



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 403 – FRIDAY 3 FEBRUARY 2023

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

MEMBERS PRESENT: Suzanne Philip (Chair), Marion Guppy, Peter Pangquee and Mick Palmer (not present for item 1)

APOLOGIES: Mark Blackburn

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Amit Magotra and Emily Hardy, Ann-Marie Reynolds and Sonia Barnes (Items 1, 2 & 3), (Development Assessment Services)

COUNCIL REPRESENTATIVE: Cindy Robson and Rob Taylor

Meeting opened at 10.45 am and closed at 2.15 pm

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

ITEM 1
PA2022/0287
RECONSIDERATION - ROOMING ACCOMMODATION WITH 72 ROOMS (INCLUDING 1 STAFF ACCOMMODATION ROOM) IN A NINE STOREY BUILDING WITH GROUND LEVEL CAR PARKING
LOT 1380 (7) SHEPHERD STREET, DARWIN CITY, TOWN OF DARWIN
APPLICANT Peter McMillan

Pursuant to section 97 of the *Planning Act 1999*, Mick Palmer, Community Member of the Darwin Division of the Development Consent Authority disclosed an interest and was not present during, contributed to or took part in the deliberation or decision of the Division in relation to Item 1.

DAS tabled a further submission from David Norton (Chairman, Body Corporate, 82 Woods Street).

Applicant - Peter McMillan attended.

Submitter Lulu Yang sent her apology.

Submitters – Chairman Body Corporate 82 Woods Street – David Norton attended via video link, Tony O'Neill, John Blockey and Roger O'Brien attended.

Yuhan Selva (Ace Body Corporate) and Bill Linkson (owner of a unit at 82 Woods Street) attended on behalf of 82 Woods Street.

RESOLVED
07/23

That, the Development Consent Authority vary the requirements of Clauses 5.2.3.2 (Volumetric Control in Central Darwin and 5.2.3.3 (Urban Design Requirements in Central Darwin) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 1380 (7) Shepherd St, Darwin City, Town of Darwin for the purpose of rooming accommodation (student accommodation) with 72 rooms (including 71 single rooms and 1 staff accommodation room) in a nine storey building with ground level car parking, subject to the following conditions:

CONDITION 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 generally be in accordance with the plans submitted with the application but modified to show:
 - a. 13 car spaces in the ground floor car park in accordance with Clause 5.2.4.4 (Parking Layout);
 - b. Removal of drop-off area in the Shepherd Street road reserve; and
 - c. Provision of on-site drop-off area with swept path diagrams for vehicle accessing the drop-off from the proposed crossover having

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- regard to minimising the impact of the drop-off area on active street frontages as per Clause 5.2.3.3 (Urban Design Requirements in Central Darwin); and
- d. (Power Networks) approved substation dimensions of 4.0m x 3.5m.
2. Prior to the endorsement of plans, prior to the commencement of works (including site preparation) a Car Parking Management Plan (CPMP) for the use must be submitted to and approved by the consent authority. When approved, the plan will be endorsed and will then form part of the permit. The CPMP must include, but not necessarily be limited to, the following:
- measures to restrict and control student car ownership;
 - measures to ensure student/ visitor vehicles are not parked within car parking spaces not designated for this development or on surrounding streets;
 - operational and management details of any car share scheme;
 - procedures for monitoring, investigating and reporting; and
 - procedures to receive and address complaints and infringements including the position and details of the Manager (or other nominated person, recording mechanisms of complaints received and infringements identified and actions undertaken.
3. Prior to the endorsement of plans and commencement of use, an operational management plan (OMP) must be submitted to and approved by the consent authority addressing the use of the property for the purpose of rooming accommodation, to the satisfaction of the authority. When approved, the OMP will be endorsed and will form part of the permit. The OMP must include specific measures to ensure the use is operated as student accommodation only. The OMP must include, but not necessarily be limited to, the following
- Details of the occupancy agreement demonstrating measures to ensure the use as student occupation;
 - Details on how the communal facilities, laundry facilities and bicycle parking will be made available as well as the hours of access;
 - Details in relation to the management of guest arriving and departing from the property; and
 - Details of the day to day management of the property and measures to be taken (by the site manager) should breaches of the occupational management plan occur.
4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a comprehensive Traffic Impact Assessment report is to be prepared by a suitably qualified traffic engineer to the requirements of the City of Darwin, to the satisfaction of the consent authority. The traffic impact assessment report should be in accordance with the Austroads Document Guide to Traffic Management Part 12: Traffic Impacts of Developments, in the report structure provided as Appendix C of that document. The Traffic Impact Assessment shall include:
- a. Identify adequate access sightlines for pedestrians, cyclists and vehicles is provided for all vehicle access points exiting from the site;

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- b. Swept paths for vehicles accessing the drop-off area;
 - c. Swept paths for waste collection vehicles entering and exiting the site;
 - d. Development traffic generation, trip distribution, traffic operation impact and measures required to mitigate the traffic impacts.
 - e. Any necessary upgrades to the surrounding street networks.
 - f. Details on the internal parking layout, to confirm that vehicles exiting parking bays 1 and 2 do not conflict with the swing gate.
5. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), approval is required for the provision of awnings to the street frontages to the requirements of the City of Darwin, to the satisfaction of the consent authority.
6. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a landscape plan to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plan will be endorsed and will then form part of the permit. The landscaping plan must be generally in accordance with the landscape concept plan and must include a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, sizes at maturity, and quantities of each plant. All species selected must be to the satisfaction of the consent authority.
7. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.
8. Prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the city of Darwin stormwater drainage system shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels and Council's stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council's system.
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), a waste management plan addressing the City of Darwin's Waste Management Guidelines must be prepared, to the requirements of the City of Darwin, to the satisfaction of the consent authority. The waste management plan

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must include a turning template demonstrating internal waste vehicle circulation is to be provided and should confirm that a waste vehicle can safely enter and exit the site in a forward gear.

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. All works recommended by the traffic impact assessment are to be completed to the requirements of the City of Darwin, to the satisfaction of the consent authority.
13. 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 and 2 for further information.
14. 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.
15. 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.
16. If Council approval is obtained for in association with Condition 5 and other encroachments into the City of Darwin Road Reserve building elements over City of Darwin road reserve, the applicant will be required to enter into appropriate agreements with the City of Darwin and the design specifications to the requirements of the City of Darwin, to the satisfaction of the consent authority.
17. 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.
18. Written confirmation from a qualified traffic engineer that the car parking spaces and access lanes associated with the development comply with the relevant Australian Standards for car parking must be provided in instances where the car parking does not comply with the minimum requirements of Clause 5.2.4.4 (Parking Layout) of the Northern Territory Planning Scheme 2020, to the satisfaction of the consent authority.
19. 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.

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20. The owner shall:
 - (a) remove disused vehicle and/ or pedestrian crossovers;
 - (b) provide footpaths/ cycleways;
 - (c) collect stormwater and discharge it to the drainage network; and
 - (d) undertake reinstatement works;all to the technical requirements of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
21. 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 parking spaces, access lanes and driveways must be kept available for these purposes at all times.
22. 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, in accordance with the requirements of City of Darwin, to the satisfaction of the consent authority.
23. Upon completion of any works within or impacting upon the Woods Street and Shepherd Street road reserve, the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin.
24. Before the occupation of the development starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
25. 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.
26. Storage for waste disposal bins is to be provided to the requirements of City of Darwin to the satisfaction of the consent authority.
27. 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 and from view of neighbouring or nearby developments (or developments reasonably anticipated), 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. The use of angled louvered slats for screening

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purposes is acceptable, however the slat screening must be designed with a panel to gap ratio, such that the condenser units are not readily visible from any angle.

28. 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).
29. 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.
30. 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.
31. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building.
32. 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.
33. The use must operate in accordance with the Car Parking Management Plan (CPMP) and Operation Management Plan (OMP) endorsed as forming part of this permit.
34. Excluding the staff accommodation room, the premises must not be occupied more than 71 persons at any time.

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. 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

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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>

3. This development permit is not an approval to undertake building work. You are advised to contact a Northern Territory registered building certifier to seek a building permit as required by the Northern Territory *Building Act 1993* before commencing any demolition or construction works.
4. 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 8936 4070 to determine if the proposed works are subject to the Act.
5. The Department of Defence advises that the subject site is located in an area mapped by Defence as "Birdstrike Group B". In this area certain land uses that have the potential to attract wildlife should be avoided through the management of organic waste (such as maximum storage onsite and the use of covered/enclosed bins, as they will potentially increase the risk for bird strike for aircraft operation from RAAF Base Darwin.
6. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5346 (surveylandrecords@nt.gov.au).
7. 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.
8. A "Permit to Work Within a Road Reserve" may be required from City of Darwin before commencement of any work within the road reserve.
9. The City of Darwin advises that a monetary contribution is paid to City of Darwin, in lieu of the removal of any on-street car parking bays in Woods Street. Any changes to line marking or signage as a result of this development will be at no cost to Council.
10. This development as approved by the Development Consent Authority (DCA) achieves a level of active interface deemed by the authority to provide 75% of the length of the (Shepherd Street) site boundary at ground level as active street frontage. Retaining this level of active frontage is considered by the DCA to be essential to this development achieving the purpose of clause 5.2.3.3 (Urban Design Requirements in

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Central Darwin). Any reduction in the percentage of active street frontage is unlikely to be supported, and will require full consideration by the DCA at a meeting of the authority. Refer to “Design guidance to achieve active frontages and provide for services” for advice to active street frontages in relation to service authority requirements.

Notwithstanding the approved plans, the demonstrated awning in City of Darwin road reserve is subject to Council approval at no cost to Council.

11. City of Darwin has advised approval is required for any element of the building (separate to awnings) that is designed to be constructed or installed over the City of Darwin road reserve, to the satisfaction of the consent authority.
12. 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.
13. 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*.
14. A Compliance Certificate under the *Swimming Pool Safety Act 2004* issued by the Swimming Pool Safety Authority is required for the swimming pool/s prior to the commencement of the development.

REASONS FOR THE DECISION

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

The NT Planning Scheme 2020 (NTPS) applies to the land and rooming accommodation requires consent under Clause 1.8 (When development consent is required). It is identified as Merit Assessable under Clause 4.10 Zone CB (Central Business), therefore Clauses 5.2.3 (Buildings in Central Darwin), 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), 5.4.7 (Communal Open Space) and 5.4.8 (Building Design for Dwelling Group, Dwelling Multiple, Rooming Accommodation and Residential Care Facility), need to be considered.

This is a reconsideration of an application that has been before the DCA on two previous occasions as the Authority sought clarification as to how the application met the definition of “rooming accommodation” in Schedule 2 of the NTPS and to address concerns raised by submitters. The application, as originally presented to the DCA stated that the “*proposed facility will provide short to medium term accommodation for a range of visiting tourists, professionals and others requiring accommodation*”

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for a period longer than that expected in an hotel/ motel, without entering into a residential lease.” The NTPS contains various definitions which potentially apply to the proposed use. An applicant’s description of a proposed development as falling within a particular definition is not, of itself, decisive. It will always be a question of fact and degree to be determined objectively by the DCA as to whether a proposal meets the elements of a defined use. Three possible definitions may apply to the proposed use - rooming accommodation, serviced apartments and particularly hotel/motel. It is of particular import as the resultant Scheme requirements such as parking vary greatly between those uses. Elements of this proposal fitted just as easily within the definition of hotel/motel as it would rooming accommodation. Hotel/motel is defined to mean–

premises primarily used for the short term accommodation of travellers. The use can include where ancillary, meeting and function rooms, food premises-restaurant, a bar-small, and recreation facilities, but does not include a bar public, club, or nightclub entertainment venue;

Short term accommodation is not defined legislatively but may, in various contexts, include accommodation of up to 3 months or even 6 months. Hotels commonly include such facilities as guest laundries and communal eating spaces.

The definition of rooming accommodation on the other hand provides - *rooming accommodation means premises such as hostels, guest houses, student and worker accommodation used for the accommodation of unrelated persons which may include:*

(a) the provision of food or other services and facilities, and/or

(b) on-site management or staff and associated accommodation,

and where each guest/resident:

(c) has a right to occupy one or more rooms; and

(d) does not have a right to occupy the whole of the premises in which the rooms are situated; and

(e) may have separate facilities for private use or share communal facilities or communal space with other residents.

The use can include where ancillary, bar-small, food premises-café/take away, office, and shop;

Items (a) to (e) could equally apply to a hotel/motel. The key lies in the introductory words - premises such as hostels, guest houses, student and worker accommodation. Rooming Accommodation is also dealt with in Clause 5.4.8 Building Design for Dwelling-group, Dwelling-multiple, Rooming Accommodation and Residential Care Facility which may give some guide as to the type of accommodation that would be covered by the term.

A hostel is a budget-oriented overnight lodging place, with dormitory accommodation and shared facilities. A guest house is a private house offering accommodation to paying guests. Neither amounts to the type of accommodation originally described as on offer in this application. The accommodation was to be open to the general public, not limited to

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students or workers. As a result, the DCA's sought details which would establish why this proposal should be considered as rooming accommodation and not as a hotel/motel.

Meeting 7th October 2022

This application was first considered by the Authority at its meeting on 07 October 2022. The application was subsequently deferred to enable the applicant to provide additional information that the Authority considered necessary in order to enable proper consideration of the application, including:

- amended plans showing more car parking spaces akin to hotel/motel use;
- amended plans showing a drop off zone within the site; and
- further information and/or amended plans addressing concerns raised by the City of Darwin regarding waste management, including waste collection and compliance with the City of Darwin's Waste Management Guidelines.

The key consideration that formed part of the Authority's decision was its classification as rooming accommodation that overlaps with the NTPS 2020 definitions of hotel/motel and serviced apartments. The Authority noted that classification determines the applicable clauses, including matters such as the number of car parking spaces to be provided. The Authority considered that this is particularly relevant given the concerns of the public submitters relating to the impact on the amenity of car parking and traffic congestion.

In response to the Notice of Deferral, the applicant, Mr Peter McMillan, provided a written response to address the points of deferral. The response outlined why additional car parking was not provided. The deferral response also indicated that a drop off point could be provided from the Woods Street driveway or from the Shepherd Street, however amended plans were not provided clarifying the proposed location of the drop-off point. In response to waste management, the deferral response indicates that waste will be compacted and sorted on site and that the on-site manager will be responsible for disposing of the waste.

Meeting 5th December 2022

On that basis, the application was reconsidered at the Development Consent Authority meeting dated 05 December 2022.

In considering the application, the Authority again raised concerns regarding the classification of the use as rooming accommodation and its impact on the car parking and other development requirements.

Mr McMillan, at the hearing, clarified that the intent is for students, including post graduate students, dance students, hospitality students and academics, and they have no intention to provide short term accommodation to workers or travellers. Mr McMillan also indicated that some of the car parking spaces could be utilised to accommodate a car-

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share agreement whereby students would be afforded the opportunity to hire one of three cars provided onsite if and when required thereby further negating the need to have personal vehicles. Furthermore, Mr McMillan confirmed that he did not have any issues limiting the development occupants to students and academics.

The Authority noted that for any permit to be issued for a 'rooming accommodation' the use must comply with the definition in Schedule 2. The applicant conceded that the proposed development was intended for the use of students, including post graduate students, dance students, hospitality students and academics and there was no intention to provide short term accommodation to workers or travellers. The Authority considered the need for further information demonstrating how the use will be limited to students and associated academics only. Further information was also requested regarding the provision of additional car parking spaces to accommodate the provision of a car-share agreement, drop-off area and details of car share arrangements proposed by the applicant.

The applicant responded to the deferral, which outlined details of the Occupation Agreement at which students are permitted to reside, conditions of residency and details regarding car share arrangements. The applicant also provided amended plans showing additional 4 car parking spaces on the ground floor of the building and a drop-off area in the driveway to Shepherd Street.

Meeting 3rd February 2023

The Authority accepted the Development Assessment Services (DAS') assessment that concluded that the terms and conditions of the Occupancy Agreement, proposed by the applicant, provide details regarding eligibility criteria and the lessee's use obligations and prohibitions. The Authority was mindful that it could not feasibly condition and subsequently enforce a permit containing conditions that would reflect a specific business model. The Authority determined to include the classification of the rooming accommodation (i.e. Students Accommodation) on the permit to clarify the nature of the use, to make the applicant aware of the limitations proposed on the development and to restrict the use of the development for any other purpose. The Authority noted that any change to the use of the rooming accommodation classification would require a change of use application, which would be subject to an assessment under the NTPS 2020. Furthermore, any change to the land use without consent would also be subject to compliance enforcement.

In regard to the car parking, the Authority notes that the amended ground floor plan shows four additional car parking spaces (50% greater than required for a rooming accommodation under the NTPS 2020). The Authority further notes that the site is located within the CBD area and is surrounded by a mix of land uses accommodating a range of retail, commercial, and educational establishments (including the new CDU campus and Vocational Education providers) and other land uses. The

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main destination of residents would be Charles Darwin University (new campus) which is located within proximity (approximately 500m). Furthermore, bicycle parking is provided on each level (a total of 48 spaces). A bus stop is located within 400m of the site, providing students with a range of transport options. The Authority considered these as legitimate reasons to consider the car parking provided in the development adequate for the proposed use.

At the hearing, Mr Peter McMillan (applicant) spoke to the application and reiterated that the proposed use would provide accommodation only for students and associated academics'. Mr McMillan stressed that the nature of the land use, the proposed business operations model and the target market for the proposed development includes postgraduate students, dance students, hospitality students and academics and will be limited to these occupants only. Mr McMillan outlined that measures will be taken (as stated in the occupancy agreement) to ensure that the use operates as Students Accommodation. The Authority noted that the car parking requirements of the NTPS for rooming accommodation are calculated on the number of persons and that the application as originally advertised was for 71 single rooms and a caretaker's room. Mr McMillan indicated that in some cases a student with disabilities may have a carer in their room. However, given the NTPS requirements, the nature of the use as advertised and the lack of detail around any such double occupancy rooms, the Authority determined to approve the application for 71 single use rooms and 1 staff accommodation room and to specify a maximum number of occupants, excluding the staff accommodation room, of no more than 71 persons at any time.

Condition precedent 3 is included on the permit to provide an Operation Management Plan (OPM) for the proposed use as student accommodation. The OPM must consist of detailed measures and conditions of occupancy for students and associated academics, ensuring the use is operated as student A general condition that the use operates in accordance with the endorsed OPM will ensure that the use operates as per the obligations and prohibitions of the Student Accommodation.

In regard to the other non-compliance relating to Clause 5.2.3.3 (Urban Design Requirements in Central Darwin) of the Northern Territory Planning Scheme 2020 identified in the technical assessment, the Authority relies on the reasons which conclude that:

- The subject site is bounded by roads on two sides, and the setback intrusion is minor in nature and will not impact the potential for view corridors to Darwin harbour.
- The intrusion of the building to the north-west and south-west side boundaries are minor (approximately 1m) and privacy screening of the balconies is demonstrated on the plans along the southwest boundary balconies.
- The non-compliance related to two street frontages at level 8 are not impacted as the widths of the road reserve allow for adequate daylight and breeze penetration between buildings.

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A full compliance with the active street frontage for Woods Street is impractical to achieve as the boundary length of Woods Street is shorter than Shepherd Street and all service connections and car parking access is located along this street frontage.

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 or information received under section 50, in relation to the development application.

The initial application was placed on public exhibition for a period of two weeks. Two public submissions were received under section 49(1) of the *Planning Act 1999*.

Eight submissions (four in opposition and four in support) were received after the completion of the exhibition period and were therefore not considered under Section 49 of the Act. However, such late submissions can be considered by the Authority under Section 51(t) which allows a consent authority, in considering a development application, to take into account "other matters it thinks fit". Given that the matters raised in the late submissions were substantial, it is proper that they be considered in making a determination in this matter. (see *Association of Islamic Da'Wah in Australia Inc v Development Consent Authority* [2019] NTCAT 14)

The consent authority at the 05 December 2022 meeting decided to defer consideration of the application to allow the applicant to provide further information.

The applicant's response, including amended plans were circulated to all submitters, including late submissions, to comment.

Two further submission were received, raising concerns regarding limited on-street parking available on surrounding streets, less on-site parking for the use and the need for clarity regarding the management of use. In addition to the written submissions, the Authority heard from submitters present at the meeting.

Mr Norton, a neighbour of the site reiterated the concerns raised in his written submissions with the car parking requirements required for rooming accommodation in the NTPS 2020. Mr Norton raised that while the proposal is limited to students, and noting the applicant has provided 4 additional car parking spaces, there is no provision for visitors' vehicle parking in the proposed development. This will create pressure on the limited on-street parking. Mr Norton also raised concerns regarding the enforcement of management measure suggested by the applicant, as these measure does not sufficiently safeguard residents in the future.

Mr O'Neill raised concerns regarding potential non-compliance of the ground floor car parking with Clause 5.4.2.2 (Parking Layout) of the NTPS 2020. Mr O'Neill considered the 4 additional car parking spaces along the side boundary would likely result in a reduced two way driveway width of

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less than 6m and therefore does not comply with Planning Scheme requirements for two way traffic. Mr O'Neill also shared concerns in relation to the car parking requirements required for rooming accommodation in the NTPS 2020.

Mr Roger O'Brien shared many of the same concerns as Mr Norton in relation to the car parking requirements.

The Authority has taken all comments into account and carefully considered the submitters' concerns raised in their submissions and the hearing (including previous submission and hearings) the applicant's response to the matters raised.

The Authority clarified that the application is lodged and assessed under the requirements Planning Scheme and it is not the role of the Authority to determine the validity of a particular requirement of the Scheme.

With regard to the concerns raised by the submitters' regarding less car parking and its impact on the surrounding streets, a condition requiring a Car Parking Management Plan (CPMP) along with a general condition to enforce the CPMP is included on the permit.

With regard to the concerns raised by Mr O'Neill, a condition precedent to provide an amended ground floor car parking plan in accordance with Clause 5.4.2.2 is included on the permit, as details are not shown on the submitted plans.

3. 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.

The application was circulated to the relevant authorities and comments received from these authorities are addressed by the inclusion of conditions and/or notations on the development permit as required

Regarding the drop-off area, the Authority noted that the applicant proposes to include a drop-off area in the Shepherd Street driveway to cater to the needs of guests arriving by taxi or similar vehicles.

At the hearing, Ms Cindy Robson from the City of Darwin confirmed to the Authority that approval for the drop-off area on Shepherd Street will not be supported due to issues with the layout and design of the adjacent road network, space constraints with the ongoing shared path removal of on-street car parks and issues with the ongoing maintenance requirements of unground service corridors.

A condition to provide amended plans showing the removal of drop-off area in the Shepard Street road reserve and the provision of an on-site drop-off area with swept path diagrams is included on the permit.

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The City of Darwin's concerns relating to waste management and removal is address by a condition precedent requiring a Waste Management Plan to the satisfaction of the City of Darwin included on the permit.

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

The proposal is consistent with surrounding land uses in Zone CB in the immediate locality, which predominately comprise residential, office, and commercial uses. Given the scale and density of the proposal and the terms of the NTPS which expects and allows such uses within the CB zone, no impact on the existing or future amenity of the area is anticipated. The internal orientation of dwellings and the use of solid perimeter walls will assist in reducing noise transmission from adjoining streets.

Provided the use operates in accordance with the conditions of the permit, minimal impact on the existing and future amenity of the area is expected.

FOR: 3
AGAINST: 0
ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

ITEM 2
PA2022/0453

GROUND LEVEL CAR PARK (38 CAR PARKING SPACES)

LOT 6824 (2) FOELSCH STREET, DARWIN CITY, TOWN OF DARWIN

APPLICANT Cunningham Rosse Town Planning and Consulting

Applicant – Brad Cunningham and Chiara Randazzo (Cunnington Rosse Town Planning and Consulting) attended.

Submitter -Mia Spencer (on behalf of the residents of 4 Foelsche Street - City Central Apartments) attended.

RESOLVED
08/23

That, pursuant to section 53(a) of the *Planning Act 1999*, the Development Consent Authority consent to the application to develop Lot 6824 (2) Foelsche Street Darwin City, Town of Darwin for the purpose of a ground level carpark (38 car parking spaces), subject to the following conditions:

CONDITIONS PRECEDENT

1. 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.

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2. Prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Darwin stormwater drainage system shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels and Council's stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council's system.
3. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of City of Darwin.

GENERAL CONDITIONS

4. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
5. 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.
6. 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.
7. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply and electricity to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time. Please refer to notation 1 for further information.
8. 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.
9. The owner shall:
 - (a) remove disused vehicle and/ or pedestrian crossovers;
 - (b) provide footpaths/ cycleways;
 - (c) collect stormwater and discharge it to the drainage network; and
 - (d) undertake reinstatement works;all to the technical requirements of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
10. Before the use or occupation of the development starts, the area 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;

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- (d) drained;
- (e) line marked to indicate each car space and all access lanes; and
- (f) clearly marked to show the direction of traffic along access lanes and driveways to the satisfaction of the consent authority.

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

11. Protective kerbs (of a minimum height of 150mm) must be provided to the satisfaction of the consent authority to prevent damage to fences or landscaped areas.
12. Any gate over an access to a public road shall be placed on the subject site at least 4.5 metres from the face of the kerb line of the adjoining public road to the requirements of 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, in accordance with the requirements of City of Darwin, to the satisfaction of the consent authority.
14. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
15. Upon completion of any works within or impacting upon existing road reserves, the infrastructure within the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin and returned to the condition as documented in the dilapidation report.
16. Before the use of the development starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
17. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.

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.

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2. A “Permit to Work Within a Road Reserve” may be required from City of Darwin before commencement of any work within the road reserve.
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. 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
5. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin

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 NT Planning Scheme 2020 applies to the land and a carpark requires consent under Clause 1.8 (When development consent is required). It is identified as Merit Assessable under Clause 1.891(b)(ii)(2), therefore the zone purpose and outcomes of Clause 4.10 Zone CB (Central Business), Clause 5.2.4.4 (Parking Layout), Clause 5.2.6 (Landscaping) and Clause 5.5.3 (Commercial and other development in Zones HR, CV, 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.

The DAS report notes that the shade structure proposed on the corner provides an identifiable access point to the car park and protects pedestrians from sun and rain. Furthermore, two shade trees are proposed in the two internal landscaping strips, which can provide shading to car parks.

At the hearing, Mr Brad Cunningham from Cunningham Rosse Town Planning and Consulting (applicant), gave an overview of the proposed development. Mr Cunningham explained that the car park will be secure and privately leased and indicated the gates will be remotely operable via a smartphone app which will restrict access into the car park.

The Authority notes the DAS report recommended a condition precedent that required amended drawings illustrating wheel stops within the turnaround bay to prevent two-way circulation and improve the internal functionality of the car park.

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The Authority notes the car park proposes 38 car parking bays which are intended to be privately leased, and therefore considers the requirement for wheel stops within the turnaround bay unnecessary.

2. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent authority must take into consideration any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application

Ms. Mia Spencer (on behalf of the residents of 4 Foelsche Street - City Central Apartments) attended and spoke to the matters raised in the submission regarding noise, heat generation, anti-social behaviour and the existing traffic congestion on Foelsche Street. Ms Spencer stated there is an abundance of car parking within the city centre that serves the wider community and which is not at capacity, and questioned whether another car park is warranted. Ms Spencer deemed the site to be prime real estate and that a short term development does not serve the community best. Ms Spencer advised the Authority that the application was not exhibited correctly as signage was not placed on the Woods Street frontage.

Mr Cunnington addressed the Authority and noted that the car park proposed does not generate a parking requirement under the NTPS 2020 and will not bring any additional traffic to the area. It is anticipated to provide additional off-street parking and a space to people who those already working or residing in the immediate area.

At the hearing Ms Cindy Robson from the City of Darwin confirmed to the Authority that the comments in its letter dated 9 December 2022 are correct and City of Darwin requires details of sightlines and has requested the inclusion of a standard condition for sightlines. In terms of traffic, Ms Robson advised that the traffic generation from the site was anticipated to be less than 5% at peak hour and therefore does not warrant any traffic modelling, hence why none was requested.

The Authority has taken all comments into account and has considered the deeply held concerns of the submitter. The Authority notes Lot 6824 (2) Foelsche Street is bounded, on the Wood Street boundary, by another parcel of land, Lot 6927 (34) Wood Street, being a 1.5m wide parcel accommodating electrical infrastructure.

Given the lot does not front a public road, the Authority considers the application was exhibited in accordance with section 47 of the *Planning Act 1999* and section 6A(3) of the *Planning Regulations 2000*.

In relation to the concerns regarding traffic, the Authority notes that Local Government Authority, the City of Darwin, the authority responsible for Foelsche Street did not raise any issues of concern or specific requirements for the development Street as well as Ms Robsons comments in relation to traffic congestion on Foelsche.

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The Authority clarified that the application was lodged and assessed under the requirements NT Planning Scheme 2020 and it is not the role of the Authority to determine the viability of a proposed development.

As a merit assessable use, the Authority also considers the conditions imposed on the development permit will ensure the carpark can be established and operated in a way that is unlikely to impact on the amenity of the area and accords with the relevant zone purposes and outcomes. Furthermore, the Authority notes that establishing a use on a vacant site will allow for continued passive surveillance of surrounding streets.

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 subject site can be serviced by reticulated power and water as required. The site has been previously cleared and is considered capable of supporting the proposal.

The Department of Environment, Parks and Water Security did not comment on the application and no issues in relation to land capability were identified or raised by other service authorities.

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.

Whilst it is acknowledged the proposed use of the site for a car park is not the highest density or 'best use', the development of a car park is expected to reactivate and improve the amenity of the existing lot which is currently vacant, overgrown and unkempt.

The proposal will activate the site, provide improved landscape frontages and pedestrian linkages and provide additional off-street parking options in the central business locality.

FOR: 4
AGAINST: 0
ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

ITEM 3
PA2022/0411
CHANGE OF USE FROM SHOP AND CARETAKERS' RESIDENCE TO
DWELLING-MULTIPLE (1 X 3 BEDROOM AND 1 X 4 BEDROOM) IN AN
EXISTING 1 X 2 STOREY BUILDING
LOT 6386 (66) MARINA BOULEVARD, LARRAKEYAH, TOWN OF DARWIN
APPLICANT Tatam Planning Co

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Applicant – Cat Tatam (Tatam Planning Co) attended.

RESOLVED
09/23

That, the Development Consent Authority reduce the car parking requirements pursuant to Clause 5.2.4.2 (Reduction in parking requirements outside of Zone CB in Darwin) and vary the requirements of Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), Clause 5.4.6 (Private Open Space) and Clause 5.4.7 (Communal Open Space) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(b) of the *Planning Act 1999*, alter the proposed development and consent to the proposed development as altered to develop Lot 6386 (66) Marina Boulevard, Town of Darwin for the purpose of a change of use from shop and caretakers' residence to dwelling-multiple (1 x 3 bedroom and 1 x 4 bedroom) in an existing 1 x 2 storey building, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans submitted with the application but modified to show:
 - (a) The planter boxes altered to remove the metal slats proposed;
 - (b) Plant specifies details and overall height of the planter boxes;
 - (c) Ground level doors to the laneway to be removed or swing inwards towards the dwelling-multiple and/or clarification that the WC external to the dwelling-multiple is existing and does not form part of this application; and
 - (d) Elevation plans to confirm window design, show planter boxes and remove 'existing drawings to date' with materials and finishes shown on plans.

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

Please refer to notation 1 for further information.

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5. The use and development as shown on the endorsed plan must not be altered without the further consent of the consent authority.
6. A certificate of compliance for the development approved under this permit will not be granted until Part V clearance has been issued for the revised unit title arrangements resulting from the development.

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. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
3. The 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*.

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 NT Planning Scheme 2020 (NTPS 2020) applies to the land. The use of the existing building for dwellings-multiple is identified as *Impact Assessable* under Clause 4.13 TC (Tourist Commercial) and therefore the strategic framework of Central Darwin Area Plan (2019), the zone purpose of outcomes of Clause 4.13 TC (Tourist Commercial), Clause 5.2.4 (Vehicle Parking), Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), Clause 5.4.6 (Private Open Space), Clause 5.4.7 (Communal Open Space) and Clause 5.4.8 (Building Design for Dwelling-group, Dwelling-multiple, Rooming Accommodation and Residential Care Facility) need to be considered.

It is noted that under Clause 1.10(5) of the NTPS 2020, the consent authority may consent to a proposed development that is not in accordance with Part 5 of the Scheme only if it is satisfied that the variation is appropriate having regard to the purpose and administration clauses of the requirement, and the considerations listed under Clause 1.10(4).

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The following has been assessed as part of the application in accordance with Clause 1.10(4) for, *“an application for a use or development identified as Impact Assessable the consent authority must take into account all of the following:*

- (a) any relevant requirements, including the purpose of the requirements, as set out in Parts 5 or 6;*
- (b) any Overlays and associated requirements in Part 3 that apply to the land;*
- (c) the guidance provided by the relevant zone purpose and outcomes in Part 4; and*
- (d) any component of the Strategic Framework relevant to the land as set out in Part 2.”*

This is discussed in the section below.

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).

Central Darwin Area Plan (CDAP) 2019

The proposal has been considered under the CDAP, which identifies the subject site as being located in an area for mixed use (commercial, civic, residential, education, tourism, recreation and retail) and within an area for activated frontages. When assessing the mixed use themes of CDAP, Objective 2.1 is to *“encourage development that provides for a mix of uses”*. Ms Tatam confirmed the intent of the ground floor dwelling-multiple is to provide short term accommodation as a dwelling-multiple to the area, contributing to the mixed use nature of the site. Objective 2.2 seeks to *“encourage building design for new buildings that can be adapted to changing demand”*, which will not be altered by the change of use. In future, if the ground level were to be used as a shop again, internally, the building has been designed for this use and it could be re-established.

The site is located within a mixed use area, with a requirement for activated street frontages. When assessing the objectives of a mixed use area, the existing building does not meet Objective 2.3 to *“provide activated frontages with ground floor commercial activities in priority locations”*. Under the residential theme, the CDAP states, *“Within established residential areas, such as Larrakeyah and Cullen Bay, this Area Plan supports development to the densities allowed by the current zoning to protect amenity”*. Although the application is located within a mixed use area, the use of the site for a dwelling-multiple is unlikely to impact on the amenity of the site and surrounding area based on the existing building design. The existing building design on the subject lot has constrained street activation and passive surveillance in comparison to other lots and their building design, noting the existing building has blacked out windows and doors.

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The activation of the street frontage of the subject lot has already been removed and the proposal is unlikely to further impact on the amenity of the site and surrounding area. Proposed planter boxes will provide landscaping and greening to the proposed dwellings-multiple and public realm in accordance with Objective 2.5 of CDAP. The use of a dwellings-multiple contributes to mixed use development in the area that is also in keeping with the zone and zone outcomes, as discussed below.

Zone TC (Tourist Commercial)

The purpose of the zone is *“Facilitate commercial and residential development that caters for the needs of visitors, supports tourism activities, and is of a scale and character compatible with surrounding development”*. The use of dwelling-multiple has been assessed in the above section of the report and further below, with the zone outcomes and statement of effect provided as part of the application.

When considering the zone outcomes of Zone TC, sub-clause *“Limited residential, commercial and community uses, such as dwellings-multiple, child care centre and community centre, where the nature of the activity does not compromise the primary use of the locality for tourist commercial activities”*. The proposed change of use is located within an existing building along Marina Boulevard, surrounded by mixed use residential and commercial development. Zone outcome 3 considers building design, including part of sub-clause 3(a) stating *“makes a positive contribution to the locality by incorporating a high quality of built form and landscape design”*. Aside from the proposed inclusion of planter boxes along the northern front boundary, the external façade of the building is not proposed to change.

The use of the site for a dwelling-multiple has been assessed by the Authority as in keeping the zone purpose of facilitating development that caters to the needs of visitors, based on the locality and confirmation from the applicant the ground level is to be used for short stay accommodation. The use of dwelling-multiple on the subject lot is considered unlikely to compromise the primary use of the locality for tourist commercial activities, with the dwelling-multiple contributing to a range of accommodation options within Larrakeyah.

As a separate matter, Ms Tatam stated the marina berths are leased out which aligns with the intent of Zone TC to cater to the needs of tourists. The existing marinas are of a scale and use compatible with the surrounding area and contribute to the mixed use nature of the site and surrounding area.

Clause 5.2.4 Vehicle Parking

The purpose of the clause is to *“Ensure that sufficient off-street car parking, constructed to a standard and conveniently located, is provided to service the proposed use of a site”*. Two (2) dwellings-multiple require two (2) car spaces each, with the application requiring four (4) car spaces total on site. The existing site has access to two (2) car spaces within an existing garage and a variation of two (2) car spaces is required.

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Administratively, *“The consent authority may consent to a use or development that is not in accordance with the table to this clause only if it is satisfied the use or development is appropriate to the site having regard to the purpose of this clause and the potential impact on the surrounding road network and the amenity of the locality and adjoining property”*. It is noted by the Authority that although Zone TC (Tourist Commercial) requires assessment of this clause, the site is also located within the Cullen Bay Commercial Precinct Car Parking Policy (2000). The policy applies to the site and forms part of the assessment under Clause 5.2.4.2 Reduction in Parking Requirements outside of Zone CB in Darwin.

Clause 5.2.4.2 Reduction in Parking Requirements outside of Zone CB in Darwin

The car parking schedule for Lot 6386 (subject site), provides an allocation of three (3) car spaces from the road and ferry terminal surplus and seven (7) car spaces from car parks on Lots 5899, 6390 and 6397. It is noted that the policy states *“the car parking requirements for developments within Cullen Bay commercial precinct shall be based on the Darwin Town Plan 1990 with a 21% discount for mixed uses”*. The above distribution of spaces has been provided on the basis of a mixed use development, instead of a change of use to dwellings-multiple.

The above allocation was provided on the basis that the site was used as a shop and dwelling-caretaker's, approved under DV5239 and prior to the policy coming into force. The Authority has assessed the change of use and is satisfied that it is unlikely to impact on the car parking allocated to the site, with dwelling-multiple having a lesser car parking generation than a shop and the use will continue to contribute to the commercial precinct.

The Authority did confirm with Ms Tatam that the allocation of the two car spaces on site will be retained with the upper level, which has been accepted by the Authority. The dwelling-multiple at ground level would then rely on the distributed public car spaces in proximity to the use.

Clause 5.4.3 Building Setbacks of Residential Buildings and Ancillary Structures

The purpose of the clause is to *“Ensure that residential buildings and ancillary structures are located in a manner that: (a) is compatible with the streetscape and surrounding development including residential buildings on the same site; (b) minimises adverse effects of building massing when viewed from adjoining land and the street; (c) avoids undue overlooking of adjoining properties; and (d) facilitates breeze penetration through and between buildings”*. Administratively, *“The consent authority may consent to a development that is not in accordance with sub-clauses 6-8 only if it is satisfied that the reduced setback is consistent with the purpose of this clause and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property”*. The applicant has proposed planter boxes along the northern, front boundary adjoining Marina Boulevard. The front setback has an existing reduced setback of 1.85m, with the planters having a width of 800mm, further reducing the setback to 1m.

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The *Cullen Bay Setback Policy 2000* applies to the site, with a previous variation granted to the front setback. The site was in Zone B2 (Local Business) when the development was originally approved in 1993. Although the policy lists Zone B2, it does not specifically list the setback requirements of the time, noting a setback plan forms part of the policy which is not legible. The proposed variation has been considered against sub-clause 3, as to whether it is in keeping with its location, scale and impact on adjoining and nearby property. Although there are planter boxes along Marina Boulevard, they are not of a height and design comparable with what has been proposed.

Ms Robson, City of Darwin, queried the location of the planter boxes; Ms Tatam clarified that the planter boxes will be located wholly within the site boundary, and do not intrude into the road reserve.

Based on the locality of the area, a condition for amended plans showing the planter boxes without the metal slates shown in the development plans. The planter boxes will allow for planting that will provide greater privacy to the site, however it will also allow passive surveillance. The amended plans are also required to confirm the exact shape of the windows, noting the existing windows are circular, not rectangular.

Clause 5.4.6 Private Open Space

The purpose of the clause is to *"Extend the function of a dwelling and enhance the residential environment by ensuring that each dwelling has private open space that is: (a) of an adequate size to provide for domestic purposes; (b) appropriately sited to provide outlook for the dwelling; (c) open to the sky and sufficiently permeable to allow stormwater infiltration and lessen runoff from the site; and (d) inclusive of areas for landscaping and tree planting"*. Administratively, *"The consent authority may consent to private open space that is not in accordance with sub-clauses 4 and 5 only if is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property"*. A variation has been sought by the applicant to requirements 4(e) deep soil planting of at least 5m² and 5(a) and 5(b) in relation to fencing for the dwelling-multiple on the lower level.

It is noted by the Authority that the minimum areas for private open space have been achieved for both dwellings-multiple proposed. The ground level provides 54.82m² (requires minimum 45m² for Area A) and 24m² meeting the minimum requirement for Area B. The upper level with no direct has an area of 114.1m² exceeding the minimum requirement for 12m² with no direct ground level access to private open space.

The Authority considers a variation to the requirements Clause 5.4.6 for fencing and deep soil planting appropriate, based on the existing character of the site and surrounding area. The site adjoins the Cullen Bay Marina at the rear, where private open space will be located. Based on the location of the site and the existing character of the surrounding area, it is appropriate in this instance to waive the requirement for fencing and deep soil planting to the ground level private open space.

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Clause 5.4.7 Communal Open Space

The purpose of the clause is to “*Ensure that suitable areas for communal open space are provided for dwellings-multiple, residential care facilities and rooming accommodation*”. The application does not comply as the proposed upper level dwelling-multiple does not have access to direct and independent access to ground level private open space. Administratively, “*The consent authority may consent to a dwelling-multiple comprising serviced apartments in Zone TC that is not in accordance with sub-clause 3 only if it is satisfied it is consistent with the purpose of this clause and that the private open space associated with each dwelling provides appropriate opportunities for outdoor activities*”. The applicant has sort a variation to the clause and has not provided communal open space as part of the application.

The private open space provided to each level is considered appropriate for outdoor activities and provides enough space for domestic activities. Based on the scale of development and private open space provided, a variation to the clause is considered appropriate by the Authority.

Clause 5.4.8 Building Design for Dwelling-group, Dwelling-multiple, Rooming Accommodation and Residential Care Facility

The purpose of the clause is to “*Promote site-responsive designs for dwelling-group, dwelling-multiple, rooming accommodation and residential care facility, which provide a pleasant living environment for the occupants and a sympathetic interface with adjoining lots, to minimise unreasonable impacts on the privacy and amenity of surrounding residents*”.

The application has been assessed as generally compliant with the requirements of the clause, noting the proposal utilises an existing building. It is however noted that the proposed development plans show a bathroom only accessed via the laneway and it is unclear which level of the development the bathroom is provided for. It is also noted that doors to the laneway will open into the laneway and amended plans have been requested so that the doors will swing into the development. At the hearing, Ms Tatam confirmed the bathroom is existing and used by the marina berths and accepted a condition precedent to be included to show the doors swinging inwards.

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 land is capable of supporting the proposed use. The proposal will utilise existing development on site, include the building and car parking. The use of dwelling-multiple is in keeping with surrounding residential and commercial uses and is unlikely to adversely impact the site and surrounding area based on the existing design of the building having removed on street activation previously.

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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 impact on amenity should be considered in the context of the site and its surrounds. The development is existing and consistent with the existing character of the site and surrounding area, noting various non-commercial uses in proximity. The assessment notes that proposed residential use will not jeopardise other (residential and commercial) activities in Zone TC (Tourist Commercial).

Where the development does not comply with the relevant clauses of the NTPS 2020, the impact on existing and future amenity has been considered and a variation has only been supported in cases where this amenity will not unduly be impacted upon.

5. Pursuant to section 51(1)(t) of the *Planning Act 1999*, the consent authority must take into consideration other matters it thinks fit

The recommendation of approval for a change of use for dwellings-multiple is considered appropriate for the subject lot due to the assessment of the application against the NT Planning Scheme 2020. The existing building design on the subject lot is not considered to activate the street frontage and the proposal is considered unlikely to impact on the amenity of the site and surrounding area.

Any future proposal within proximity to the subject site would need to be assessed based on its merits and how it complies with the NT Planning Scheme 2020 (or as amended).

FOR: 4
AGAINST: 0
ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

ITEM 4
PA2022/0457 **BAR-PUBLIC WITH ALFRESCO DINING (FORMERLY DUCKS NUTS)**
LOT 2198 (4) BRIGGS STREET, LOTS 2201, 2200 AND 2199, (72, 74 & 76)
MITCHELL STREET AND LOT 2202 (2) MOTT COURT, DARWIN CITY,
TOWN OF DARWIN
APPLICANT Cunnington Rosse Town Planning and Consulting

Applicant – Brad Cunnington and Chiara Randazzo (Cunnington Rosse Town Planning and Consulting), Stephen Dugan (Director TEHG Property – Landowner) attended.

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**RESOLVED
10/23**

That, the Development Consent Authority vary the requirements of Clause 5.2.3.3 (Urban Design Requirements in Central Darwin), Clause 5.2.4.4 (Parking Layout), Clause 5.2.5 (Loading Bays), Clause 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 2198 (4) Briggs Street, Lots 2199, 2200, 22001 (72, 74 & 76) Mitchell Street, Lot 2202 (2) Mott Court, Darwin City, Town of Darwin for the purpose of bar-public with alfresco dining, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the commencement of works (including site preparation), the applicant is to provide written confirmation from the Water Services division of the Power and Water Corporation that any encroachment over the sewer easement has been approved or removed, to the satisfaction of the consent authority.
2. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of City of Darwin.
3. Prior to the commencement of works (including site preparation), approval is required for the provision of awnings to the street frontages to the requirements of the City of Darwin and Power and Water Corporation, to the satisfaction of the consent authority. The awnings shall not reduce the achievement of active frontages below 64.38% of the total length of the site boundary to the street.
4. Prior to the commencement of works (including site preparation), in principle approval is required for the landscaping works within the City of Darwin road reserve (including vertical landscaping), to the satisfaction of the consent authority.
5. Prior to the commencement of works (including site preparation), a waste management plan addressing the City of Darwin's Waste Management Guidelines must be prepared, to the requirements of the City of Darwin, to the satisfaction of the consent authority.

GENERAL CONDITIONS

6. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
7. Lots 2198, 2199, 2200, 2201, 2202 Town of Darwin are required to be consolidated and a new title issued for the consolidated lot. Also please refer to Note 9 for advice related to the National Construction Code (NCC).
8. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage,

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electricity and telecommunication networks to the development/each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

Please refer to notations 1 and 2 for further information.

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. If Council approval is obtained for in association with Condition 3 and other encroachments into the City of Darwin Road Reserve building elements over City of Darwin road reserve, the applicant will be required to enter into appropriate agreements with the City of Darwin and the design specifications are to be to the satisfaction of General Manager, Infrastructure of the Department of Infrastructure, Planning and Logistics, City of Darwin.
11. In principle approval is required for the landscaping works within the City of Darwin road reserve (including vertical landscaping), to the satisfaction of the consent authority.
12. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the City of Darwin, to the satisfaction of the consent authority.
13. The owner shall:
 - (a) remove disused vehicle and/ or pedestrian crossovers;
 - (b) provide footpaths/ cycleways;
 - (c) collect stormwater and discharge it to the drainage network; and
 - (d) undertake reinstatement works;All to the technical requirements of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
14. 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.
15. 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.
16. Upon completion of any works within or impacting upon the Mitchell Street and Brigg Street road reserve, the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin.
17. Storage for waste disposal bins is to be provided to the requirements of City of Darwin to the satisfaction of the consent authority.

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18. Any reinstatement works required as a result of any damage caused to infrastructure or landscaping must be undertaken by the developer, to the technical standards of and at no cost to the City of Darwin, to the satisfaction of the consent authority. This includes grassing the verge between the property boundary and the kerb.
19. The loading and unloading of goods from vehicles must only be carried out on the land (within the designated loading bays and must not disrupt the circulation and parking of vehicles on the land).
20. 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 and from view of neighbouring or nearby developments (or developments reasonably anticipated), 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. The use of angled louvered slats for screening purposes is acceptable, however the slat screening must be designed with a panel to gap ratio, such that the condenser units are not readily visible from any angle.
21. 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.
22. 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 satisfaction of City of Darwin.
23. Before the use starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
24. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.

NOTES

1. 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. 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

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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>

3. This development as approved by the Development Consent Authority (DCA) achieves a level of active interface deemed by the authority to provide 64.38% of the length of the site boundary at ground level as active street frontage. Retaining this level of active frontage is considered by the DCA to be essential to this development achieving the purpose of clause 6.3.3 (Urban Design Requirements in Central Darwin). Any reduction in the percentage of active street frontage is unlikely to be supported, and will require full consideration by the DCA at a meeting of the authority. Refer to “Design guidance to achieve active frontages and provide for services” for advice to active street frontages in relation to service authority requirements.

Notwithstanding the approved plans, the demonstrated awning in City of Darwin road reserve is subject to Council approval at no cost to Council.

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. 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.
6. 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.
7. Any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin Policy 042 – Outdoor Advertising Signs Code.
8. 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*.
9. This development permit is not an approval to undertake building work. You are advised to contact a Northern Territory registered building certifier to seek a building permit as required by the Northern Territory *Building Act 1993* before commencing any demolition or construction works. Due to provisions in the National Construction Code (NCC), the

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subject lots may need to be consolidated before a building permit can be issued.

10. City of Darwin has advised that the operator of the business is required to submit an Outdoor Dining Application to City of Darwin, prior to commencement of trade in the road reserve.

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 proposed bar-public is *Merit Assessable* under Clause 4.10 Zone CB (Central Business), therefore Clause 5.2.3 Building Heights in Central Darwin, Clause 5.2.4 Vehicle Parking, Clause 5.2.5 Loading Bays, Clause 5.2.6 Landscaping, Clause 5.3.7 End of Trip Facilities in Zones HR, CB, C, SC and TC, 5.5.1 Interchangeable Developments in Zones CB and C, Clause 5.5.3 Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T, Clause 5.5.6 Al Fresco Dining Areas in Zone CB in Central Darwin and Clause 5.5.10 Nightclub Entertainment Venue, Bar-Public and Bar-Small.

These clauses have been considered and it is found that the proposal complies with the relevant requirements of the Planning Scheme except for Clauses 5.2.3.3 (Urban Design Requirements in Central Darwin), Clause 5.2.4.4 (Parking Layout), Clause 5.2.5 (Loading Bays), Clause 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T). The non-compliances have been addressed below.

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 5.2.3.3 Urban Design Requirements in Central Darwin

The purpose of the clause is to “Promote exemplary urban design in Central Darwin that: (a) responds to the local environment; (b) provides a high amenity pedestrian environment; and (c) contributes to the interest and activity at street level”. Administratively, “consent authority may consent to a development that is not in accordance with sub-clause 5 only if it is satisfied that compliance would be impractical” and “The consent authority may consent to a development that is not in accordance with sub-clauses 6, 7 and 8 only if it is satisfied it is consistent with the purpose of this clause, and it is appropriate to the site having regard to such matters as its location, nature, scale and impact on surrounding amenity”. The applicant has sought a variation to the 75% active frontage requirement (sub-clause 5), the requirement

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for awnings along full street frontages (sub-clause 6(a)) the requirement for mid-block pedestrian linkages (arcades) at ground level from one street to the other buildings that have dual frontages (sub-clause 6(b)).

The existing site provides an active street frontage that equates to 64.38%, 10.62% less than what is required under the current NTPS 2020. Active street frontage is defined under Schedule 2 of the NTPS 2020 as “any frontage of a building that creates activity on the adjacent street or another public place. Unless otherwise specified, active street frontage: (a) contains active uses such as retail, entertainment and dining uses for a minimum of 75% of the street front boundary, (b) is built to the street front boundary at ground level; (c) has windows and door openings to the adjacent street or public place; and (d) minimises driveway and servicing access across the active street frontage”. The following justification has been provided within the statement of effect by the applicant:

“The frontages consist of 37.405 metres of inactive frontage (the existing car parking area), and 67.59 metres of combined active frontage (the alfresco areas) and partially active frontage (the pedestrian access points). Collectively, the inactive and partially active extents equate to 64.38% of the total extent of the Ducks nuts frontage. The extent of active frontage is well below the required 75%, however given the intended active reuse of the existing vacant building, and the limitations on the ability to achieve the active frontage requirement due to the structural design and layout of the existing building, compliance is clearly impractical. The proposal improves the extent of active frontage via the modifications to the existing alfresco areas to both the Mitchell and Briggs Street frontages, and is consistent with the purpose of Clause 5.2.3.3 in the contribution to a high amenity pedestrian environment, and contribution to interest and activity at street level.”

The Authority agrees with the above justification provided and recommends the variation of the requirement under Clause 5.2.3.3, noting the requirement is impractical for the development.

In relation to street awnings and providing a pedestrian linkage within the site, it is again acknowledged that the proposal utilises existing development on site. Awnings are provided for the alfresco dining area, with mature trees along the road reserve that provide shading. The majority of Brigg Street frontage adjoins an existing car parking area that will be utilised as part of the proposed bar-public and the requirement for awnings would not be feasible for this section of the street frontage.

At the time the development was originally approved, the above requirement for awnings along at 75% of street frontages and pedestrian linkages were not required. In this instance the Authority considers the variations appropriate based on the existing building design not providing pedestrian linkages and unlikely impact on the site and surrounding area the non-compliances will have.

The following comments were provided from City of Darwin in relation to alfresco dining areas and awnings:

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“The application includes works in the outdoor dining area, which is partly located within the Mitchell Street road reserve. As the permanent works in the road reserve have already been approved by Council, City of Darwin requires a Works Permit Application to be submitted, detailing the proposed works in the road reserve, and a Works Permit to be issued prior to any works commencing.

City of Darwin will also require the operator of the business to submit an Outdoor Dining Application to City of Darwin, prior to commencement of trade in the road reserve.”

The requirements are addressed via recommended conditions of the development permit.

Clause 5.2.4.4 Parking Layout

The purpose of the clause is to *“Ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose”*. Administratively, *“The consent authority may consent to a car parking area that is not in accordance with sub-clause 4 if it is satisfied that the non-compliance will not: (a) result in adverse impacts on the local road network or internal functionality of the car parking area; and (b) unreasonably impact on the amenity of the surrounding locality”*. Variations have been sort for the setback of the parking area from the road (requirement 4g), car space dimensions (4h), car space end/ perpendicular to driveway for car space 11 (requirement 4j).

The application utilises an existing parking area on site, with a use that has been previously permitted. In relation to the car space dimensions (minimum 5m length by 2.5m width) sufficient two-way access way widths (6m) have been provided on site, which reduces any functionality issues in the car parking area. Existing landscaping will provide a buffer between the Council road reserve and the parking area to decrease any unreasonable impact to the surrounding area.

The parking area was approved under DP02/0293 for a hotel and restaurant. The application does not propose to amend the car parking layout or an upgrade the existing car parking area. The existing car parking area is unlikely to impact on the amenity of the surrounding area based on existing building and car parking design on site and in the surrounding area, with the proposed use in keeping with the previous use and its intensity. The variations are therefore considered appropriate for development approval.

Clause 5.2.5 Loading Bays

Under Clause 5.2.5, the purpose is to *“provide for the loading and unloading of vehicles associated with the use of land”*. Administratively, *“The consent authority may consent to a use or development that is not in accordance with sub-clauses 2 and 3 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and that the non-compliance will not result in adverse impacts on the local road network nor the number or availability of car parking spaces”*.

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The proposed use of a bar-public has been considered in conjunction with PA2022/0458, with a total floor area less than 10,000m² (2,882m² total) therefore requiring one (1) loading bay. A loading bay has been provided with correct dimensions (7.5m by 3.5m), however the loading bay is located within the two-way access way, requiring a variation to the clause.

The variation is considered appropriate in this instance due to the nature of the use, likely delivery times and the utilisation of an existing car parking area that forms part of the applications. Deliveries to the subject site are likely to occur outside of operational hours (or in quieter times in the day), noting the use of a bar-public is unlikely to require as many deliveries as other uses. Mr Cunningham confirmed delivery times would be outside of peak business hours and functional loading and unloading (including waste collection) could occur on site. It is therefore recommended the variation is granted to the subject site.

Clause 5.5.3 Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T

Under Clause 5.5.3, the purpose is to *"Promote site-responsive designs of commercial, civic, community, recreational, tourist and mixed use developments which are attractive and pleasant and contribute to a safe environment"*. Administratively, *"A development application must, in addition to the matters described in sub-clauses 2-16, demonstrate consideration of and the consent authority is to have regard to the Community Safety Design Guide (as amended from time to time) produced by the Department of Lands and Planning"*. The application does not meet requirements 15 and 16, for child minding facilities and parenting rooms nor does not provide bicycle access, storage facilities and shower facilities.

Pursuant to Clause 1.10 (5), *"the consent authority may consent to a proposed use or development that 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)."*

It is noted that the administration subsection of this clause does not provide guidance on how this clause can be varied by the consent authority. Therefore, it requires consideration to the purpose of the requirements, any applicable overlays, the guidance provided by the zone purpose and outcomes and the strategic framework.

While the development includes public toilets, no parenting rooms or child minding facilities are shown on the plans. Requirement 15 states *"Provide facilities, including public toilets, child minding facilities, parenting rooms and the like where the size of the development warrants such facilities"*. Based on the size of the development and nature of the use as a bar-public, it is considered appropriate by the authority to waive the requirement of child minding facilities and parenting rooms.

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The applicant has argued in relation to bicycle access, storage facilities and shower facilities, these have not been provided on the basis that it is not a new building the proposed use will utilise and Clause 5.3.7 (End of trip facilities in Zones HR, CB, C, SC and TC) does not apply. Furthermore, in comparison, due to the nature of the use and the proximity of the site to public transportation and other public facilities (such as bicycle racks), the above is not required. Bicycle access can be considered through the car parking area and the authority notes there may be opportunity in future to install bicycle parking.

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 overall height and scale of the development are largely consistent with that anticipated in the Darwin CBD with respect to the capability of the land and the effect on surrounding properties. Comments from the City of Darwin, Power and Water Corporation, have been sought in relation to the capability of the land, including the proposed access arrangements, easements, and building heights with no objection raised by the service authorities. At the hearing, Ms Cindy Robson, City of Darwin confirmed that prior approval had been granted by City of Darwin to the subject site (formerly Ducks Nuts).

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

The application was placed on public exhibition for a period of two weeks. One public submission was received under section 49(1) of the *Planning Act 1999*. The submission raised concerns regarding the management plan not addressing potential amenity impacts (noise, operation hours, live music, etc); appropriate acoustic engineering to occur to understand potential noise impacts to the area, including for residential development; and appropriate environment noise criteria enforced based on the NT EPA guidelines for noise and compliance, based on the application's acoustic report.

The assessment notes that the application has provided all relevant information required (acoustic report and management plan), and has been assessed compliant against Clause 5.5.10 Nightclub Entertainment Venue, Bar-Public and Bar-Small and its requirements. Furthermore, the Management Plan's requirement in Clause 5.5.10 of the NTPS 2020 is to guide the DCA in making its decision on the proposed use and these matters are dealt with extensively in the application for the grant of a liquor licence by the NT Liquor Commission under the *Liquor Act 1978*.

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The Authority notes that the approval of a planning application for the proposed use of a bar-public does not mean approval from the Liquor Commission will also be granted, as they are two very distinct processes and assessments with separate decision-making authorities. The history of the site and existing building design will also be considered, noting the acoustic report further assessment will occur through the liquor licence application and building redesign.

At the hearing, Mr Brad Cunningham from Cunningham Rosse Town Planning and Consulting (applicant), addressed the Authority. Mr Cunningham accepted the submission and acknowledged the proponent has an extensive history of compliance with approvals, including development and liquor licence permit.

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 potential impact on amenity should be considered in the context of the site and the surrounding area. The development is consistent with the broader zone purpose and outcomes of Zone CB (Central Business) and applicable clauses, including the overall height and scale of the building. The building is of high architectural quality and presents the Briggs Street and Mitchell Street frontages with increased active street frontages and activation. The building presents a high quality interface and limited service provision to the two street frontages. Any adverse impacts on amenity have been addressed through the recommended conditions and notes for any permit that may be issued for the proposal.

FOR: 4
AGAINST: 0
ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

ITEM 5
PA2022/0458

BAR-PUBLIC WITH ALFRESCO DINING (FORMERLY BCC CINEMA)

LOT 2198 (4) BRIGGS STREET, LOTS 2200, 2201, AND 2199, (74 72 & 76) MITCHELL STREET AND LOT 2202 (2) MOTT COURT, DARWIN CITY, TOWN OF DARWIN

APPLICANT

Cunnington Rosse Town Planning and Consulting

Applicant – Brad Cunningham and Chiara Randazzo (Cunnington Rosse Town Planning and Consulting), Stephen Dugan (Director TEHG Property – Landowner) attended.

RESOLVED
11/23

That, the Development Consent Authority vary the requirements of Clause 5.2.3.3 (Urban Design Requirements in Central Darwin), Clause 5.2.4.4 (Parking Layout), Clause 5.2.5 (Loading Bays), Clause 5.5.3 (Commercial and Other

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Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to Lot 2198 (4) Briggs Street, Lots 2199, 2200, 22001 (72, 74 & 76) Mitchell Street, Lot 2202 (2) Mott Court, Darwin City, Town of Darwin for the purpose of bar-public with alfresco dining, 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 correct staging of the development to be shown on the staging plan.
2. Prior to the commencement of works (including site preparation), the applicant is to provide written confirmation from the Water Services division of the Power and Water Corporation that any encroachment over the sewer easement has been approved or removed, to the satisfaction of the consent authority.
3. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of City of Darwin.
4. Prior to the commencement of works (including site preparation), approval is required for the provision of awnings to the street frontages to the requirements of the City of Darwin and Power and Water Corporation, to the satisfaction of the consent authority. The awnings shall not reduce the achievement of active frontages below 72% of the total length of the site boundary to the street.
5. Prior to the commencement of works (including site preparation), in principle approval is required for the landscaping works within the City of Darwin road reserve (including vertical landscaping), to the satisfaction of the consent authority.
6. Prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.
7. Prior to the commencement of works (including site preparation), a waste management plan addressing the City of Darwin's Waste Management

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Guidelines must be prepared, to the requirements of the City of Darwin, to the satisfaction of the consent authority.

GENERAL CONDITIONS

8. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
9. Lots 2198, 2199, 2200, 2201, 2202 Town of Darwin are required to be consolidated and a new title issued for the consolidated lot. Also please refer to Note 9 for advice related to the National Construction Code (NCC).
10. 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/each lot shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

Please refer to notations 1 and 2 for further information.

11. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
12. If Council approval is obtained for in association with Condition 4 and other encroachments into the City of Darwin Road Reserve building elements over City of Darwin road reserve, the applicant will be required to enter into appropriate agreements with the City of Darwin and the design specifications are to be to the satisfaction of General Manager, Infrastructure of the Department of Infrastructure, Planning and Logistics, City of Darwin.
13. In principle approval is required for the landscaping works within the City of Darwin road reserve (including vertical landscaping), to the satisfaction of the consent authority.
14. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the City of Darwin, to the satisfaction of the consent authority.
15. The owner shall:
 - (a) remove disused vehicle and/ or pedestrian crossovers;
 - (b) provide footpaths/ cycleways;
 - (c) collect stormwater and discharge it to the drainage network; and
 - (d) undertake reinstatement works;All to the technical requirements of and at no cost to the City of Darwin, to the satisfaction of the consent authority.
16. 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

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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.

17. 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.
18. Upon completion of any works within or impacting upon the Mitchell Street and Brigg Street road reserve, the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin.
19. Storage for waste disposal bins is to be provided to the requirements of City of Darwin to the satisfaction of the consent authority.
20. Any reinstatement works required as a result of any damage caused to infrastructure or landscaping must be undertaken by the developer, to the technical standards of and at no cost to the City of Darwin, to the satisfaction of the consent authority. This includes grassing the verge between the property boundary and the kerb.
21. The loading and unloading of goods from vehicles must only be carried out on the land (within the designated loading bays and must not disrupt the circulation and parking of vehicles on the land).
22. 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 and from view of neighbouring or nearby developments (or developments reasonably anticipated), 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. The use of angled louvered slats for screening purposes is acceptable, however the slat screening must be designed with a panel to gap ratio, such that the condenser units are not readily visible from any angle.
23. 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.
24. 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 satisfaction of City of Darwin.
25. Before the use starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
26. 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.

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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. 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>
3. This development as approved by the Development Consent Authority (DCA) achieves a level of active interface deemed by the authority to provide 64.38% of the length of the site boundary at ground level as active street frontage. Retaining this level of active frontage is considered by the DCA to be essential to this development achieving the purpose of clause 6.3.3 (Urban Design Requirements in Central Darwin). Any reduction in the percentage of active street frontage is unlikely to be supported, and will require full consideration by the DCA at a meeting of the authority. Refer to "Design guidance to achieve active frontages and provide for services" for advice to active street frontages in relation to service authority requirements.
Notwithstanding the approved plans, the demonstrated awning in City of Darwin road reserve is subject to Council approval at no cost to Council.
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. 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.
6. 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.

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7. Any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin Policy 042 – Outdoor Advertising Signs Code.
8. 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*.
9. This development permit is not an approval to undertake building work. You are advised to contact a Northern Territory registered building certifier to seek a building permit as required by the Northern Territory *Building Act 1993* before commencing any demolition or construction works. Due to provisions in the National Construction Code (NCC), the subject lots may need to be consolidated before a building permit can be issued.
10. City of Darwin has advised that the operator of the business is required to submit an Outdoor Dining Application to City of Darwin, prior to commencement of trade in the road reserve.

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 NT Planning Scheme 2020 applies to the land and the proposed bar-public is *Merit Assessable* under Clause 4.10 Zone CB (Central Business), therefore Clause 5.2.3 Building Heights in Central Darwin, Clause 5.2.4 Vehicle Parking, Clause 5.2.5 Loading Bays, Clause 5.2.6 Landscaping, Clause 5.3.7 End of Trip Facilities in Zones HR, CB, C, SC and TC, 5.5.1 Interchangeable Developments in Zones CB and C, Clause 5.5.3 Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T, and Clause 5.5.11 Food Premises.

These clauses have been considered and it is found that the proposal complies with the relevant requirements of the Planning Scheme except for Clauses 5.2.3.3 (Urban Design Requirements in Central Darwin), Clause 5.2.4.1 (Parking Requirements), Clause 5.2.4.3 (Reduction in Parking Requirements within Zone CB in Darwin), Clause 5.2.4.4 (Parking Layout), Clause 5.2.5 (Loading Bays), Clause 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T). The non-compliances have been addressed below.

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

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(b) The considerations listed under Clause 1.10(3) or 1.10(4).

Clause 5.2.3.3 Urban Design Requirements in Central Darwin

The purpose of the clause is to “Promote exemplary urban design in Central Darwin that: (a) responds to the local environment; (b) provides a high amenity pedestrian environment; and (c) contributes to the interest and activity at street level”. Administratively, “consent authority may consent to a development that is not in accordance with sub-clause 5 only if it is satisfied that compliance would be impractical” and “The consent authority may consent to a development that is not in accordance with sub-clauses 6, 7 and 8 only if it is satisfied it is consistent with the purpose of this clause, and it is appropriate to the site having regard to such matters as its location, nature, scale and impact on surrounding amenity”.

The applicant has sort a variation to the 75% active frontage requirement (sub-clause 5), the requirement for awnings along full street frontages (sub-clause 6(a)) the requirement for mid-block pedestrian linkages (arcades) at ground level from one street to the other buildings that have dual frontages (sub-clause 6(b)) (Refer to figure 3 on the following page).

The site provides an overall active street frontage (including partially active areas) that equates to 72%, 3% less than what is required under the current NTPS 2020 Active street frontage is defined under Schedule 2 of the NTPS 2020 as “any frontage of a building that creates activity on the adjacent street or another public place. Unless otherwise specified, active street frontage: (a) contains active uses such as retail, entertainment and dining uses for a minimum of 75% of the street front boundary, (b) is built to the street front boundary at ground level; (c) has windows and door openings to the adjacent street or public place; and (d) minimises driveway and servicing access across the active street frontage”. When considering the entire development, including the development that forms part of PA2022/0457 (formerly Ducks Nuts), the development provides an active street frontage of 67.8%.

The following justification has been provided within the statement of effect:

“Collectively, the inactive and partially active extents equate to 67.8% of the total extent of the site frontage. The extent of active frontage is well below the required 75%, however given the intended active reuse of the existing vacant building, and the limitations on the ability to achieve the active frontage requirement due to the structural design and layout of the existing building, compliance is clearly impractical. The proposal significantly improves the extent of active frontage via the inclusion of extensive alfresco areas to both the Mitchell Street and Mott Court frontages, and is consistent with the purpose of Clause 5.2.3.3 in the contribution to a high amenity pedestrian environment, and contribution to interest and activity at street level.”

The authority agrees with the above justification provided and recommends the variation of the requirement under Clause 5.2.3.3,

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noting the requirement is impractical for the development. In addition to the comments provided above, large windows are being installed along an existing blank wall frontage to Mott Court, which will partially activate the street frontage. Considering Mott Court is a cul-de-sac with no existing active street frontages provided, the installation of windows will provide a greater building design outcome and allow for passive surveillance from the subject site.

In relation to street awnings and providing a pedestrian linkage within the site, it is again acknowledged that the proposal utilises existing development on site. Awnings are provided for the alfresco dining area, with mature trees along the road reserve that provide shading along Mitchell Street and Briggs Street.

At the time the development was originally approved, the above requirement for awnings, active street frontages of at least 75% and pedestrian linkages were not required. In this instance the authority considers the variations appropriate based on the existing building design not providing pedestrian linkages and unlikely impact on the site and surrounding area the non-compliances will have.

The following comments were provided from City of Darwin in relation to alfresco dining areas and awnings:

"This development application includes a proposed outdoor dining area to the Mitchell Street road reserve. These works require consideration and approval by the Council, and in discussions with the applicant, City of Darwin officers requested a separate application for these works on 29 November 2022 to be submitted to Council. As a result, works in the road reserve are not able to be resolved within the exhibition period."

The authority has included conditions to reflect the above comment within the development permit and City of Darwin confirmed at the meeting they agreed with the conditions.

Clause 5.2.4.1 Parking Requirements

The purpose of the clause is to "Ensure that sufficient off-street car parking, constructed to a standard and conveniently located, is provided to service the proposed use of a site". Administratively, "The consent authority may consent to a use or development that is not in accordance with the table to this clause only if it is satisfied the use or development is appropriate to the site having regard to the purpose of this clause and the potential impact on the surrounding road network and the amenity of the locality and adjoining property". The application requires forty-two (42) car spaces in total, with a shortfall of twenty-five (25) car spaces as seventeen (17) car spaces are provided on site.

It is noted City of Darwin provided in their service authority comments stating "City of Darwin records identify that in 1991 Council was paid a car parking contribution for 32 car parking bays for the use of these premises at that time. Additionally, these premises are paying Council an annual Municipal Parking Rate for 3 car parking bays though the Local Government

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(General) Regulations 2021. This results in these premises having a credit of 35 car parking bays". When calculating the car parking requirements of the clause for both PA2022/0458 (formerly BCC Cinemas) and PA2022/0457, a total of 32 car spaces are provided on site, a contribution of 32 car spaces have been paid for and 3 car parking bays are paid for annually.

It is noted the previous approval would have required a higher rate of car parking as car parking calculations have since been revised under the NTPS 2020 (and formerly NTPS 2007). Based on the proposal being in keeping with the previous approval and there not being an amenity impact to the site and surrounding road network previously, a reduction in car parking is therefore not required for the proposal.

Clause 5.2.4.4 Parking Layout

The purpose of the clause is to "Ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose". Administratively, "The consent authority may consent to a car parking area that is not in accordance with sub-clause 4 if it is satisfied that the non-compliance will not: (a) result in adverse impacts on the local road network or internal functionality of the car parking area; and (b) unreasonably impact on the amenity of the surrounding locality".

Variations have been sort for the setback of the parking area from the road (requirement 4g), car space dimensions (4h), car space end/perpendicular to driveway for car space 11 (requirement 4j). The application utilises an existing parking area on site, with a use that has been previously permitted. In relation to the car space dimensions (minimum 5m length by 2.5m width) sufficient two-way access way widths (6m) have been provided on site, which reduces any functionality issues in the car parking area. Existing landscaping will provide a buffer between the Council road reserve and the parking area to decrease any unreasonable impact to the surrounding area.

The parking area was approved under DP02/0293 for a hotel and restaurant. The application does not propose to amend the car parking layout or upgrade the existing car parking area. The existing car parking area is unlikely to impact on the amenity of the surrounding area based on existing building and car parking design on site and in the surrounding area, with the proposed use in keeping with the previous use and its intensity. The variations are therefore considered appropriate and it is recommended they are approved.

Clause 5.2.5 Loading Bays

Under Clause 5.2.5, the purpose is to "provide for the loading and unloading of vehicles associated with the use of land". Administratively, "The consent authority may consent to a use or development that is not in accordance with sub-clauses 2 and 3 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and that the non-compliance will not result in adverse impacts on the local road network nor the number or availability of car parking spaces".

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The proposed use of a bar-public has been considered in conjunction with PA2022/0458, with a total floor area less than 10,000m² (2,882m² total) therefore requiring one (1) loading bay. A loading bay has been provided with correct dimensions (7.5m by 3.5m), however the loading bay is located within the two-way accessway, requiring a variation to the clause.

The variation is considered appropriate in this instance due to the nature of the use, likely delivery times and the utilisation of an existing car parking area that forms part of the applications. Deliveries to the subject site are likely to occur outside of operational hours (or in quieter times in the day), noting the use of a bar-public is unlikely to require as many deliveries as other uses. Mr Cunningham confirmed delivery times would be outside of peak business hours and functional loading and unloading (including waste collection) could occur on site. It is therefore recommended the variation is granted to the subject site.

Clause 5.5.3 Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T

Under Clause 5.5.3, the purpose is to “Promote site-responsive designs of commercial, civic, community, recreational, tourist and mixed use developments which are attractive and pleasant and contribute to a safe environment”. Administratively, “A development application must, in addition to the matters described in sub-clauses 2-16, demonstrate consideration of and the consent authority is to have regard to the Community Safety Design Guide (as amended from time to time) produced by the Department of Lands and Planning”. The application does not meet requirements 15 and 16, for child minding facilities and parenting rooms nor does not provide bicycle access, storage facilities and shower facilities.

While the development includes public toilets, no parenting rooms or child minding facilities are shown on the plans. Requirement 15 states “Provide facilities, including public toilets, child minding facilities, parenting rooms and the like where the size of the development warrants such facilities”. Based on the size of the development and nature of the use as a bar-public, it is considered appropriate by DAS to waive the requirement of child minding facilities and parenting rooms.

The applicant has argued in relation to bicycle access, storage facilities and shower facilities, these have not been provided on the basis that it is not a new building the proposed use will utilise and Clause 5.3.7 (End of trip facilities in Zones HR, CB, C, SC and TC) does not apply. In comparison, due to the nature of the use and the proximity of the site to public transportation and other public facilities (such as bicycle racks), the above is not required. Bicycle access can be considered through the car parking area and there may be opportunity in future to install bicycle parking. Based on the use of the site as a bar-public, storage facilities and shower facilities are not considered to be required.

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As a separate matter, upon review of the development plans, it is noted a staging plan has been provided as part of the application. Mr Cunnington confirmed the plan was for the purpose of occupancy permits under the Building Act 1993 (NT), not for development permit purposes. Upon review of the amended plan (provided January 2023), the staging does not accurately reflect the staging of the development and the authority has included a condition precedent for the plan to reflect the correct staging.

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 overall height and scale of the development are largely consistent with that anticipated in the Darwin CBD with respect to the capability of the land and the effect on surrounding properties. Comments from the City of Darwin, Power and Water Corporation, have been sought in relation to the capability of the land, including the proposed access arrangements, easements, and building heights as discussed in section 7(m) below.

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 potential impact on amenity should be considered in the context of the site and the surrounding area. The development is consistent with the broader zone purpose and outcomes of Zone CB (Central Business) and applicable clauses, including the overall height and scale of the building. The building is of high architectural quality and presents the Briggs Street and Mitchell Street frontages with increased active street frontages and activation. The building presents a high quality interface and limited service provision to the two street frontages. Any adverse impacts on amenity have been addressed through the recommended conditions and notes for any permit that may be issued for the proposal.

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

The application was placed on public exhibition for a period of two weeks. One public submission was received under section 49(1) of the *Planning Act 1999*. The submission raised concerns regarding the management plan not addressing potential amenity impacts (noise, operation hours, live music, etc); appropriate acoustic engineering to occur to understand potential noise impacts to the area, including for residential development; and appropriate environment noise criteria

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enforced based on the NT EPA guidelines for noise and compliance, based on the application's acoustic report.

The assessment notes that the application has provided all relevant information required (acoustic report and management plan), and has been assessed compliant against Clause 5.5.10 Nightclub Entertainment Venue, Bar-Public and Bar-Small and its requirements. Furthermore, the Management Plan's requirement in Clause 5.5.10 of the NTPS 2020 is to guide the DCA in making its decision on the proposed use and these matters are dealt with extensively in the application for the grant of a liquor licence by the NT Liquor Commission under the Liquor Act 1978.

The authority notes that the approval of a planning application for the proposed use of a bar-public does not mean approval from the Liquor Commission will also be granted, as they are two very distinct processes and assessments with separate decision-making authorities. The history of the site and existing building design will also be considered, noting the acoustic report further assessment will occur through the liquor licence application and building redesign.

Mr Cunnington accepted the submission and acknowledged the proponent has an extensive history of compliance with approvals, including development and liquor licence permit.

FOR: 4
AGAINST: 0
ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

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

SUZANNE PHILIP
Chair

13 February 2023