raised that the Compact Urban Growth Policy (CUGP) released by the Department of Infrastructure, Planning and Logistics provides that high-density residential areas should be accommodated on sites with an adjoining road width of 20m or more. As the road width of Gardens Hill Crescent is less than 20m, the development does not comply with the CUGP. Ms Bradley noted that the graphic representation of the concerns raised by the submitters in the DAS report does not include the issue of antisocial use of public spaces by itinerants raised in her submission.

Ms Phayer, resident of Gardens Hill Crescent and also a member of Planning for People Inc., raised the issue of noise from the balconies and its impact on the amenity of surrounding residents.

Ms Hickey, whilst not a submitter under section 49 of the Act, shared many of the same concerns as Ms Phayer. Ms Hickey also raised the issue regarding poor ventilation in the design of the apartments and issues faced by Body Corporates in managing the developments.

Mr Harrison, also a resident of Gardens Hill Crescent, raised that the development differs greatly from the existing buildings and the character in The Gardens. The height at 7/8 storeys is significantly greater than the surrounding buildings, which are mostly two-storey townhouses. Mr Harrison also raised traffic concerns and told the Authority that the traffic on Melville Street is resident only. Furthermore, the bottom end of the Gardens Hill Crescent is not suitable for high traffic volume. Mr Harrison stressed that the planning should focus on creating beautiful suburbs rather than beautiful buildings.

Ms Norrish, spoke on behalf of residents of 33 Gardens Hill Crescent. Ms Norrish told the Authority that retirees occupy the unit complex and some have medical issues. Therefore, heavy traffic on Gardens Hill Crescent and noise (both during construction and post-construction) will be detrimental to their wellbeing and quality of life.

Mr Plummer, a member of Planning for People Inc. raised concerns that the proposed development does not meet the definition of the landmark development. Mr Plummer raised concerns regarding pro-forma/ petitions supporting the development with 490 signatures. Mr Plummer stressed that it is not clear how many of the signatories are local residents.

Mr Bradley, member of Planning for People Inc., relied on his submission made during the exhibition period and spoke further on issues identified in the DAS report. Mr Bradley noted that, while submitters' concerns are presented in DAS's report, they are not comprehensively addressed. Mr Bradley stressed that the DAS report does not provide a detailed explanation of the impact of the proposed development on the public's quality of life. Mr Bradley referred to the provision in the *Planning Act 1999* and NTPS regarding minimising adverse impacts of development on existing amenity and ensuring that the planning reflects the wishes and needs of the community through appropriate public consultation. Mr Bradley stressed that the DAS has wrongly interpreted the NTSC decision findings regarding paragraph 3(a) to (e) of SD46. Mr Bradley quoted the findings of Justice Barr in paragraph 12 of the decision which says *"In my opinion, it would be difficult to conceive of a situation in which a landmark development, achieved through high architectural quality and distinctive streetscapes, which provided high levels of pedestrian amenity..."*

Mr Bradley told the Authority that the other main issue raised by many submitters is the loss of amenity (privacy/overlooking/noise/light), which again has not been comprehensively addressed in the report. Mr Bradley also raised concerns regarding the accuracy of the traffic study. Mr Bradley told the Authority that the traffic study findings shows that traffic has actually decreased in the area is not correct. Mr Bradley also raised that the DAS report incorrectly identifies the area as "inner

city area” which actually is an inner suburb area. Mr Bradley stressed that the characteristics of the area are distinctively different from the inner-city area.

Mr Bradley told the Authority that the development would cause overlooking from the balconies of the proposed residences, including into the private open space of neighbouring townhouses. This reduces privacy and the ability of residents to enjoy these areas. Also, there will be a significant increase in noise from balconies which will impact neighbouring residents. Mr Bradley further stated that the proposed development will block access to the natural light of neighbouring properties.

Mr Bradley referred to the ventilation and light diagram of apartments provided in the application, indicating that few apartments on each floor will have no access to ventilation and sunlight. Mr Bradley tabled the light and ventilation requirements in the Building Code and highlighted that the apartment design does not meet these requirements.

Mr Bradley also shared the same concerns as Ms Bradley in relation to the CUGP. Mr Bradley stressed that the width of Gardens Hill Crescent and Blake Street is not adequate to take the traffic of high density developments. Mr Bradley also raised concerns regarding landscaping maintenance.

Ms McAlpine advised the Authority that her property (2/11 Blake Street) is located directly across the site and therefore will be directly affected by the proposed development. Ms McAlpine stressed that the proposed development would impact the amenity by increasing noise from balconies, overlooking and access to natural light. This will reduce privacy and the ability of residents to enjoy living in the Blake Street Precinct. Ms McAlpine also raised concerns regarding the increase in traffic as a result of the proposed development. Ms McAlpine stressed that while the zoning of the site allows for a seven-storey development, it could be developed as low rise development similar to other High Density zoning sites along Gardens Hill Crescent.

Ms Clinch from Plan: the Planning Action Network strongly echoed Mr Bradley’s comments in relation to the provisions in the *Planning Act 1999* regarding minimising adverse impacts of development on existing amenity and ensuring that the planning reflects the wishes and needs of the community through appropriate public consultation. Ms Clinch told the Authority that the site falls within Darwin Inner Suburb Area Plan and therefore should not be considered as an Inner City area. Ms Clinch also raised concerns regarding traffic and parking issues resulting from the proposed development.

A submitter from 33 Gardens Hill Crescent echoed Ms Norrish comments in relation to the impact of the proposed development on the wellbeing and quality of life of the residents.

Ms Gibbett tabled few photographs of the site and surrounding areas and a photo of 7 storey high rise development to show how the proposed development differs greatly from the existing buildings and

the character in The Garden. Ms Gibbett also raised many of the same concerns as other submitters in relation to the impact on the existing amenity of the surrounding residential area as a result of noise, overlooking and loss of natural light.

Ms Chin also raised concerns regarding the impact on the existing amenity due to noise and loss of sunlight.

Ms D'Rozario addressed the submitters' concerns regarding the shadowing of the surrounding properties and the loss of sunlight and tabled a solar data assessment of the site, which shows that the shadow projection will change during the day. The shadow on the surrounding buildings will be maximum during dawn and dusk time. Between these times, the impact of shadowing will not impact the surrounding properties. Regarding the issue of the width of surrounding roads, Ms D'Rozario referred to the survey plan, which shows that the width of Blake Street and Garden Hill Crescent is 20.115m and 18.29m, respectively. Regarding the impact on amenity, Ms D'Rozario stressed that the requirement of the clause is how the amenity should be achieved. This has been adequately addressed in the application. Ms D'Rozario reiterated that the proposed development is unique and different from other high-rise developments in Darwin through providing public realm spaces at ground level, landscaping scheme, and high-quality architecture design. Regarding the issue of poor design of apartments raised by submitters, Ms D'Rozario told the Authority that the application material includes a detailed analysis of each apartment which shows that the design of the building exceeds all national minimum requirements for natural cross-ventilation and lighting within the apartments. Furthermore, the building has achieved a NaTHERS (average) Star Rating of 8.6, which is 2.5 times more than the BCA (NT) requirement.

The Authority has taken all comments into account and carefully considered the deeply held concerns of the submitters. The Authority also took into account the response provided by the applicant on submitters concerns and documents tabled at the hearing. In relation to landmark development, the Authority relies on its reasons listed in point (2) above, which concludes that the proposed development will develop high architectural quality with a distinctive streetscape. The Authority noted the Architect's Statement, Ian Mitchell's Design Review of the Revised Design Report, and the Landscape Architect's Statement provide details regarding architectural components and the underpinning design philosophy of the proposed development.

In response to the concerns raised regarding the application of the CUGP, which provides that high-density residential areas should be accommodated on sites with an adjoining road width of 20m or more, the Authority notes Ms D'Rozario's comments in relation to the survey plan for the site, LTO2008/104, which illustrates the road width of Blake Street to be 20.115m in width.

The DISAP identifies that it implements the CUGP as it identifies compact urban growth localities around activity centres, public transport corridors and other localities that satisfy the objectives of this Policy. The Authority considers that the application of this policy is not

relevant to development in Zone SD46 as the proposal is not proposing a higher density than what the zone envisages and is not a proposal for an Area Plan, Rezoning or Exceptional Development.

The concerns regarding the timing of the application and whether consideration should be adjourned until such time as a review of the DISAP has been completed have also been considered. The Authority notes that in December 2017, a rezoning application to amend the NTPS 2007 was submitted for adjacent parcels 16 and 25 Blake Street, The Gardens and was subsequently refused by the Minister for Infrastructure, Planning and Logistics in July 2020. In refusing the application, the Minister requested the NT Planning Commission to review the DISAP, as it relates to The Gardens, within the context of the Reasons for Decision in refusing the rezoning application for 16 and 25 Blake Street. No such review has been undertaken. Section 51 (1)(b) of the Planning Act requires the Authority to consider –

- (b) any proposed amendments to such a planning scheme:*
 - (i) that have been or are on exhibition under Part 2, Division 3;*
 - (ii) in respect of which a decision has not been made under Part 2, Division 5; and*
 - (iii) that are relevant to the development proposed in the development application;*

There are no such proposed amendments to the Planning Scheme that are relevant to the present application.

The traffic concerns raised by many submitters are not shared by the City of Darwin, which is the controlling agency of the surrounding road network. The Authority notes that the traffic study requirement under Clause 4(g) is to the requirements and satisfaction of the City of Darwin. Given that the City of Darwin has raised no concerns with the addendum to the traffic study, the requirement of the clause is considered to be satisfied. The Authority notes that the proposal includes a surplus of 11 parking bays to accommodate visitors parking in the proposed development.

The Authority noted the concerns of the submitters in relation to the ongoing maintenance of the proposed landscaping and has included a condition addressing the requirement for such maintenance. A number of submitters raised concerns relating to the proximity to the Gardens Amphitheatre and possible future noise complaints impacting on the ongoing use of the Amphitheatre. In response to those concerns, the Authority has included a condition requiring a Caution Notice stating that “this dwelling is located in close proximity to the Darwin Amphitheatre and you may experience high levels of noise during events”.

Regarding amenity impacts, the Authority relied on the NTSC decision of the previous proposal, which states that the compliance of sub-clause 3(a) to 3(e), of SD46 ensure the development will contribute to improving the amenity of the Blake Street Precinct, as an inner-city mixed-use area. The decision clearly indicates that if (a) – (e) is achieved, then the development automatically is considered to improve

the amenity of the Blake Street Precinct. The Authority noted that the development complies with the requirements of the clause and non-discretionary requirements of Zone SD46 and all discretionary requirements of Zone SD46, excepting a minor variation sought to Clause 7.5 (Private Open Space).

In consideration of the concerns raised by submitters in relation to the site being incorrectly referred to as forming part of the inner-city rather than an inner suburb, the Authority notes that DAS report correctly references the wording 'inner-city mixed use area' is included in paragraph 3 of Zone SD46.

Regarding issue of apartment design the Authority relies on its reasons listed in point (2) above which concludes that the NT Planning Scheme requirements relating to internal layout/design are appropriately dealt with through the provisions of Clause 7.8 (Building Design for Multiple Dwellings, Hostels and Supporting Accommodation), which seeks to promote site-responsive designs which are pleasant for the occupants. Clause 7.8 requires (amongst other things) that building design allows breeze penetration and circulation; concealment of service ducts, pipes, air conditioners, air conditioning plant etc.; location of bedrooms and private open spaces away from noise sources; and internal drainage.

The Authority noted that the applicant's application material and further response provides a detailed analysis of each apartment addressing the light and ventilation requirements, which demonstrate that the apartments in the proposed building achieve higher compliance with these requirements.

5. 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 Authority required a number of servicing matters to be addressed through conditions of consent. These matters include submission of a stormwater management plan, an environmental and construction management plan, a dilapidation report and a waste management plan. The Authority considered that these requirements, combined with standard conditions relating to the connection and upgrade of utility services and the provision and treatment of easements, will ensure that the land is developed in accordance with its physical capabilities and will ensure that utility and infrastructure requirements of the relevant agencies are appropriately addressed.

6. 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 potential impact on the existing and future amenity of the area in which the land is situated was considered in the rezoning process; when Lot 7820 was rezoned from Zone CP (Community Purpose) to SD46 (Specific Use Darwin 46). The site was determined by the then Minister for Lands and Planning to be appropriate for infill development for a commercial and residential building with 7 storeys. The Tribunal in the 2018 decision found that -

95. In no way does the criteria in SD46 require a reconsideration of the impacts of rezoning on amenity. SD46 speaks for itself. One of the requirements is that a development must contribute to improved amenity. Whatever issues around amenity may have been raised during the rezoning debate, the outcome of that public debate and the rezoning process is what is contained in SD46.

The definition of amenity within the *Planning Act 1999* states that “amenity in relation to a locality or building, means any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable.”

The Authority found that the proposed building provides high level of pedestrian amenity through its high architectural quality, distinctive streetscape and public realm spaces at ground level. The public realm spaces at ground level within the site boundaries, will be accessible by the public at all times, including a public piazza, vegetable/herb garden, children’s playground, public artwork and various pocket parks. These public realm spaces have been designed as a meeting place for residents and the wider community to participate, connect and interact. Furthermore, the building is designed to create a pedestrian scale at the street edges by placing single storey café-restaurant and office buildings, with green roofs, at the front of the street. The deep building setbacks and porous fencing for most of Gardens Hill Crescent’s alignment allow for visibility of activities at ground level. The development includes vertical gardens and landscaping on every level, enhancing the internal amenity for residents of the building.

The assessment found the development will improve the amenity of the Blake Street precinct by satisfying the matters specified in SD46.3 (a) to (e). Furthermore, in the Supreme Court decision for leave to appeal [2018] NTCAT 984, the Court affirmed that the compliance of sub-clause 3(a) to 3(e), of SD46 ensure the development will contribute to improving the amenity of the Blake Street Precinct, as an inner-city mixed use area. The decision clearly indicates that if (a) – (e) are achieved, then the development is automatically considered to improve the area’s amenity. The Court found that

[10] Clause 3 should therefore be interpreted such that it is to be taken for granted that a development will contribute to improving the amenity of the precinct if the criteria in pars (a) to (e) are satisfied.

The proposed development complies with the non-discretionary requirements of Zone SD46 (including clause 3(a) – 3(e) and the Authority concluded that the potential impact on the existing and future amenity of the area is consistent with what could reasonably be expected from any development in accordance with the zone provisions and, further, pursuant to the express provisions of the SD46, improves the amenity of the Blake Street precinct.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Determination

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

SUZANNE PHILIP

Delegate

17 August 2021