



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 395 – FRIDAY 19 AUGUST 2022

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

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

APOLOGIES: Peter Pangquee and Morgan Rickard

LEAVE OF ABSENCE: Suzanne Philip (Chair)

OFFICERS PRESENT: Amit Magotra, Julie Hillier, Monica Pham and Breanna Lusty (Development Assessment Services)

COUNCIL REPRESENTATIVE: Cindy Robson and Brian Sellers

Meeting opened at 10.30 am and closed at 11.50am.

ITEM 1

PA2015/0446 **EXTENSION OF TIME OF DP15/0490 FOR A PERIOD OF TWO YEARS**
SECTIONS 5602 (55) BOULTER ROAD, BERRIMAH, HUNDRED OF BAGOT

APPLICANT WSP Australia Pty Ltd – Principal Linda Rodriguez

RESOLVED That, pursuant to section 59(3)(a) of the *Planning Act 1999*, the Development
45/22 Consent Authority consent to extend the base period of DP15/0490 for a period of
two years.

REASONS FOR DECISION

1. Development Permit DP15/0490 was issued on 17 August 2015 for the purpose of 42 x 2 and 8 x 3 bedroom multiple dwellings in 12 x 1 and 13 x 2 storey buildings. On 22 May 2017, Extension of Period of Permit DP15/0490A was issued, which extended the base period of the permit by a further three years, expiring on 17 August 2020. Subsequently, on 29 July 2020, another Extension of Period of Permit DP15/0490B was issued, which extended the base period of the permit by a further three years, expiring on 17 August 2022.
2. On 01 July 2022, WSP Australia Pty Ltd, on behalf of the landowner, lodged an application to extend the base period of DP15/0490 for an additional two year period which was amended to four years period in the additional information received from the applicant.
3. In support of the application for an extension of time the applicant has stated that the proponent is exploring options to finance the project. The application states that, at present, pre-sales have been insufficient to enable finance and construction of the project. The applicant anticipates that the proposed upgrades to Boulter Road will assist in obtaining the required pre-sales once completed. However, this will not be until late 2023/early 2024. The applicant has requested an extension of four years to provide sufficient time to meet pre-sales and gear up the development for delivery.
4. The Authority carefully considered the applicant's submission and considered all factors in making its decision. The Authority noted the advice contained within the Development Assessment Services (DAS) report that stated there have been substantial changes to the Northern Territory Planning Scheme (NTPS) since the time of issue of the original permit that would impact the compliance of the development. The Authority considered that since the time of issue of the original permit, substantial time has passed, and the nature of the locality, including owners and occupiers of adjacent and nearby developments, may have changed.
5. The Authority noted that the current application is the third extension of the period of the permit and that seven years have already passed since the permit was issued in 2015, without the development having been substantially

commenced. The Authority further notes that the conditions precedent of DP15/0490 have yet to be cleared and endorsed plans have not yet been issued.

6. The Authority determined to grant two years extension, which will extend the base period of the permit to August 2024. The Authority were unanimous in determining that any further request for an extension of time to the base period of the permit is unlikely to be granted, and the applicant is encouraged to commence the development within the new base period of the permit.

FOR: 3

AGAINST: 0

ABSTAIN: 0

ACTION:

Extension of Time Permit with covering email to include the last paragraph from above, reiterating that any further extension is unlikely to be supported.

ITEM 2

**PA2022/0142
APPLICANT**

CHANGES TO DP21/0139 TO CONVERT MEDICAL CLINIC AND OFFICE TO FOOD PREMISES – CAFÉ/TAKE AWAY AND FOOD PREMISES – RESTAURANT. LOT 9998 (69) PROGRESS DRIVE, NIGHTCLIFF, TOWN OF NIGHTCLIFF

One Planning Consult

Applicant Israel-Tshepo Kgosiemang from One Planning Consult attended.

Submitters Fiona Douglas and David Ujimoto attended.

**RESOLVED
46/22**

That, pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 9988 (69) Progress Drive, Nightcliff, Town of Nightcliff for the purpose of changes to DP21/0139 to convert office to food premises – restaurant, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans submitted with the application but modified to show:
 - (a) the number of bicycle parking spaces and lockers adjacent to the proposed food premises – restaurant.

GENERAL CONDITIONS

2. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
3. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, electricity and telecommunication networks to the development shown on the

endorsed plan in accordance with the authorities' requirements and relevant legislation at the time. Please refer to notations 1, 2 and 3 for further information.

4. 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.
5. 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.
6. Before the use commences the owner must meet all conditions of this development permit and Development Permit DP21/0139.

Notes

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (powerdevelopment@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. All developers, including owner-builders, are required to comply with Commonwealth telecommunications requirements. Under Commonwealth law, developers are generally required to provide fibre-ready pit and pipe in their developments at their expense. Developers may be able to access an exemption from these arrangements in some circumstances. For more information visit www.infrastructure.gov.au/tind.
3. 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/buildersdesigners.html>.
4. The applicant is advised to engage a Northern Territory registered building certifier to ensure that the intended use of any existing buildings or structures is permitted by occupancy certification in accordance with the *Building Act 1993*.
5. 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*.

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

The application originally proposed “changes to DP21/0139 to convert medical clinic and office to food premises – café/take away and food premises – restaurant”. In response to the submissions received during the exhibition period, the applicant amended the application to keep the medical clinic use as approved under DP21/0139 and removed the food premises - café/takeaway component in the proposal.

The NT Planning Scheme 2020 (NTPS 2020) applies to the land and changes to DP21/0139 to convert office to food premises – restaurant requires consent under Clause 1.8 (When development consent is required). It is identified as *Merit Assessable* under Clause 4.11 Zone C (Commercial), therefore Clauses 5.2.1 (General Height Control), 5.2.4 (Vehicle Parking), 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 5.3.7 (End of trip facilities in Zones HR, CB, C, SC and TC), 5.5.2 (Plot Ratios in Commercial Zones) and 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T), need to be considered.

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

A condition precedent requiring that amended plans are provided that show the number of bicycle parking spaces and lockers adjacent to the proposed food premises – restaurant is included on the development permit issued for the proposal as these details were not confirmed on the submitted plan.

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

Four submissions were made under section 49 in relation to the application during the exhibition period. The key issues raised in the submissions relate to the impact on the amenity on the existing residential area, increased traffic, noise and fumes generated by the development.

In response to public submissions received, the applicant revised the plans to keep the medical clinic use as approved under DP21/0139 and removed the food premises - café/takeaway component in the proposal. The amended

proposal and additional material were circulated to the (four) public submitters to comment. Two further submissions were received, which raised concerns regarding takeaway access in the amended proposal, rubbish collection and trading hours.

The Authority notes that the proposed development results in no implications on the existing approved parking reduction or parking layout approved under DP21/0139. Concerns relating to traffic, bicycle lanes, on-site rubbish collection relates to Council matters, and the City of Darwin have not raised any concerns in its comments. Regarding potential noise levels, any noise generated by the proposed food premises - restaurant, the Authority notes that the development will need to meet the relevant noise criteria contained within the Northern Territory Environment Protection Authority (EPA) Northern Territory Noise Management Framework Guideline, which the EPA administers. The Authority further notes that no alfresco area is provided on the amended plans, and the location of the bin enclosure and loading area is similar to the previous approval granted under DP21/0139. Regarding the potential for an increase in anti-social behaviour, the Authority considers that the increased presence of persons on the site, lighting and surveillance opportunity to abutting streets and surrounding areas are considered adequate to address the potential for anti-social behaviour.

At the hearing, Mr Israel-Tshepo Kgosiemang from One Planning Consult (applicant) gave an overview of the proposed development and spoke about the amended purpose of the application. Mr Kgosiemang stressed that in response to the submissions received regarding changing the medical clinic into a café, the proponent revised the plans to keep the medical clinic. The amended proposal is to convert the office into the restaurant's kitchen and storage area. Mr Kgosiemang also clarified that the restaurant is not a fast-food restaurant.

The Authority also heard from submitters present at the hearing.

Ms Douglas spoke to her concerns regarding noise generated by the takeaway food pick up bench shown on the plans and takeaway access from the side of the kitchen. Ms Douglas noted that car parking at the front along Progress Drive is an advantage; however, to pick up takeaway from the kitchen side would mean cars would likely drive around the surrounding apartment residences.

Mr Ujimoto spoke to his concerns regarding the impact on amenity and Liquor Licensing. Mr Ujimoto stressed the Development Assessment Services report has not adequately addressed the impact on amenity of surrounding residential area from the operation of proposed food premises - restaurant which largely relate to increase in noise and fumes generated from the kitchen of food premises - restaurant.

In response to concerns raised regarding pick-up and take away access, Mr Kgosiemang explained that access to the restaurant and takeaway pickup is provided from the entrance located along Progress Drive and not from the side of the kitchen area access. Mr Kgosiemang clarified that the "takeaway food pick up bench" area labelled on the plans is a drafting error.

In response to the issue of fumes, Mr Kgosiemang explained that the kitchen of the proposed food premises - restaurant would have commercial hoods installed as per the standards and requirements of the NT Food Safety and Regulations. Mr Kgosiemang stressed that the food premises - restaurant was approved under the previous DP21/0139, and the current proposal seeks an extension by converting the adjoining office tenancy to a kitchen and associated storage areas.

The Authority has taken all comments into account and carefully considered the submitters' concerns and the applicant's response to the matters raised. In relation to the potential impact on amenity as a result of proposed development the Authority considered the proposal will not have a significant impact on the amenity of the area as the food premises-restaurant tenancy was approved under the previous permit DP21/0139 and the proposal seeks an extension to the approved food premises-restaurant by converting the adjoining office tenancy into a kitchen and storage area.

In relation to the issue of liquor licensing, noise and fumes raised by the submitters the Authority noted that these matters are dealt under separate legislation and require a separate application to the relevant agencies.

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

The capability of the land has been previously considered through Development Permit DP21/0139, and no land capability issues have been identified.

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

The proposed development is consistent with the purpose of the zone and complies with the NT Planning Scheme 2020. It is considered unlikely that the proposal will significantly impact the area's amenity as the restaurant tenancy was approved under the previous permit DP21/0139, and the proposal seeks an extension to the approved restaurant area by converting the office into a kitchen and storage area. The conditions and notes included in the permit and DP21/0139 will also assist in preventing any adverse impacts on amenity.

FOR: 3

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

ITEM 3 **SUBDIVISION TO CREATE 81 LOTS INCLUDING ONE PUBLIC OPEN SPACE LOT**
PA2022/0087 **PORTIONS 1841, 1842 AND 1843 (440, 450 & 460) MCMILLANS ROAD,**
MARRARA, HUNDRED OF BAGOT
APPLICANT Cunnington Rosse Town Planning and Consulting

Applicant Brad Cunnington from Cunnington Rosse Town Planning and Consulting attended.

Harris Davidson from ADG Engineers and Afshin Beigi from SJ Traffic Consulting attended.

RESOLVED That, the Development Consent Authority vary the requirements of Clause 6.2.1
47/22 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR), Clause 6.2.3 (Site Characteristics for Subdivision in Zones LR, LMR, MR and HR) and Clause 6.2.4 (Infrastructure and community facilities for subdivision in Zones LR, LMR, MR and HR) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Portion 1841 (440) McMillans Road, Portion 1842 (450) McMillans Road and Portion 1843 (460) McMillans Road, Hundred of Bagot for the purpose of subdivision to create 81 lots including one public open space lot, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans submitted with the application but modified to show:
 - (a) a 25 metre three chord truncation to the lot boundaries at each corner of the intersection of the proposed subdivision road with McMillans Road, to the requirements of Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics and dimensions of truncations to all other intersections to the requirements of City of Darwin; and
 - (b) any development changes that result from addressing condition precedents 2 to 4.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a traffic impact assessment report is to be prepared by a suitably qualified traffic engineer to the requirements of the City of Darwin and Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics.
3. Prior to the commencement of works (including site preparation), the applicant is to prepare a Construction Traffic Management Plan and/or Operational Traffic Management Plan, to the requirements of Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.

4. Prior to the endorsement of plans and prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the stormwater drainage system in accordance with NT Subdivision Development Guidelines shall be submitted to and approved by Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics (where it impacts on the Northern Territory Government controlled road reserves), the Crown Land Management Division (where it impacts on Crown land or a drainage easement in favour of the Territory), and the City of Darwin.
5. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a stormwater plan shall be prepared to the requirements of Department of Defence, in consultation with City of Darwin. The stormwater plan shall show how the on-site management of stormwater and its discharge into the local and trunk stormwater drainage system is managed such that the post development stormwater flows from Portion 1841 (440) McMillans Road, Portion 1842 (450) McMillans Road and Portion 1843 (460) McMillans Road, Hundred of Bagot do not exceed the total pre-development stormwater flows, and that stormwater run-off from the RAAF Base on Section 5730 (405) Stuart Highway Hundred of Bagot, is not impeded.
6. Prior to the commencement of works, a **Type 2** Erosion and Sediment Control Plan (ESCP) must be developed in accordance with the Department of Environment, Parks and Water Security ESCP Standard Requirements 2019 available at <https://nt.gov.au/environment/soil-land-vegetation>. The ESCP must be developed and certified by a Certified Professional in Erosion and Sediment Control (CPESC) to the satisfaction of the consent authority. The ESCP should be submitted for acceptance prior to the commencement of any earth disturbing activities (including clearing and early works) to Development Assessment Services via email: das.ntg@nt.gov.au.
7. Prior to works commencing, a Weed Management Plan (WMP) is to be submitted to and approved by the consent authority on the advice of the Department of Environment, Parks and Water Security. The WMP must be developed and implemented so as to meet the minimum requirements declared under the *Weeds Management Act 2001* and the minimum gamba grass management requirements for the proposed parcel sizes in the Class B Zone area as described in the Weed Management Plan for Gamba Grass 2020-2030. The WMP should include vehicle and equipment hygiene controls in line with the key principles for weed spread prevention as outlined in the Weed Management Branch document 'Preventing weed spread is everybody's business'. The WMP should detail methods, treatments and timing for effective gamba grass management on the site during the development, so that gamba grass is satisfactorily managed at completion of works for all proposed or existing lots. Information and documents on weed management is available at www.nt.gov.au/weeds. The WMP should be emailed to DevelopmentAssessment.DEPWS@nt.gov.au for assessment.

8. Prior to the commencement of works (including site preparation), plans must be submitted to City of Darwin demonstrating that all road infrastructure meets the requirements of the Northern Territory Subdivision Development Guidelines 2020 and the City of Darwin Schedule of Variations, to the requirements of City of Darwin, to the satisfaction of the consent authority.
9. Prior to the commencement of works (including site preparation), the applicant is to prepare a Site Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP should specifically address the impact to Council owned public spaces and include a waste management plan for disposal of waste to Shoal Bay, traffic control for affected City of Darwin roads, haulage routes, storm water drainage & sediment control, use of City of Darwin land, and how this land will be managed during the construction phase.
10. Prior to the commencement of works (including site preparation), the applicant is to prepare a public open space plan in accordance with Section 5.2 of the Northern Territory Subdivision Development Guidelines to be submitted and approved by the City of Darwin, to the satisfaction of the consent authority.

GENERAL CONDITIONS

11. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
12. Before the issue of titles, the developer is to provide written confirmation (in the form of plans or drawings) demonstrating that all lots less than 600m² for dwelling-single allow for future vehicle access via a single driveway unrestricted by street infrastructure (including any power, water, sewer, or stormwater infrastructure) which demonstrates that a 3.5m driveway can be located on each lot whilst ensuring that each lot's street frontage has a minimum continuous length of 6.5m, to the satisfaction of the consent authority.
13. 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.
14. 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 on the plan of subdivision submitted for approval by the Surveyor General.
15. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage, drainage, electricity and telecommunication networks to each lot shown on the endorsed plan (other than the remnant parcel) in accordance with the authorities'

requirements and relevant legislation at the time. Please refer to Notations on this permit numbered 2 to 6 for further information.

16. All proposed roads to be created on the plan of subdivision submitted for approval by the Surveyor General must be dedicated to the relevant Northern Territory or local government authority.
17. All works recommended by the traffic impact assessment are to be completed to the requirements of the City of Darwin and the Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics to the satisfaction of the consent authority.
18. Access onto McMillans Road from the development shall be constructed to the requirements of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics.
19. Any proposed work (including the provision or connection of services) within, or impacting upon the Northern Territory Government controlled road reserve shall be in accordance with the standards and specifications of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics. Design documents must be submitted to the Director Corridor Management, Transport and Civil Services Division for Road Agency Approval and no works are to commence prior to approval and receipt of a "Permit to Work Within a Road Reserve".
20. The McMillans Road intersection is subject to road safety audits in accordance with the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics policy "Road Safety Audits", to the satisfaction of the consent authority.
21. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of City of Darwin, to the satisfaction of the consent authority.
22. The owner shall:
 - a) remove disused vehicle and/ or pedestrian crossovers;
 - b) provide footpaths/ cycleways;
 - c) collect stormwater and discharge it to the drainage network; and
 - d) undertake reinstatement works;
all to the technical requirements of and at no cost to the City of Darwin and Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
23. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics (where it impacts on the Northern Territory Government controlled road reserves), the Crown Land Management Division (where it impacts on Crown land or a drainage easement in favour of the Territory), or the City of Darwin to the satisfaction of the consent authority. All works are to comply with NT

Subdivision Development Guidelines and be certified by a chartered professional civil engineer.

24. All works relating to this permit must be undertaken in accordance with the accepted Type 2 Erosion and Sediment Control Plan (ESCP) to the requirements of the consent authority. Should the accepted Type 2 Erosion and Sediment Control Plan (ESCP) need to be amended, the revised ESCP must be developed and/or certified by a Certified Professional in Erosion and Sediment Control (CEPSC) to the satisfaction of the consent authority. The revised ESCP should be submitted for acceptance to Development Assessment Services via email: das.ntg@nt.gov.au.

All reasonable and practicable measures must be undertaken to prevent: erosion occurring onsite, sediment leaving the site, and runoff from the site causing erosion offsite. Appropriate erosion and sediment control measures must be effectively implemented throughout the construction phase of the development (including clearing and early works) and all disturbed soil surfaces must be satisfactorily stabilised against erosion at completion of works, to the satisfaction of the consent authority. For further information refer to Note 7 below. At completion of works, clearance should be sought from the Department of Environment, Parks and Water Security regarding satisfactory implementation of permanent erosion and sediment control measures and site stabilisation. To arrange a clearance site inspection, email the Land Development Coordination Branch at: DevelopmentAssessment.DENR@nt.gov.au

25. All works relating to this permit are to be undertaken in accordance with the approved Weed Management Plan (WMP) to the requirements of the consent authority on the advice of the Department of Environment, Parks and Water Security.
26. The developer shall have carried out an assessment of the development's present and predicted future exposure to road traffic noise levels by a suitably qualified person, in accordance with AS3671-1989, "Acoustics – Road Traffic Noise Intrusion – Building Siting and Construction", and where required provide appropriate noise attenuation measures to the satisfaction of the Authority. All noise attenuation works deemed necessary shall be carried out by and at the full cost of the developer and shall be wholly contained (including foundations) within the subject lot.
27. No individual property access shall be allowed onto McMillans Road at any stage of the development, including temporary access for construction purposes and construction and delivery vehicles shall not be parked on the McMillans Road road reserve, to the requirements of Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
28. The loads of all trucks entering and leaving the site of works are to be constrained in such a manner as to prevent the dropping or tracking of materials onto streets. This includes ensuring that all wheels, tracks and body surfaces are free of mud and other contaminants before entering onto

the sealed road network. Where tracked material on the road pavement becomes a potential safety issue, the developer will be obliged to sweep and clean material off the road.

29. Where unfenced, the McMillans Road road frontage is to be appropriately fenced in accordance with Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics standards and requirements to the satisfaction to the consent authority.
30. The finish of any Prime Identification sign, if erected, shall be such that, if illuminated, day and night readability is the same and is of constant display (i.e. not flashing or variable message). The sign shall be positioned:
 - a) so as not to create sun or headlight reflection to motorists; and
 - b) be located entirely (including foundations and aerially) within the subject lot.

Advertising signage, either permanent or temporary, e.g. 'A' frame, vehicle or trailer mounted shall not be erected or located within the McMillans road reserve.

Notes

1. This permit will expire if one of the following circumstances applies:
 - a) the development is not started within two years of the date of this permit; or
 - b) the development is not completed within *four* years of the date of this permit.The consent authority may extend the periods referred to if a request is made in writing before the permit expires.
2. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (powerdevelopment@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
3. A "Permit to Work Within a Road Reserve" may be required from City of Darwin and Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics before commencement of any work within a road reserve.
4. Prior to the commencement of works (including site preparation), the applicant is to prepare designs and specifications for landscaping of the road reserve adjacent to the property, to the requirements of City of Darwin.
5. All developers, including owner-builders, are required to comply with Commonwealth telecommunications requirements. Under Commonwealth law, developers are generally required to provide fibre-ready pit and pipe in their developments at their expense. Developers may be able to access an

exemption from these arrangements in some circumstances. For more information visit www.infrastructure.gov.au/tind

6. If you choose nbn to service your development, you will need to enter into a development agreement with nbn. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered nbn will be in contact to discuss the specific requirements for the development. Nbn requires you to apply at least 3 months before any civil works commence. All telecommunications infrastructure should be built to nbn guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/builders-designers.html>
7. Information regarding erosion and sediment control can be obtained from the IECA Best Practice Erosion and Sediment Control 2008 books available at www.austieca.com.au and the Department of Environment, Parks and Water Security ESCP Standard Requirements 2019 and Land Management Factsheets available at <https://nt.gov.au/environment/soil-land-vegetation>. For further advice, contact the Land Development Coordination Branch: (08) 8999 4446.
8. There are statutory obligations under the *Weeds Management Act 2001* to take all practical measures to manage weeds on the property. For advice on weed management, please contact the Department of Environment, Parks and Water Security.
9. The Aboriginal Areas Protection Authority recommends that the permit holder obtain an Authority Certificate to indemnify against prosecution under the *Northern Territory Aboriginal Sacred Sites Act 1989*. For advice on how to obtain a certificate, please contact the Aboriginal Areas Protection Authority.
10. 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.
11. The development must comply with the technical standards of the Northern Territory Subdivision Development Guidelines for the construction of public infrastructure as part of subdivision works to the requirements of the relevant local and service authorities. Prior to any works commencing, it is encouraged that you engage early with the relevant authorities to confirm their requirements, and any variations that may be sought to the Subdivision Development Guidelines, to ensure the works are completed to the relevant authorities' requirements. The Northern Territory Subdivision Development Guidelines can be found at: <https://www.ntlis.nt.gov.au/sdg-online/>
12. There are statutory obligations under the *Waste Management and Pollution Control Act 1998* (the Act), that require all persons to take all measures that are reasonable and practicable to prevent or minimise pollution or

environmental harm and reduce the amount of waste. The proponent is required to comply at all times with the Act, including the General Environmental Duty under Section 12 of the Act. There is also a requirement to obtain an authorisation prior to conducting any of the activities listed in Schedule 2 of the Act. Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority website at <http://ntepa.ntg.gov.au/waste-pollution/guidelines/guidelines>.

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

13. The site is subject to the 'Defence Areas Control Regulations (DACR)'. All structures, including temporary structures, higher than 15m above ground level, including, but not limited to, additional buildings, light poles, cranes used during construction, vegetation etc., require approval from the Department of Defence.
14. The applicant is advised that the provision of lighting at the site is required to be consistent with the CASA Manual of Standards (MOS-139) Aerodromes to minimise the potential for conflict with aircraft operations. The design of lighting is a developer responsibility and if it is later found that lights or glare endangers the safety of aircraft operations, the Department of Defence or the Civil Aviation Safety Authority may require the lighting to be extinguished or suitably modified.

REASONS FOR THE DECISION

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

The application proposes the subdivision of three parcels (Portions 1841, 1842 and 1843, Hundred of Bagot) to create 81 lots. The site is multi-zoned, comprising of Zone LMR (Low-Medium Density Residential) and Zone PS (Public Open Space). The proposed subdivision comprises:

- 79 residential lots, ranging in size from 416m² to 1846m², within Zone LMR;
- One public open space lot with an area of 6160m² within Zone PS; and
- One lot to be used for a water retention basin within Zone LMR.

The application was originally for the purpose of 82 lots, however the proposal was amended by the applicant resulting in 81 lots being created.

The NT Planning Scheme 2020 (the Scheme) applies to the land, and subdivision of land requires consent under Clause 1.8 (When development

consent is required). It is identified as *Impact Assessable* under Clause 1.8(1)(c)(ii), and therefore the strategic framework (Part 2 of the Scheme, including the Darwin Regional Land Use Plan 2015, Zone purpose and outcomes of Clause 4.3 (Zone LMR – Low-Medium Density Residential) and Clause 4.17 (Zone PS – Public Open Space), Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR), Clause 6.2.2 (Lots less than 600m² for Dwellings-Single), Clause 6.2.3 Site Characteristics for Subdivision in Zones LR, LMR, MR and HR) and Clause 6.3.2 (Lot Size and Configuration for Subdivision in Zones RL, R and H, and Unzoned Land), need to be considered.

These clauses have been considered, and it is found that the proposal complies with the relevant requirements of the Scheme as conditioned, except for Clauses 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR), 6.2.3 (Site Characteristics for Subdivision in Zones LR, LMR, MR and HR) and 6.2.4 (Infrastructure and community facilities for subdivision in Zones LR, LMR, MR and HR).

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

Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR)

The proposal has been found not to be in accordance with sub-clause 6 of Clause 6.2.1 because proposed Lots 14, 26, 44 and 45 are not configured to enable compliance with the minimum building envelope requirement of 17m x 17m (exclusive of any boundary setbacks or service authority easements) that applies to lots with an area of 600m² or greater.

The Administration of the clause enables the Authority to consent to a subdivision not in accordance with sub-clause 6 provided it is satisfied the subdivision is consistent with the purpose of Clause 6.2.1 and the zone purpose and outcomes. The purpose of Clause 6.2.1 (Lot Size and Configuration for Subdivision in Zones LR, LMR, MR and HR) is to ensure that subdivision of land for urban residential purposes creates lots of size, configuration and orientation suitable for residential development at a density envisaged by the zone. The Authority is satisfied that a variation to this clause is appropriate in this instance because:

- with the exception of Lot 26, the non-compliant lots effectively adopt the building envelope requirements of the lower category (i.e. 450-599m² lots) rather than, the larger 600m²; and
- that the subdivision will still create lots of a size, configuration and orientation suitable for residential development at a density envisaged by the zone.

Clause 6.2.3 (Site Characteristics for Subdivision in Zones LR, LMR, MR and HR)

The proposal has been found not to be in accordance with sub-clause 4 of Clause 6.2.3, which requires that an application ensure, by site selection or site grading, that areas intended for lots less than 600m² do not slope in excess of 2% such that the need for on-site stormwater structures, retaining walls and the like is minimised. The assessment has found that it did not comply with proposed Lot 25, shown as one lot that is less than 600m² (590m²) that will have slopes in excess of 2%. The application indicates that the requirement for retaining walls has been minimised as part of the design.

The purpose of Clause 6.2.3 (Site Characteristics for Subdivision in Zones LR, LMR, MR and HR) is to ensure that the subdivision of land provides lots suitable for urban residential purposes that respond appropriately to the physical characteristics of the land and do not detrimentally impact on surrounding land. The Administration of the clause enables the Authority to consent to a subdivision not in accordance with sub-clause 4 only if it is satisfied the subdivision design is consistent with the purpose of this clause. Given that the subdivision design is able to demonstrate that the drainage surface contours are generally between 1 and 2%, the application is considered to respond appropriately to the zone purpose, and a variation to the requirements is granted.

Clause 6.2.4 (Infrastructure and community facilities for subdivision in Zones LR, LMR, MR and HR)

The proposal has been found not to be in accordance with sub-clause 7 of Clause 6.2.4, which requires that a subdivision provide a minimum of 10% (6.71ha) of the subdivision area as public open space where the proposed subdivision provides 9% (6.1ha).

The Administration of the clause enables the consent authority to consent to a subdivision that is not in accordance with subclause 7 only if it is satisfied the subdivision is consistent with the purpose of this clause which is to ensure that the subdivision of land for residential purposes is appropriately integrated with infrastructure, community services and facilities. The Authority, having regard to the Purpose and Administration of the clause, is satisfied to grant a variation to the clause. The Authority notes the assessment of the Development Assessment Services (DAS), which concludes that the proposed park is consistent in the area with a neighbourhood park. The zoning supports the connection of this park with open space to the north and south to form a connected network in the future, including a local park and pocket park. The Authority further notes that the area of the park in stage 1 includes two temporary turnaround areas at both the northern and southern ends of the park, providing areas for vehicles to manoeuvre without needing to provide a cul-de-sac. These roads will ultimately connect through to stage 2, and the turnaround areas will be absorbed into the public open space area, increasing the park's size to 6.64ha.

3. Pursuant to Section 51(e) of the *Planning Act 1999*, the consent authority must take into consideration any submissions made under section 49, and

any evidence received under section 50, in relation to the development application.

Four submissions were received which raised concerns regarding the impact of the development associated with the discharge of stormwater, both in terms of quality and quantity, potential flood risk on the subject land, change to the land surface (currently grass open), maintenance of the acoustic wall, future connection to Batten Road and variation to minimum building envelope requirements.

The Authority has carefully considered the concerns of the submitters and took comments into consideration in making its decision. The Authority also took into account the response provided by the applicant on submissions. In relation to the issue of stormwater, management conditions are included on the permit that expressly requires the proponent to submit stormwater management plan to the requirements of various service agencies to ensure that stormwater design is undertaken in accordance with the NT Subdivision Development Guidelines and demonstrate the on-site management and its discharge into the local and trunk stormwater drainage system.

A condition requiring the proponent to provide acoustic fencing is also included on the permit.

Regarding flooding, the Authority notes that there is no published mapping of flooding that shows the subject land is within a flood-affected area. Furthermore, the flood Overlays under the Scheme do not apply to the subject site. The Authority further notes that the recent rezoning approval of the land did not determine any flood risk associated with rezoning the land from Zone CV to Zone LMR.

In relation to the concern raised regarding variation to minimum building setback, the Authority relies on its reason 2 above, which concludes that the subdivision will still create lots of size, configuration and orientation suitable for residential development at a density envisaged by the zone. The concern regarding the connection to Batten Road relates to stage 2 of the subdivision, which is not part of the current application.

4. Pursuant to section 51(1)(j) of the *Planning Act 1999*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development. Pursuant to Section 51(1)(m) of the *Planning Act 1999*, the consent authority must consider the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

Conditions are included on the permit that expressly requires the proponent to submit stormwater management to the requirements of the

Department of Infrastructure, Planning and Logistics (where it impacts on the Northern Territory Government controlled road reserves), the Crown Land Management Division (where it impacts Crown land or a drainage easement in favour of the Territory), and the City of Darwin which ensures that stormwater design is undertaken in accordance with the NT Subdivision Development Guidelines and demonstrate the on-site management of stormwater and its discharge into the local and trunk stormwater drainage system. Furthermore, the condition of the permit also requires the post-development stormwater flows from the subdivision do not exceed the total pre-development stormwater flows and that stormwater run-off from the RAAF Base on Section 5730 (405) Stuart Highway Hundred of Bagot is not impeded.

Mr Brad Cunnington from Cunnington Rosse Town Planning and Consulting (the applicant), at the hearing, requested the Authority to remove the proposed condition precedent 1a requiring an amended plan to show internal roads and the intersections designed to allow 12.5 metre rigid passenger busses to allow public passenger transport and consider special needs accessible transport to serve the development in the future, to the requirements of the Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics. Mr Cunnington stressed that a design requirement would create significant changes to the subdivision design. Mr Cunnington advised that the comments received from the Transport and Civil Services Division indicate no such requirement, and therefore, the proposed condition precedent is not relevant for the subdivision.

The Authority noted the applicant's comments and removed the proposed condition precedent 1(a). The Authority noted that the majority of lots are within the 400m radius of the bus stop located on McMillans Roads as required under the Scheme.

Mr Cunnington also requested the Authority to amend the note in the proposed condition precedent 2 referring to the proposed intersection with McMillans Road limited to LEFT-IN and LEFT-OUT. Mr Cunnington advised the Authority that discussions are ongoing with the Transport and Civil Services Division to re-assess the requirements of LEFT-IN and LEFT-OUT at the intersection with McMillans Road. Therefore the note should be amended to allow access arrangements to the satisfaction of the approving road agency.

The Authority noted the applicant's comments and amended the condition precedent 2 to provide flexibility for access arrangements from McMillans Road to the requirements of the Transport and Civil Services Division.

Recommended conditions precedent 4 was amended to seek stormwater management plan approval from the City of Darwin. The Authority questioned the applicant regarding amending the general condition 15 to reflect the requirements of Power and Water Corporation (PWC), sewerage division. The applicant agreed that all infrastructure works in the

proposed subdivision would be carried out to the requirements of the service authority and was amenable to amend the condition.

In addition to the above, the Authority required a number of other servicing matters to be addressed through conditions of consent. These matters include the submission of a construction management plan, a weed management plan and an erosion and sediment control 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.

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

The proposed subdivision creates a diverse urban residential environment by providing a variety of lot sizes and housing types. The Authority notes that the subdivision design seeks to promote the best amenity outcomes for the future residents by providing a 2.3m high acoustic wall along McMillans road and a single neighbourhood park suitably designed and located to provide for public use and enjoyment of future residents. Provided the subdivision proceeds in accordance with the conditions included on the permit and provided that associated stormwater drainage is appropriately managed, the proposed subdivision can achieve appropriate levels of residential amenity.

The Authority at the hearing questioned the applicant regarding the safety consideration of lots adjacent to the western boundary (adjacent to the Darwin Golf Club). Mr Cunnington explained that the depth of lots adjacent to the western boundary (adjacent to the Darwin Golf Club) is increased to provide a greater separation to golf course activities and there is a safety net along this boundary. The Authority notes that a 1.8m high colorbond fence is proposed along the boundary of the lots adjacent Golf Course.

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

Marion Guppy

MARION GUPPY
DEPUTY CHAIR

25th/08/2022