



## **DEVELOPMENT CONSENT AUTHORITY**

### **DARWIN DIVISION**

### **MINUTES**

**MEETING No. 384 – FRIDAY 19 NOVEMBER 2021**

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

- MEMBERS PRESENT:** Suzanne Philp (Chair), Marion Guppy, Mark Blackburn, Simon Niblock and Peter Pangquee
- APOLOGIES:** Nil
- LEAVE OF ABSENCE:** Nil
- OFFICERS PRESENT:** Margaret Macintyre (Secretary), Ann-Marie Reynolds, Richard Lloyd and Amit Magotra (Item 1 only) (Development Assessment Services)
- COUNCIL REPRESENTATIVE:** Brian Sellers and Cindy Robson only attended on 19 November

**Meeting opened at 10.45 am and closed at 4.15 pm  
Meeting resumed Monday 22 November at 10.00 am and closed at 11.00 am**

**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**

**PA2021/0242 SERVICE STATION AND FOOD PREMISES-FAST FOOD OUTLET  
LOT 8013 (34) STUART HIGHWAY, STUART PARK, TOWN OF DARWIN  
APPLICANT MasterPlan NT**

Alex Deutrom and Chandhini Kumar (MasterPlan NT) attended and phone linked with Jarrad Haynes (Capital Prudential).

Mr Deutrom tabled photographs of three service stations in Darwin Area.

**RESOLVED  
93/21**

That, the Development Consent Authority vary the requirements of Clause 5.5.8 (Service Station) of the Northern Territory Planning Scheme 2020 (NTPS 2020), and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 8013 (34) Stuart Highway, Town of Darwin for the purpose of a service station and food premises-fast food outlet 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. Fuel bowsers associated with the service station are located 20m from the food premises-fast food outlet building as required under Clause 5.5.8 (Service Station).
  - b. Pedestrian crossings in the drive-thru connecting pedestrian access from Stuart Highway and food premises-fast food outlet.
  - c. Provision of pedestrian crossing connecting the car parking along the eastern boundary and the food premises-fast food outlet.
2. Prior to the endorsement of plans and prior to commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the Transport and Civil Services Division (TCSD) of the Department of Infrastructure, Planning and Logistics and/or City of Darwin as the case may be, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.
3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), in principle approval is required for the crossover and driveway to the site from the TCSD and/or City of Darwin road reserve, to the satisfaction of the consent authority.

*[Note: Swept path diagrams for the design vehicle/ maximum sized vehicle intended to access the lot shall be provided with the detailed design drawings submitted for TCSD approval to demonstrate the suitability of the access design geometry.]*

4. Prior to the commencement of works (including site preparation), a Construction Traffic Management Plan (CTMP) and/or an Operational Traffic Management Plan (OTMP) is to be submitted to and approved by the TCSD to the satisfaction of the consent authority. The CTMP and/or OTMP should specifically address the following:
  - i. Details regarding all appropriate site management measures and construction access routes;
  - ii. Haulage routes and vehicles types;
  - iii. Existing assets and public access; and
  - iv. Risk assessment.
5. Prior to the commencement of works (including site preparation), the applicant is to prepare a Site and Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP is to address how construction will be managed on the site, and is to include details of waste management, traffic control and haulage routes, stormwater drainage, and the use of City of Darwin land during construction. The SCMP is also to address the protection of existing assets, the protection of public access, and include a risk assessment.
6. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management standards, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.
7. Prior to commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.

#### **GENERAL CONDITIONS**

8. Works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
9. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage facilities and electricity services to the land shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time
10. 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.
11. 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.

12. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of TCSD and/or 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 TCSD and City of Darwin, to the satisfaction of the consent authority.
14. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street to the requirements of the City of Darwin, to the satisfaction of the consent authority.
15. All proposed work (including the provision or connection of services) within, or impacting upon the Stuart Highway road reserve shall be in accordance with the standards and specifications of the Transport and Civil Services Division, Department of Infrastructure, Planning and Logistics. Design documents must be submitted to the Director Corridor Management, Transport and Civil Services Division for Road Agency Approval and no works are to commence prior to approval.
16. The installation or relocation of any services or service connections within the site on completed works requires, in addition to service authority approvals, the approval of the TCSD. All service related works are to be contained within the appropriate Nominal Service Corridor (refer Standard Drawing CS-3001).
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 and/or TCSD, to the satisfaction of the consent authority.
18. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
19. 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.

20. The car parking shown on the endorsed plans must be available at all times for the exclusive use of the occupants of the development and their visitors.
21. "No entry/no exit" signs and arrows directing the internal traffic movement on site shall be provided at the completion of building to the requirements and satisfaction of the consent authority.
22. 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.
23. 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.
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.
25. No temporary access for construction purposes shall be permitted from the Stuart Highway road reserve. Construction and delivery vehicles shall not be parked on the Stuart Highway road reserve.
26. Upon completion of any works within or impacting upon the Stuart Highway road reserve, the road reserve shall be rehabilitated to the standards and requirements of the TCSD.
27. Loads of all trucks entering and leaving the site of works are to be constrained in such a manner as to prevent the dropping or tracking of materials onto streets. This includes ensuring that all wheels, tracks and body surfaces are free of mud and other contaminants before entering onto the sealed road network. Where tracked material on the road pavement becomes a potential safety issue, the developer will be obliged to sweep and clean material off the road.
28. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view, located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority.
29. 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.
30. External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the consent authority.

## NOTES

1. 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>

2. 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.
3. All works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
4. City of Darwin advises that vehicle load limits have been introduced on Dinah Beach Road. Vehicles over 14.5 metres in length and 14 tonnes vehicle weight are not permitted to use Dinah Beach Road.
5. Power and Water Corporation advises that the Water and Sewer Services Development Section ([landdevelopmentnorth@powerwater.com.au](mailto:landdevelopmentnorth@powerwater.com.au)) and the Power Network Engineering Section ([powerconnections@powerwater.com.au](mailto:powerconnections@powerwater.com.au)) should be contacted via email a minimum of one month prior to construction works commencing to determine servicing requirements and the need for upgrading of infrastructure.
6. The Developer, their Contractor or Service Provider is required to obtain a "Permit to Work Within NT Government Road Reserves" prior to the commencement of any works within the Stuart Highway road reserve.
7. The proposed access to the Stuart Highway shall be designed as left in access only. Appropriate curve radius and signage to be provided to prevent left out movement from the access.
8. The boundary of the lot with Stuart Highway road reserve is to be appropriately protected in accordance with the TCSD's standards and requirements to deter unauthorised vehicular and/or pedestrian movement.
9. The finish of any Prime Identification sign, if erected, shall be such that, if illuminated, day and night readability is the same and is of constant display (i.e. not flashing or variable message). The sign shall be positioned:
  - (a) so as not to create sun or headlight reflection to motorists; and
  - (b) be located entirely (including foundations and aerially) within the subject lot.
10. Advertising signage, either permanent or temporary, e.g. 'A' frame, vehicle or trailer mounted shall not be erected or located within the Stuart Highway road reserve.
11. Any floodlighting or security lighting provided on site is to be shielded in a manner to prevent the lighting from being noticeable or causing a nuisance to Stuart Highway traffic.

12. 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](mailto:info@ntbuild.com.au)) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.

## REASONS FOR THE DECISION

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

The NT Planning Scheme 2020 applies to the land and service station, and food premises-fast food outlet requires consent under Clause 1.8 (When development consent is required). It is identified as *Impact Assessable* under Clause 1.8(c)(i) and therefore Part 2 of the Scheme – Darwin Inner Suburbs Area Plan 2016), zone purpose and outcomes of Clause 4.12 (Zone SC), and Clauses 5.2 (Plot Ratios in Commercial Zones), 5.2.4 (Vehicle Parking), 5.2.5 (Loading Bays) 5.2.6 (Landscaping), 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR), 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC), 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T), 5.5.8 (Service Station) and 5.5.11 (Food Premises), need to be considered.

These clauses have been considered, and it is found that the proposal complies with all relevant requirements except Clause 5.5.8 (Service Station).

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 5.5.8 (Service Station)

*Sub-clause 2 specifies that the fuel bowsers associated with the service station are visually screened and are located at least 20m from any residential or other commercial development on the site.*

*Sub-clause 1 (administration) of the clause specifies – the Authority may consent to a service station that is not in accordance with sub-clauses 2-4 only if it 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, nature, scale and impact on surrounding amenity.*

The purpose of the clause is – *to ensure that a service station:*



- (a) *is developed in a location that provides convenient access and does not interfere with the safe and efficient operation of the local road, cycle and footpath network;*
- (b) *does not, because of appearance or the emission of fumes, noise or light, unreasonably affect the use and enjoyment of adjacent land;*
- (c) *incorporates appropriate site layout, building and landscape design to ensure that there are no unreasonable impacts on the anticipated amenity of adjacent land;*
- (d) *incorporates best practice environmental management measures to prevent contamination of land, stormwater, groundwater and air; and*
- (e) *responds to existing and anticipated development on the site and adjacent land.”*

The Authority notes that no screening is provided to fuel bowsers associated with the service station. The Authority, taking into account the purpose of clause 5.8.8 (under subclause (c) above), grants a variation to screen fuel bowsers associated with the services station due to the following reasons:

- The development has shown good consideration of the purpose (sub-clause 3) by providing a 3m landscaping buffer along the street frontages and rear boundary, which will minimise the amenity impacts of fuel bowsers if any.
- The fuel bowsers are located more than 20m away from the adjoining residential boundary, 11m from Stuart Highway and 8m from Kings Street.
- The screening of fuel bowsers will reduce the opportunities to provide passive surveillance of streets.

The Authority further notes that it is an unusual practice to provide screening to fuel bowsers in service stations as the nature of the use is such that it should be highly visible from street frontages.

The Development Assessment Services (DAS) assessment found that a small portion of the service yard area associated with the food premises-fast food outlet is located 18.4m from one fuel bowser of the service station. The remaining areas of the food premises-fast food outlet building (including alfresco associated with the fast-food outlet) are located more than 20m away from the fuel bowsers. The convenience store is located more than 20m away from the fuel bowsers.

The Authority notes the assessment of DAS, which concludes that a variation to the clause is appropriate as it is minor and will not impact the safe and efficient operation of the service station. Furthermore, the encroachment relates to the integrated service yard area (comprising bin storage and services room) with no openings facing the bowsers. Therefore, it will not unreasonably affect the use and enjoyment of the food outlet customers due to the emission of fumes and noise. The assessment also notes that the food outlet's seating area (indoor and outdoor) is located more than 20m away from the fuel bowsers.



Mr Alex Deutrom from Master Plan NT (applicant) attended the meeting and spoke further about the non-compliance. Mr Deutrom told the Authority that the fuel bowsers associated with the service stations would be equipped with the latest technology, reducing the emission of fumes from the nozzle of bowsers. Mr Deutrom stressed that the area of encroachment relates to the service yard of the food outlet building; therefore, it will not unreasonably impact the amenity of customers of the food premises-fast food outlet. Mr Deutrom also table photographs of three service station development in the Darwin area with commercial development less than 20m from the fuel bowsers.

The Authority notes the above-mentioned comments of the applicant and the DAS' assessment in support of the variation. The Authority noted that the clause requires the fuel bowsers associated with the service station to be located at least 20m from the other commercial development on the site (underline emphasis added). The Authority determined not to grant a variation to this clause as the proposed development is a Greenfield. There was no evidence that a further reconfiguration of the development, which complies with the requirements of this clause, is either impossible or impractical. The Authority questioned the applicant on the possibility of amending the plans to comply with this clause's requirement. The applicant agreed that the plans can be amended to achieve compliance and was amenable to including a condition to this effect if the Authority determines not to grant a variation to this clause.

The Authority also took into account the photographs (tabled by the applicant) of three service stations in the Darwin area with commercial development less than 20m from the fuel bowsers. The Authority acknowledges that those service stations failed to consider the separation distance requirement of the service station. The authority was mindful not to grant a variation in this instance as it would simply compound the errors made in previous comparable developments. The Authority notes the NTCAT decision - *Adelaide Nominees PTY LTD v Development Consent Authority* - [2020] NTCAT 33 at para [61] which concluded that previous errors in the approach adopted by the Development Consent Authority when approving similar developments does not justify a departure from cl 8.1.4(2)(a) – the 20m requirement.

3. The Authority notes that the proposed development contributes to the mix of residential, commercial, retail, community and other uses anticipated in the locality and has been designed to ensure the proposed use is compatible with future, reasonably anticipated residential development. The development itself provides for refuelling, convenience retail and fast food needs of passing traffic and the surrounding localities. It is therefore consistent with Objective 1 of the Darwin Inner Suburbs Area Plan 2016. The proposal is consistent with providing service commercial uses servicing both the inner suburbs and the CBD. The proposal does not compromise the primary arterial function of the Stuart Highway and ensures vehicle and pedestrian movement routes are maintained.

The Authority noted that the subject site is identified as an “area for change” to Mixed Use – Residential, Commercial and Showrooms in the Concept Plan for Stuart Highway, Stuart Park included in the DISAP 2016. The Authority the DAS’ assessment which concludes that that the DISAP does not prevent the use of land consistent with the current town planning zone that applies to a site. The proposed uses are identified as *Impact Assessable* in the NTPS 2020, and the consideration of the applicable relevant clauses of the NTPS 2020 found that the proposal is generally compliant. The Authority considers that the application of the concept identified for the site in the DISAP is not relevant to the current as the proposed uses are not prohibited in Zone SC or require rezoning of the site.

4. 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.

One (1) public submission was received during the exhibition period under Section 49 of the Act with respect to the original proposal.

Following the close of the exhibition period of the original application, the applicant amended the site layout. The amended proposal was re-advertised for an additional two (2) week period (from 08 October 2021 to 22 October 2021). No further public submissions were received under section 49 of the Act.

The Authority notes that the submitter was notified by DAS (via email) about the re-exhibition and invited to comment on the amended proposal. No further submission was received.

The concerns raised by the submitter in relation to the original application primarily relates to the inconsistency of the proposal with the DISAP and amenity impacts of the service station on the adjacent residential areas.

The Authority carefully considered the concerns of the submitter in making its decision. In relation to the inconsistency with the DISAP, the Authority has addressed this matter in reason three (3) above, which concludes that the DISAP does not prevent the use of land consistent with the current town planning zone that applies to a site. The assessment has found that the proposed development is generally compliant with the relevant requirements of the NTPS 2020.

The other concerns raised by the submitter are addressed in amended plans which propose relocation of the waste areas and loading area away from the boundary of 4 Queen Street, increasing the separation distance between fuel bowsers and nearby dwellings and providing mature trees with the boundary with 4 Queen Street. The Authority noted that no further submission was received from the submitter on the amended proposal. Conditions are included on the permit to maintain the landscaping and minimise lighting impacts on nearby dwellings to protect the existing and future amenity of the adjacent residential area.

5. 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. and 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 site had been developed /used as a vehicle sales and motor repair station for over 35 years and is connected to reticulated electricity, water and sewerage services. The site is situated above the 1% AEP flood event allow for the anticipated access, stormwater and servicing requirements for the land.

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.

6. 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 is considered in the context of the site and its surroundings. The development is consistent with the broader intent of Zone SC (Service Commercial) and applicable clauses of the NTPS 2020. The non-compliance identified related to Clause 5.5.8 (Service Station) is minor in nature and is unlikely to unduly affect the future amenity of the site and surrounding area.

The design and layout of the proposed development are considered to provide adequate separation to residential uses adjoining the subject site. A 3m landscaping buffer and 1.8m high solid Colorbond good neighbour fencing are provided along the eastern boundary to provide additional visual and acoustic screening to the adjacent residential uses. Conditions are recommended on the permit to maintain the landscaping, which will likely minimise lighting impacts on nearby dwellings to protect the existing and future amenity of the adjacent residential area.

7. Pursuant to section 51(1)(p), the consent must take into consideration the public interest, including (if relevant) how the following matters are provided for in the application:
- (i) community safety through crime prevention principles in design;
  - (ii) water safety; and
  - (iii) access for persons with disabilities.

In relation to community safety through crime prevention, the establishment of use of a vacant building site will allow for continued passive surveillance of surrounding streets. The proposed uses will be open throughout the evening (outside of normal business hours), providing an active use in the locality. The development maintains sightlines within the driveways (for vehicles) and clear sightlines for pedestrians. The Authority notes that there are no relevant matters concerning water safety.

Regarding access for persons with disabilities, the development provides two disabled car parking spaces, one each in front of the food outlet and convenience store. The Authority noted that no pedestrian crossing is provided in the drive-thru to connect the pedestrian access from Stuart Highway with the food premises-fast food outlet building. Also, no pedestrian access was provided in the car park located along the eastern The Authority noted that the food premises-fast food outlet (with a drive-thru) is expected to experience more traffic and should provide pedestrian crossing in the development for the safety of the pedestrians. The Authority notes that The *Disability Discrimination Act 1992* (DDA) is the primary legislation in Australia addressing discrimination against people with disabilities. It is the responsibility of the developer and landowner to ensure that compliance with the DDA is achieved.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Notice of Determination

**ITEM 2**

**PA2021/0076**

**DWELLING-INDEPENDENT WITH A FLOOR AREA IN EXCESS OF 50M2 AND REDUCED FRONT AND SIDE SETBACKS**

**LOT 5390 (27) LAMBELL TERRACE, LARRAKEYAH, TOWN OF DARWIN**

**APPLICANT**

June D'Rozario & Associates

The applicant sent their apologies.

Peter McQueen (on behalf of the applicant) and David Flint (landowner) attended.

Submitters in attendance: Kim Leslie and Jodie McLeod. Ms Leslie tabled an additional submission.

Gerard Rosse (Tropics Consultancy) attended representing submitters David and Jodie McLeod.

**RESOLVED  
94/21**

That, the Development Consent Authority, pursuant to section 53(c) of the *Planning Act 1999*, refuse to consent to the application to develop Lot 5390 (27) Lambell Terrace, Town of Darwin for the purpose dwelling-independent with a floor area in excess of 50m<sup>2</sup> and reduced front and side setbacks, for the following reasons:

## REASONS FOR THE DECISION

1. There is an extensive background of previous Development Applications of a similar nature in respect of the subject Lot. Of particular note is, firstly, an application for a dependent unit exceeding 50m<sup>2</sup> with a reduced front setback which was approved by the Development Consent Authority (DCA) in 2011. That application (PA2010/1370), was subject to a third party appeal to the Lands Planning and Mining Tribunal in 2012, which revoked the decision of the DCA; see *Buntine and McLeod v DCA*, delivered 13<sup>th</sup> April, 2012 (the 2012 Decision). This decision was appealed to the Supreme Court, but then discontinued. Secondly, in 2018, an application for an independent unit with a floor area in excess of 50m<sup>2</sup> was refused by the DCA (NR18/0011) (the 2018 Determination). The principal reason for the refusal was that the building comprised three storeys, with the third storey component being an uninhabitable storage area.
2. 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 and a dwelling-independent in excess of 50m<sup>2</sup> with a reduced front and side setback requires consent under Clause 1.8 (When development consent is required), as it is identified as becoming *Merit Assessable* under Clause 1.8(b)(ii)(2). Because it is Merit Assessable and the proposal is also found to be non-compliant with Clauses 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), 5.4.6 (Private Open Space) and 5.4.13 (Dwelling-Independent) of NTPS2020, those clauses must be considered.

### Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures)

The proposal is not in accordance with Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), because the proposed development will result in a reduced front setback of less than 6.0m (2.0m proposed) and a side setback of less than 1.5m (extension of garage wall which forms part of a planter box – zero setback proposed).

In relation to the non-compliant front setback, which proposes 2.0m where 6m is required, the Authority considers that the proposal is not compatible with the streetscape and surrounding development, particularly in that it would considerably reduce the buffer intended to be established by the minimum setbacks for land in Zone LR and land in Zone TC, and the proposed variation is not supported. The Authority noted the 2012 Decision of the Lands Planning and Mining Tribunal which considered a comparable proposal with a similar setback on appeal in 2012. The present proposal is substantially the same and there has been little change in the immediate area both in terms of existing development and zoning since that time. The Tribunal Chair concluded in 2012:

*'It is reasonably anticipated that land in Zone TC, immediately opposite the development site, might in the future be developed either in terms of a permitted or discretionary use (Impact or Merit Assessable under NTPS2020), each of which are regulated by minimum setbacks.*

*In my opinion, if the proposed development were to be approved with the reduced front setback that would considerably reduce the buffer intended to be established by the minimum setbacks for land in Zone SD (now Zone LR), and land in Zone TC. Approval of the proposed development would seriously compromise the buffer that was intended to exist between Zone SD and Zone TC in the Larrakeyah locality.*

*On that basis the Tribunal considers that the first respondent (the then DCA), erred in concluding that the proposed development was justified on the basis of "special circumstances", and that its determination, in that regard, would result in an outcome manifestly contrary to a planning provision of the NTPS.'*

The Tribunal subsequently revoked the DCA's decision to approve the application (which was made in 2011).

It is particularly noted that the Tribunal found the proposed setback reduction represented 'a very significant and grave departure in degree from the relevant planning control', and considered that 'minimum planning requirements, such as setbacks, set a bare minimum standard for residential and non-residential buildings...' and 'minimum setback requirements are designed to ensure orderly and appropriate development...' The Tribunal further considered 'The greater the departure or variation from those minimum requirements the greater the negative effect on orderly and appropriate development under the relevant planning scheme.'

This consideration remains just as valid for this application.

The Authority notes that the assessment of the proposal in the 2012 Decision was made under the NT Planning Scheme 2007, which required consideration of whether 'special circumstances' existed before exercising its discretion to vary or waive compliance with a setback requirement. Under the current Scheme, Sub-clause 3 of Clause 1.10 requires the Authority, in exercising its discretion in relation to a merit assessable application, to take into account all of the following -

- (a) the relevant requirements, including the purpose of the requirements, as set out in Parts 5 or 6; Northern Territory Planning Scheme 2020 Part 1-6;*
- (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 relevant to a variation of requirements in Parts 5 or 6; and*
- (d) if an Area Plan in Part 2 applies to the land, any component relevant to a variation of requirements in Parts 5 or 6.*

Noting the changed method of assessment under the current scheme, the Authority considers that the findings of the Tribunal remain relevant



to the assessment of this proposal under NTPS 2020, particularly with regard to the purpose of the setback requirements and compatibility of the proposal with the streetscape and surrounding development.

Peter McQueen (on behalf of the applicant) and David Flint (landowner) attended the meeting and spoke further to the application. In respect of the proposed variation to the front setback, Mr McQueen noted that the City of Darwin has declined to sell a portion of the road reserve to Mr Flint and has indicated that it *“cannot guarantee the option for pedestrian access via the Lambell Terrace road reserve will be maintained. City of Darwin requires the flexibility to realign the road reserve, if required, when Lot 6364 (10) Lambell Terrace (old hospital site) is developed”*. Mr McQueen argued that the continued uncertainty about the future use of the Old Hospital site and the road reserve were factors which the DCA should take into account in exercising its discretion to grant a reduction to the front setback. The Authority, however, considers that such uncertainty is a factor contributing to the conclusion that it would be unsafe to grant a reduction.

In respect of the side setback, Mr McQueen reiterated that neither the applicant nor the landowner conceded that a variation to the side setback was required as the garage extension or wall referred to by Development Assessment Services (DAS) in its report delineates part of the lot boundary with the adjoining lot, and is considered a fence or barrier.

Mr Flint advised the Authority that the dwelling-independent was required to provide accommodation for a carer to provide in-home care for Mr Flint and his wife to enable them to continue to live at home in the long term.

The Authority notes the abovementioned comments however, considers the wall constructed along the north western is an extension of the garage and requires consent regardless of whether or not it is proposed to form part of a planter box along the western boundary as illustrated in the plans submitted as part of the application.

As such, the authority considers that a zero side setback to the planter box referred to in the application to be is a significant variation and large departure from the 1.5m requirement of Clause 5.4.3. The Authority considers it likely to be visually imposing when viewed from the adjoining neighbouring lot to the North Western and is therefore not supportive of the variation proposed.

The Authority also considers the zero side setback proposed does not achieve the purpose of the Clause 5.4.3. Specifically, it does not minimise adverse effects of building massing when viewed from adjoining land.

Having regard to the zone purpose and outcomes of the zone, the Authority notes that outcome 4 and 6 of Zone LR (Low Density Residential) state *‘Dwellings and outbuildings are set back in a manner sympathetic to neighbours, the streetscape and scale and character of surrounding development’* and *‘Building design, site layout and*



*landscaping provide a sympathetic interface to the adjoining public spaces and between neighbours, provides privacy and attractive outdoor spaces’.*

The Authority considers that the proposal does not achieve either of the above outcomes sought for Zone LR (Low Density Residential) as the extension to the garage is not sympathetic to neighbouring properties and is in unacceptably close proximity to the affected boundary.

#### 5.4.6 (Private Open Space)

The proposal meets the requirement for private open space in that it will have an area dimension of 5.0m x 9.0m open vertically to the sky. The Authority notes however that it will not be directly accessible from the dwelling. A similar scenario existed with a previous development application considered by the Authority in 2018 in which it determined that such a variation could be supported. At the time, the Authority noted the circumstances relevant in varying this requirement include that the siting of the open space area is as best allowed by the terraces which result from the original slope of the land, and that the design encourages the connection from the independent unit to the area below through the inclusion of the rear verandah and the stairs to enable an extension of the function of the dwelling. On this basis, the Authority considers that a variation to this clause remains supported.

#### Clause 5.4.13 (Dwelling-Independent)

The site plan identifies a floor area of 56.0m<sup>2</sup>. This is 6.0m<sup>2</sup> (or 12%), over the required floor area for a dwelling-independent in Zone LR. It is considered that it is essentially due to the size of the proposed dwelling-independent that a reduced front setback is sought. The Authority considers that given the reduced front setback is not considered acceptable, the additional floor area of 6.0m<sup>2</sup> is also be considered unacceptable in that it significantly impacts on the amenity of the adjoining and nearby land through the creation of the inappropriate front setback.

The Authority notes that the level of assessment that applies to a dwelling-independent in Zone LR is ‘permitted without consent’ under NTPS 2020 when the following apply:

- i. it is shown as Permitted on the relevant assessment table in Part 4; and
- ii. it does not require consent by virtue of an overlay in Part 3; and
- iii. it complies with all relevant development requirements set out in Part 5; or
- iv. a provision of the Planning Scheme expressly sets out that it is Permitted

Should the applicant wish to development a dwelling-independent that complies with the provisions of the NTPS2020, planning consent would not be required.

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

Five submissions were made by three submitters under section 49 of the Act in relation to the application during two exhibition periods. It is noted there were two exhibition periods as the application was substantially revised by the applicant following the first exhibition period.

The key issues raised in the submissions principally relate to: setbacks, amenity impacts, building height, private open space, size of dwelling-independent, zone objectives, landscaping, noise and building approval.

Mr Gerard Rossi (Tropics Consultancy) spoke on behalf of the submitters David and Jodie McLeod. Mr Rossi reiterated the submitters concerns regarding the amenity impact and made reference to the zone purpose being compatible with residential development and that dwellings and outbuildings are to be set back in a manner that is sympathetic to neighbours, the streetscape and scale and character of surrounding development.

Ms Kim Leslie spoke to her original submission and tabled an additional submission outlining her concerns regarding the impact the development would have including building massing, sunlight penetration, breezes, overlooking and noise.

Matters relating to setbacks, private open space and size of dwelling independent are addressed in point 1 above.

The Authority notes the abovementioned comments. The Authority also considers that the proposal does not achieve outcome 4 or 6 of Zone LR (Low Density Residential) which state *'Dwellings and outbuildings are set back in a manner sympathetic to neighbours, the streetscape and scale and character of surrounding development'* and *'Building design, site layout and landscaping provide a sympathetic interface to the adjoining public spaces and between neighbours, provides privacy and attractive outdoor spaces'*. The Authority considers that the nature of the development is unsympathetic to neighbouring properties and the proximity to the affected boundary is unacceptable.

Regarding the other matters raised, it is noted that the proposal is identified as *Merit Assessable* under Clause 1.8(b)(ii)(2) of NTPS2020, and therefore, under Clause 1.10(2), the consent authority must consider the requirements in Part 5 that are not complied with and whether the proposal meets the purpose of the requirements. The matters not complied relate to Clauses 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), 5.4.6 (Private Open Space) and 5.4.13 (Dwelling-Independent) of NTPS2020. Consequently, consideration of other matters, including zone objectives, is essentially not required.

Nevertheless, it is noted that a number of the issues raised in the submissions were also considered by the DCA in its 2018 Determination under the NT Planning Scheme 2007, which was similar in many respects to this current application. Notably, a key reason for the 2018 refusal was that the proposed building comprised three storeys, with the third storey component being an uninhabitable storage area. This storage area as previously proposed is not part of this application, which makes the dwelling a two-storey building. The application indicates that the cavity, which makes up the storage area, will be closed and the door removed with the door opening restored to match the surface of the retaining wall. As such the building proposed as part of this application is considered compliant as a two storey building under Clause 5.4.2 (Residential Height Limitations).

The height of the building is determined through Clause 5.2.1 (General Height Control), which states that *'the height of any building is not to exceed 8.5m above ground level...'* The 2018 refusal considered *'it more likely than not that the building height would not have exceeded 8.5m'*. The building height for this current proposal (8.457m), is the same as for the previous proposal and is therefore considered compliant under Clause 5.2.1.

Landscaping consists of mature established gardens, a pool and associated barbecue area, and outdoor entertainment deck. Other than the additional landscaping shown on the application drawings, no changes are proposed to the existing landscaping. The existing landscaping on the site is considered sufficient to meet the purpose and requirements of Clause 5.2.6 (Landscaping).

Regarding the issue of noise, this is a matter regulated by the NT EPA through the *Waste Management and Pollution Control Act 1998*. It is noted that the NT EPA has raised no issues regarding the proposal.

In relation to building approvals, this is a matter which falls under the *Building Act 1993*. A note is applied to development permits issued advising the developer to contact a Northern Territory registered building certifier to seek a building permit as required by the *Building Act 1993* before commencing any demolition or construction works, and this note would be applied in the event the application was approved.

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.

It is considered that the proposal will have a negative impact on the amenity of the area in this instance, particularly as the proposed front setback would considerably reduce the buffer intended to be established by the minimum setbacks for land in Zone LR, and land in Zone TC. Furthermore, the nature of the development is unsympathetic to neighbouring properties and its proximity to the affected side boundary is unacceptable.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Notice of Refusal

**ITEM 3**

**PA2021/0209**

**RECONSIDERATION - EXHIBITION CENTRE WITH ANCILLARY FOOD PREMISES-RESTAURANT AND SHOP IN A THREE STOREY BUILDING WITH BASEMENT LEVEL (STATE SQUARE ART GALLERY)  
LOTS 6649 & 7582 (3 & 7) SMITH STREET, LOTS 6571, 7583, & 5949 (14, 16 & 18) ESPLANADE, & LOT 3940 (25) MITCHELL STREET, DARWIN CITY, TOWN OF DARWIN**

**APPLICANT**

MasterPlan NT

Simon Tonkin and Alex Deutrom (MasterPlan NT), Randal Ashford (Ashford Architects), Lyle Hebb, John Harrison and Leanne Taylor (DIPL) and Stuart Hocking attended.

Ms Taylor tabled Greater Darwin Fact Sheet with an article on Civic and State Square revitalisation and a copy of a page from the NT budget showing funding allocated for the State Square Art Gallery and to redevelop State Square.

Mr Tonkin tabled a photo of the Administrators office taken from the Jurors' Carpark adjoining the Supreme Court.

Submitters Justice Kelly and Justice Hiley sent their apologies.

Submitters in attendance John Brears and Peter Forrest.

Mathew Kelly attended (representing submitter Justice Kelly).

**RESOLVED  
95/21**

That, the Development Consent Authority reduce the car parking requirements pursuant to Clause 5.2.4.3 (Reduction in Parking Requirements within Zone CB in Darwin) and vary the requirements of Clause 5.2.5 (Loading Bays) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lots 7582 (7) Smith Street, 7583 (16) The Esplanade, 3940 (25) Mitchell Street, 5949 (18) The Esplanade, 6571 (14) The Esplanade, and 6649 (3) Smith Street, Town of Darwin for the purpose of an exhibition centre with ancillary food premises-restaurant and shop in a three storey building with basement level (State Square Art Gallery), subject to the following conditions:

**CONDITIONS PRECEDENT**

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), an amended 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 plan must be generally in accordance with that submitted with the application and must include:

- a) Details of external finishes to the building consistent with the recommendations of the peer review by Mr Ian Mitchell, particularly the selection of colours so the relationship with the colours of stone in nearby buildings are achieved.
  - b) A landscape plan generally in accordance with the landscape detail plan dated 16.09.2021, 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 that will be planted, particularly to reflect the recommendation of the peer review relating to the importance of the landscape scheme in the context of State Square.
2. Prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.
  3. Prior to the commencement of works (including site preparation), the applicant is to prepare 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.
  4. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Policy 054, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.
  5. 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.
  6. Prior to the commencement of works (including site preparation), a Traffic Impact Assessment Report (TIA) is to be prepared by a suitably qualified traffic engineer 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, with particular attention to vehicular, pedestrian, and bicycle rider issues and opportunities, and submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.

The TIA is to also include swept paths for waste collection vehicles entering and exiting the site. The report should identify any necessary upgrades to the surrounding street network as a result of the implications of the development. The developer will be required to institute all required upgrade measures resulting from the traffic assessment at no cost to City of Darwin.

## **GENERAL CONDITIONS**

7. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
8. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
9. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage and electricity facilities and telecommunication networks to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
10. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of City of Darwin, to the satisfaction of the consent authority.
11. 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.
12. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street to the requirements of the City of Darwin, to the satisfaction of the consent authority.
13. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin to the satisfaction of the consent authority.
14. Storage for waste disposal bins is to be provided to the requirements of City of Darwin, to the satisfaction of the consent authority.
15. 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.
16. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view, located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority.



17. 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).
18. 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.
19. No goods are to be stored or left exposed outside the building so as to be visible from any public street.
20. Lots 6649, 7582, and 7583 and the applicable portion of Lots 6571 and 5949, Town of Darwin are required to be consolidated and a new title issued for the consolidated lot. Also please refer to Note 6 below for advice related to the National Construction Code (NCC).
21. 32 car parking spaces are to be made available on Lot 3940, Town of Darwin (State Square Underground Carpark), for the development approved through this permit.
22. The landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
23. 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.
24. General building lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the consent authority.

## **NOTES**

1. The Authority advises the applicant that the recommendations of the peer review by Mr Ian Mitchell, particularly as they relate to the State Square Master Plan, are to be implemented to the fullest extent possible.
2. The Power and Water Corporation (PWC) advises that the Water and Sewer Services Development Section ([waterdevelopment@powerwater.com.au](mailto:waterdevelopment@powerwater.com.au)) and Power Network Engineering Section ([powerdevelopment@powerwater.com.au](mailto:powerdevelopment@powerwater.com.au)) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.



3. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
4. 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. 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.
6. The Building Advisory Services (BAS) branch of the Department of Infrastructure, Planning and Logistics advises that the applicant obtain a review of the structural design of the proposed development by a structural engineer registered in the Northern Territory and provide the review to the building certifier. The building certifier may take this report into consideration when granting a building permit and if relied upon by the building certifier in granting the building permit, provide the report to the Director of Building Control. BAS can be contacted via email ([bas@nt.gov.au](mailto:bas@nt.gov.au)) or by phone on 08 8999 8985.
7. There are statutory obligations under the *Waste Management and Pollution Control Act 1998* (the Act), that require all persons to take all measures that are reasonable and practicable to prevent or minimise pollution or environmental harm and reduce the amount of waste. The proponent is required to comply at all times with the Act, including the General Environmental Duty under Section 12 of the Act. There is also a requirement to obtain an authorisation prior to conducting any of the activities listed in Schedule 2 of the Act. Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority website at <http://ntepa.ntg.gov.au/waste-pollution/guidelines/guidelines>.
8. 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.
9. 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](mailto:info@ntbuild.com.au)) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
10. 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/newdevelopments.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-withthe-nbn/newdevelopments/builders-designers.html>.

11. 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*.
12. This permit will expire if one of the following circumstances applies:
  - (a) the development and use is/are not started within two years of the date of this permit; or
  - (b) the development is not completed within four years of the date of this permit.

The consent authority may extend the periods referred to if a request is made in writing before the permit expires.

## 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 (NTPS2020) applies to the land and exhibition centre with ancillary food premises-restaurant and shop requires consent under Clause 1.8 (When development consent is required).

The land is located in Zone CB (Central Business), the purpose of which zone is to promote an active and attractive mixed use environment that maximises its function as the commercial, cultural, administrative, tourist and civic centre for the surrounding region that is integrated with high density residential development. The zone outcomes specifically require that an Exhibition Centre supports the needs of the local or regional population and contribute to the diversity and activity of uses within the zone.

The uses for the development are identified as Merit Assessable under Clause 4.10 – Zone CB (Central Business), and therefore the strategic framework (Part 2 of the Scheme – Central Darwin Area Plan 2019), zone purpose and outcomes of Clause 4.10 (Zone CB), and 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... CB...), 5.5.3 (Commercial and Other Development in Zones... CB...), 5.5.11 (Food Premises), and 5.8.4 (Exhibition Centre...), apply.

The application was considered by the consent authority on 6 August 2021 and subsequently deferred to allow the applicant to provide further information as follows:

- Extensive consideration of Clause 5.5.3 (Commercial and Other Development in Zones...CB...) of the NT Planning Scheme 2020, particularly sub-clauses 3, 4, 7, 10, 11 and 12;

- A car parking audit to clearly establish the number of car parking spaces being lost and gained in the context of the art gallery proposal and State Square Precinct as a whole, to enable proper consideration of the proposal under Clause 5.2.4 (Vehicle Parking) of the NT Planning Scheme 2020;
- Provision of indicative drawings or submission of a development application for the proposed lot consolidation to enable proper consideration of its impacts on the affected lots;
- That the issues raised in the public submissions as they relate to Clause 5.5.3 (Commercial and Other Development in Zones... CB...), of the NT Planning Scheme 2020 have been satisfactorily addressed;
- Provision of any updated plans for the art gallery as the result of any changes to address the above points of deferral;
- A third party peer review to be undertaken by an independent specialist to provide the consent authority with an opinion on the proposal focussing on sub-clauses 3 and 4 of Clause 5.5.3 (Commercial and Other Development in Zones... CB...) of the NT Planning Scheme 2020.

On 29 September 2021, the applicant responded to the points of deferral, which included a set of updated plans (principally increasing the setback between the Art Gallery and Supreme Court from 7.7m to 11m).

A third party peer review was then undertaken by an independent specialist (Mr Ian Mitchell of Mitchell Design Associates) to provide the consent authority with an opinion on the proposal focussing on sub-clauses 3 and 4 of Clause 5.5.3 (Commercial and Other Development in Zones... CB...) of NTPS 2020.

Both the applicant's response to the points of deferral and the peer review were circulated to all public submitters (including those who made late submissions) for comment.

An assessment of the revised proposal was undertaken by Development Assessment Services found the proposal to be compliant with NTPS 2020, with the exception of Clause 5.2.5 (Loading Bays).

The Authority notes the additional information provided and DAS report, nevertheless considers that the proposal does not comply with Clause 5.2.4 (Vehicle Parking).

The assessment identifies that the proposal generates 56 parking spaces. Under Clause 5.2.4.3 (Reduction in Parking Requirements within Zone CB in Darwin), the parking requirement for the development may be reduced by 25% as:

- The development is within 400m walking distance of an existing, publicly accessible car park with a combined total of 100 car parking spaces or more (5% reduction); and
- All car parking on the site is provided in an underground parking area - including the State Square underground carpark as part of the site (20% reduction).

The Authority notes that the Darwin bus interchange is not shown on the State Square Master Plan, therefore does not consider that a reduction can be granted for the development being within 400m walking distance of a bus stop given the uncertainty of the future of the interchange.

A total parking reduction of 25% therefore applies to the parking requirement of 56 parking spaces for the site. A total of 42 parking spaces are therefore required. 10 of these spaces are provided beneath the development and 32 spaces are provided in the State Square Underground Carpark (SSUC). The 32 spaces are considered a shortfall as the SSUC is separate from the actual development but part of the site covered by the development application. The SSUC has at least 133 public parking spaces currently available. A general condition is included stating that 32 car parking spaces are to be made available on Lot 3940, Town of Darwin (State Square Underground Carpark), for the development approved through this permit.

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).

The Authority considers that a variation to Clause 5.2.5 (Loading Bays) is appropriate in this instance as the non-compliance is unlikely to result in adverse impacts on the local road network or internal functionality of the car parking area or unreasonably impact on the amenity of the surrounding locality. Mainly because the Art Gallery will have a lower frequency of deliveries due to its exhibits being in place longer than that of a traditional exhibition centre. The Authority also notes that the City of Darwin has requested that a Traffic Impact Assessment Report to be prepared with particular attention to vehicular, pedestrian, cyclist and public transport issues and opportunities, and is to also include swept paths for waste collection vehicles entering and exiting the site, and this is addressed through the inclusion of a condition precedent.

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

One submission was made under section 49 of the Act in relation to the application during the exhibition period. Four late submissions were also received. All five submissions have been considered (including further submissions made by submitters regarding the Applicant's response to the matters of deferral and the peer review).

Mr John Brears and Mr Peter Forrest addressed the Authority reiterating the issues raised in their submissions to the proposal.

The key issues raised by the submitters relate to the design, colour and location of the building, noise, car parking, access, and consultation.

Regarding the design, colour and location of the building, the Authority notes that the most relevant clause of NTPS2020 relating to these aspects is Clause 5.5.3 (Commercial and Other Development in Zones... CB...), to which the proposal is considered to comply. This is particularly in light of the peer review undertaken by Mr Ian Mitchell which specifically examined whether the proposal is sympathetic to the character of buildings in the immediate vicinity and the expanses of blank walls are minimised. The review concludes that the Gallery achieves a sympathetic relationship with the Supreme Court and the wider precinct. Its conclusions, however, *“depend to a significant extent on the outcome of the Master Plan and in particular its built elements such as the covered way and the Central Heart.”* It also includes recommendations that the colour selection for the building is such that the relationship with the colours of stone in nearby buildings is achieved, and there is recognition that the landscape scheme reflects the context of State Square. To this end, a condition precedent is included to ensure that external finishes to the building are detailed in amended plans consistent with the recommendations of the peer review, particularly the selection of colours so the relationship with the colours of stone in nearby buildings is achieved. Also, a condition precedent is included requiring a landscape plan to be submitted, including a planting schedule of all proposed trees, shrubs and ground covers, particularly to reflect the recommendation of the peer review that *“the importance of the landscape scheme to the insertion of the building into the context of the Square be recognised.”*

The Authority also notes the Clare Design Expert Statement provided by the applicant in support of the design and location of the proposal, and the statement from the applicant that the proposal is one element of the wider State Square Masterplan, which has been developed by professionals in landscape architecture, urban design and architecture with input from a broad range of stakeholders, which has informed the strategic placement of the Art Gallery on the proposed site.

Regarding noise, the Authority notes the Acoustic Statement by the applicant’s noise consultant Bestec, however recognises that the Waste Management and Pollution Control Act 1998 is administered by the NT Environment Protection Authority (NT EPA). The application was circulated to the NT EPA and it subsequently provided no comment on the application indicating it has no issues regarding potential noise impacts from the development.

In relation to car parking, the Authority finds the proposal to be non-compliant with the parking requirements under NTPS2020, in that the development generates a shortfall of 32 parking spaces (after the application of applicable reductions under Clause 5.2.4.3 - Reduction in Parking Requirements within Zone CB in Darwin), as these spaces are not provided as part of the development; rather they are provided on the site covered by the development application, in the State Square Underground Carpark (SSUC). The SSUC has at least 133 public



parking spaces currently available. A general condition is included stating that 32 car parking spaces are to be made available on Lot 3940, Town of Darwin (State Square Underground Carpark), for the development approved through this permit.

The Authority also notes that the car parking audit provided by the applicant in response to the deferral shows that once the State Square Master Plan is fully implemented the State Square Precinct will have an additional 148 parking spaces when compared to prior to the construction of the Art Gallery.

Regarding access, these matters are also considered as part of Clause 5.5.3 (Commercial and Other Development in Zones... CB...) of NTPS2020, with which it is considered the proposal complies. Access to the front of the Supreme Court for service and emergency vehicles will remain. It is noted that whilst the car parking at the front of the Supreme Court does not form part of this application, the applicant acknowledges the importance of accessibility for the profession and Court users and notes that the process to develop and design access to the Supreme Court while mitigating risks around hostile vehicles, will include engagement with all stakeholders, professionals and the members of the public as Court users. The Authority supports this approach.

Regarding consultation, including advertising of the proposal, the proposal was advertised in accordance with the Planning Act 1999, in that the proposal was advertised on Planning Notices Online for two weeks from 25 June 2021 and was extended a further week due to a Covid-19 five day lockdown which occurred during this period. Six pink signs notifying of the development were installed during the advertising period on the Esplanade, Herbert Street, Mitchell Street and Smith Street adjacent to the Jurors' carpark, Administrator's Office, Administrator's Office carpark and the State Square Underground carpark. How applicants may otherwise consult with the community is not stipulated under the Planning Act 1999. It is however noted that the applicant states that consultation with the Supreme Court Chief Justice and Executive Director, Courts and Tribunals Department have been ongoing throughout the design and development of the Masterplan, and that DIPL is currently developing a re-engagement strategy to ensure Stakeholders remain informed throughout the project. The Authority strongly supports this approach.

4. Pursuant to Section 51(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. It is noted that Heritage Branch advises that the Heritage Council has no issues with the development.

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

It is considered unlikely that the proposal will have a significant negative impact on the amenity of the area. The proposal provides a community facility to the city that supports art and culture in the region and forms a key component of the State Square Masterplan. It also replaces the existing at-grade car park and is therefore expected to cool the area, provide visual interest and increase passive surveillance of the area which is a popular night-time connection between the Darwin CBD and Waterfront. It has also been found that through a peer review, the Gallery achieves a sympathetic relationship with the Supreme Court and the wider precinct.

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

It is considered unlikely that the proposal will have a significant negative impact on the amenity of the area. The proposal provides a community facility to the city that supports art and culture in the region and forms a key component of the State Square Masterplan. It also replaces the existing at-grade car park and is therefore expected to cool the area, provide visual interest and increase passive surveillance of the area which is a popular night-time connection between the Darwin CBD and Waterfront. It has also been found that through a peer review, the Gallery achieves a sympathetic relationship with the Supreme Court and the wider precinct.

**FOR: 3**

**AGAINST: 2**

**ABSTAIN: 0**

**ACTION:**

Notice of Consent and Development Permit

**NOTE**

The Chair, Suzanne Philip, and Authority member, Marion Guppy, did not support the development application as proposed. Ms Guppy considers that the proposal does not meet the requirements of clause 5.5.3 in that:

1. It does not 'preserve vistas along streets to buildings and places of architectural, landscape or cultural significance.' The Administrator's office, a place of both architectural and cultural significance, is totally isolated from State Square by the proposed development.
2. It is not 'sympathetic to the character of buildings in the immediate vicinity'. The development, in and of itself, cannot be considered sympathetic. The independent report by Mr Mitchell concedes that any sympathy to the vicinity can only be achieved through full implementation of the Master Plan. This conditionality cannot be guaranteed.



The Chair concurs with Ms Guppy and considers that the proposed development does not meet the site responsive purpose of Clause 5.5.3; nor does the response to date deal adequately with the issues raised by the submitters, including those who provided commentary, albeit late, but which is nevertheless relevant as a consideration under Section 51(t) of the *Planning Act 1999*.

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

**SUZANNE PHILIP**  
**Chair**

01 December 2021