



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 328 – FRIDAY 7 DECEMBER 2018

**BROLGA ROOM
NOVOTEL DARWIN ATRIUM
100 THE ESPLANADE
DARWIN**

MEMBERS PRESENT: Suzanne Philip (Chair), John Gleeson, Mick Palmer and Sherry Cullen

APOLOGIES: Doug Phillips

OFFICERS PRESENT: Dawn Parkes and Richard Lloyd (Development Assessment Services)
Susannah Penman (Lands Planning) (Session 1 only)
Adelle Godfrey (Development Assessment Services) (Session 2 only)

COUNCIL REPRESENTATIVE: James Whyte and Brian Sellers (Sessions 2 and 3 only)

Meeting opened at 9.35 am and closed at 2.25 pm

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

ITEM 1 **RECONSIDERATION: ALTERATIONS AND ADDITIONS TO AN EXISTING**
PA2018/0389 **SINGLE DWELLING WITH A REDUCED SIDE SETBACK**
APPLICANT **LOT 1186 (23) GREBE CRESCENT, TOWN OF SANDERSON**
AB CONSULTING (NT) PTY LTD

Ms Annette Joseland (AB Consulting (NT) Pty Ltd) attended and tabled 2x plans; one showing the proposed shed setback 1.5m from the side boundary and one showing the proposed shed rotated 90 degrees and setback 1.5m from the side boundary.

RESOLVED That, the Development Consent Authority vary the requirements of Clause 7.3
213/18 (Building Setbacks of Residential Buildings and Ancillary Structures) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act*, consent to the application to develop Lot 1186 (23) Grebe Crescent, Town of Sanderson for the purpose of a shed addition to an existing single dwelling with a reduced side setback, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), written advice from the Power and Water Corporation confirming that any part of the proposed structure, including roof eaves, does not encroach within the sewerage easement must be provided, to the satisfaction of the consent authority.
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 or an alternate approved connection.

GENERAL CONDITIONS

3. The works carried out under this permit shall be in accordance with the drawings, endorsed as forming part of this permit.
4. The use and/or development as shown on the endorsed plans must not be altered without the further consent of the consent authority.
5. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, and electricity services to the development shown on the endorsed plans in accordance with the authorities' requirements and relevant legislation at the time.

6. 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.
7. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin as the case may be to the satisfaction of the consent authority.

NOTES:

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. The Northern Territory Environment Protection Authority advises that construction work should be conducted in accordance with the Authority's Noise Guidelines for Development Sites in the Northern Territory. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.
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. City of Darwin advises that designs and specifications for landscaping of the road verges adjacent to the property shall be submitted for approval by the General Manager Infrastructure, City of Darwin and all approved works shall be constructed at the applicant's expense, to the requirements of City of Darwin.
5. City of Darwin advises that the location, design and specifications for proposed and affected crossovers shall be provided at the applicant's expense, to the satisfaction of City of Darwin.

REASONS FOR THE DECISION

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

Sheds are commonly found within the zone SD (Single Dwelling). A shed ancillary to a single dwelling is a permitted use/structure within the zone and would not require planning consent if compliant with Part 4 of the Northern Territory Planning Scheme.

The proposal continues to provide a single dwelling on the lot, with the addition of an ancillary shed not deviating from the primary purpose of the zone.

The proposal has been assessed against the Northern Territory Planning Scheme and does not comply with Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures).

Clause 2.5(4) (Exercise of Discretion by the Consent Authority) allows the authority to vary the provisions of Parts 4 or 5 only if it is satisfied that special circumstances justify the giving of consent.

In accordance with Clause 2.5 (Exercise of discretion by the consent authority) of the NT Planning Scheme, the following design features and site conditions are considered to be sufficient special circumstances to justify the granting of a variation to Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures) of the scheme. The reasons for which are outlined below:

- The siting of the single dwelling on the lot, the sewerage easement along the rear boundary, and the irregular boundary shape unduly restricts development and impacts on providing functional private open space with the addition of a shed.
- The proposed development is consistent with the primary purpose of the zone, being ancillary to a single dwelling and not having any detrimental effect on residential amenity.

A thorough assessment of the application against the *Planning Act* and Northern Territory Planning Scheme has been conducted by Development Assessment Services. A variation to the requirements of Clause 7.3 (Building Setbacks for Residential Buildings and Ancillary Structures) is supported as:

- Special circumstances exist to justify the giving of consent.
 - The shed does not to impact on the streetscape.
 - The proposal does not impact on overlooking of adjoining neighbours.
 - The siting of shed will have a negligible impact on breeze penetration through and between buildings due to the siting of buildings on both the applicant's and neighbouring lots.
 - The shed addition is generally in keeping with the purpose of the Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures).
2. The authority noted the two plans tabled by the applicant at the meeting showing the proposed shed setback 1.5m from the side boundary. The applicant explained that on both examples the location of the shed resulted in an awkward area of unusable space and reduced the amount of existing garden/private open space area. The authority acknowledged the applicant's comments.
 3. Pursuant to section 51(j) of the *Planning Act*, 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.

Service authorities did not raise any concerns with land capability. The land is capable of supporting the proposed development as the shed is ancillary to the main use and does not change the number of

dwellings on the lot. When questioned by the authority as to whether there was any intention to use the proposed shed as an independent unit, the applicant stated that the landowner was not intending to use it for habitable purposes. Furthermore the applicant stated that they are also the building certifier for the proposed shed and it will be certified as a shed.

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

The proposed shed addition would be unlikely to have an adverse impact on the existing and future amenity of the area. The adjoining landowner has sited the plans and does not object to the proposal. The proposal is consistent with Zone SD (Single Dwelling), with sheds reasonably expected within the zone.

ACTION: Notice of Consent and Development Permit

ITEM 2 **ALTERATIONS AND ADDITIONS TO AN EXISTING SHOPPING CENTRE**
PA2018/0416 **INCLUDING A CHANGE OF USE FROM MEDICAL CLINIC TO SHOP**
(TENANCY 3)
LOT 2451, (1) LINKS ROAD, MARRARA, HUNDRED OF BAGOT
APPLICANT **NEVILLE JONES SERVICES**

Mr Neville Jones (Neville Jones Services) attended.

RESOLVED That, the Development Consent Authority reduce the car parking requirements
214/18 pursuant to Clause 6.5.2 (Reduction in Parking Requirements) and vary the requirements of Clause 6.5.3 (Parking Layout) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act*, consent to the application to develop Lot 2451 (1) Links Road, Hundred of Bagot for the purpose of alterations and additions to an existing shopping centre including a change of use from medical clinic to shop (tenancy 3), subject to the following conditions:

GENERAL CONDITIONS

1. The works carried out under this permit shall be in accordance with the drawings numbered 2018/0416/001 to 2018/0416/002 endorsed as forming part of this permit.
2. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage and electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
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.

NOTES:

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section

landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.

2. The Transport and Civil Services division of the Department of Infrastructure, Planning and Logistics advises that no additional accesses shall be permitted to the lot and existing access to the lot must be used for construction purposes.

REASONS FOR THE DECISION

1. Pursuant to section 51(a) of the *Planning Act*, the consent authority must take into consideration the planning scheme that applies to the land to which the application relates. The development comprises alterations and additions to an existing shopping centre including a change of use from medical clinic to shop (tenancy 3). The proposal is a form of development anticipated in Zone C (Commercial) of which the purpose is to provide for a range of business and community uses.
2. A reduction of eleven car parking spaces proposed by the development is supported given that the proposal satisfies the purpose of Clause 6.5.2 (Reduction in Parking Requirements), based upon the following reasons:
 - the site is zoned C (Commercial) under the Planning Scheme and it is unlikely that this zoning will change in the future;
 - a recent parking survey undertaken at the shopping centre determined that the current average car park use is between 47% and 54% of capacity with a highest capacity utilization of 70.4%, and as such the parking reduction would not have a significant impact on the overall car parking for the shopping centre; and
 - the Northlakes Shopping Centre is serviced by the public bus network Route 5 between the Darwin and Casuarina interchanges.
3. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the Northern Territory Planning Scheme, the Authority may consent to a development that does not meet the standards set out in Part 4 and 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

A variation to Clause 6.5.3 (Parking Layout) is supported as the impacts of the identified non-compliance with the clause (sub-clause (h) parking space dimensions), are justified upon the following reasons:

- the identified non-compliant parking space dimensions still allow for the parking of smaller cars.
4. Pursuant to section 51(j) of the *Planning Act*, 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.

No concerns have been identified in relation to the capability of the land in accommodating the development.

5. Pursuant to section 51(n) of the *Planning Act*, 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 expanded shop floor areas are compatible with the existing uses at 1 Links Road and is unlikely to have a broader impact on the existing and future local amenity. The development is to occur within the existing building envelope and beneath the existing roof.

ACTION: Notice of Consent and Development Permit

ITEM 3 **GARAGE AND STORE ROOM ADDITION TO AN EXISTING SINGLE**
PA2018/0439 **DWELLING WITH A REDUCED SIDE SETBACK**
APPLICANT **LOT 4989 (36) GOODMAN STREET, TOWN OF NIGHTCLIFF**
SHENGZHANG WENG AND XIAOLU JIANG

Mr Jiayun Li attended on behalf of the applicants.

RESOLVED That, the Development Consent Authority vary the requirements of Clause 7.3
215/18 (Building Setbacks of Residential Buildings) of the Northern Territory Planning Scheme, and pursuant to Section 53(a) of the *Planning Act*, consent to the application to develop Lot 4989 (36) Goodman Street, Town of Nightcliff for the purpose of garage and store room addition to an existing single dwelling with a reduced side setback, subject to the following conditions:

CONDITION PRECEDENT

1. Prior to the commencement of works (including site preparation), a schematic plan demonstrating the on-site collection of stormwater and its discharge into the 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 stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected underground to system.

GENERAL CONDITIONS

2. The works carried out under this permit shall be in accordance with the drawings numbered 2018/0439/01 through to 2018/0439/03 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 electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

5. 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.

NOTES:

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. The Northern Territory Environment Protection Authority (NTEPA) advises that construction work should be conducted in accordance with the Agency's Noise Guidelines for Development Sites. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.
3. City of Darwin advises that Designs and specifications for landscaping of the road verges adjacent to the property shall be submitted for approval by the General Manager Infrastructure, City of Darwin and all approved works shall be constructed at the applicant's expense, to the requirements of City of Darwin.
4. This development permit does not grant "building approval" for the proposed structure. The Building Code of Australia requires that certain structures within 900mm of a boundary meets minimum fire resistance level requirements and you are advised to contact a registered private Building Certifier to ensure that you have attained all necessary approvals before commencing demolition or construction works.
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.
6. City of Darwin advises that the location, design and specifications for proposed and affected crossovers shall be provided at the applicant's expense, to the satisfaction of City of Darwin.

REASONS FOR THE DECISION

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

Lot 4989 Town of Nightcliff is identified within Zone SD (Single Dwelling Residential) of the NT Planning Scheme and is surrounded by lots predominantly developed as single dwellings. The primary purpose of Zone SD is to provide for single dwellings on individual lots. The proposal is for the construction of garage and store room which are ancillary to the existing single dwelling, and as such the development is considered consistent with the purpose of the zone.

2. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the Northern Territory Planning Scheme the Authority may consent to a development that does not meet the standard set out in Part 4 and 5 of the Planning Scheme where it is satisfied that special circumstances justify the granting of consent.

A variation to Clause 7.3 (Building Setbacks for Residential Buildings and Ancillary Structures) of the NT Planning Scheme is supported given that the proposal satisfies the purpose of the clause based upon following reasons:

- The provision of 1.8m -2.2m high colourbond fencing along the affected side boundary screens the majority of the structure facing pedestrian pathway.
 - There is no impact on building massing when viewed from pedestrian pathway as height of the structure sits below the existing dwelling.
 - The reduced setback of the garage affects only 9.0m portion of the total 35m length of the side boundary. The remainder of the dwelling is setback significantly from pedestrian pathway which will assist in reducing overall building massing.
 - The structure does not impact on the breeze penetration between the buildings as the neighbouring lot, adjacent to the affected side boundary, is separated by the 10 feet wide pedestrian pathways.
 - No undue overlooking of adjacent properties is foreseen.
3. Pursuant to section 51(e) of the *Planning Act*, 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.

No public submissions were received during the exhibition period under section 49 of the *Planning Act* with respect to this proposal. It is noted that while the current application is in response to a public complaint received in August 2018 regarding the development with reduced side setback, no submission was received from the complainant.

4. Pursuant to Section 51(m) of the *Planning Act*, the consent authority must take into account the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

Comments received from a number of service authorities highlighted a number of development specific requirements that have been addressed through appropriate conditions and/or notations on the development permit. The authority did not support the inclusion of recommended condition 2 relating to a dilapidation report to the requirements of the City of Darwin, due to the development having already been constructed and noted this was likely an oversight in Council's comments.

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

It is acknowledged that the development comprises of structure that are reasonably anticipated within residential areas. The provision of 1.8m - 2.2m high colour bond fencing along the side boundary screens the majority of the structure facing pedestrian pathway. This together with the roof height lower to the existing dwelling minimises the effect of building massing when viewed from the street.

The requirement for a stormwater management plan to the requirements of the City of Darwin will ensure that stormwater run-off is appropriately managed and directed away from the adjacent lot and is directed to the street frontage. Therefore, it is anticipated that the existing and future amenity of the area will remain unaffected by the development.

ACTION: Notice of Consent and Development Permit

ITEM 4 **WAREHOUSE WITH ANCILLARY OFFICE EXCEEDING 8.5M IN HEIGHT WITH**
PA2018/0435 **A REDUCED FRONT SETBACK**
APPLICANT **LOT 6845 (47) BISHOP STREET, TOWN OF DARWIN**
NORTHERN PLANNING CONSULTANTS PTY LTD

Mr Brad Cunnington (Northern Planning Consultants Pty Ltd) and Mr Jim Eadie (Sunbuild) attended.

RESOLVED That, the Development Consent Authority reduce the car parking requirements
216/18 pursuant to Clause 6.5.2 (Reduction in Parking Requirements) and vary the
 requirements of Clause 6.1 (General Height Control), Clause 6.5.3 (Parking
 Layout) and Clause 9.1.1 (Industrial Setbacks) of the Northern Territory Planning
 Scheme, and pursuant to section 53(a) of the *Planning Act*, consent to the
 application to develop Lot 06845 (47) Bishop Street, Town of Darwin for the
 purpose of warehouse with ancillary office exceeding 8.5m in height with a reduced
 front setback, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), approval is required for the kerb crossovers and driveways to the site to the technical standards of the City of Darwin, to the satisfaction of the consent authority.
2. 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, Power and Water Corporation Water Services and Power and Water Corporation Electrical Services, to the satisfaction of the consent authority.
3. Prior to the endorsement of plans and prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the 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 or an alternate approved connection.

4. Prior to the endorsement of plans and prior to the commencement of works, a waste management plan addressing the City of Darwin's Waste Management Policy 054 must be prepared, to the requirements of 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 City of Darwin.
6. Prior to the commencement of works (including site preparation), the applicant is to prepare an Environmental and Construction Management Plan (ECMP) to the requirements of the City of Darwin. The ECMP 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 ECMP should include details of the location of the crane and any holding areas.

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, sewerage, drainage and electricity to the land shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.

15. Before the use of the development starts, the areas 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 driveways

to the satisfaction of the consent authority. Car spaces, access lanes and driveways must be kept available for these purposes at all times.

16. 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).

17. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.

18. 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.

19. 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.

NOTES:

- 1. Notwithstanding the approved plans, all signage is subject to City of Darwin Council approval, at no cost to Council.
- 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 City of Darwin advises that designs and specifications for landscaping of the road verges adjacent to the property shall be submitted for approval by the General Manager Infrastructure, City of Darwin and all approved works shall be constructed at the applicant's expense, to the requirements of City of Darwin.

4. The City of Darwin advises that the proposed awnings are to be in accordance with the City of Darwin Policy No. 037 – Awnings, Balconies and Verandahs on Council Property.
5. The City of Darwin advises that any access doors to the Bishop Street frontage shall not open outwards over the road reserve unless otherwise agreed.
6. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
7. The Northern Territory Fire & Rescue Service advises that access culverts to blocks must be a minimum of 3.1 metres wide to allow entry for firefighting.
8. The Northern Territory Environment Protection Authority advises that construction work should be conducted in accordance with the Authority's Noise Guidelines for Development Sites in the Northern Territory. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.
9. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act* 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.
10. This development permit does not grant "building approval" for the proposed structure. The Building Code of Australia requires that certain structures within 900mm of a boundary meets minimum fire resistance level requirements and you are advised to contact a registered private Building Certifier to ensure that you have attained all necessary approvals before commencing demolition or construction works.
11. 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.

REASONS FOR THE DECISION

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

The Northern Territory Planning Scheme applies and the land is within Zone GI (General Industry). The application proposes a replacement warehouse building with ancillary office and light industry to an existing

warehouse building which is consistent with the primary purpose of Zone GI in providing for general industry use, and ancillary office uses.

2. Pursuant to Clause 2.5 (Exercise of Discretion by the Consent Authority) of the Northern Territory Planning Scheme the Authority may consent to a development that does not meet the standard set out in Part 4 and 5 of the NT Planning Scheme where it is satisfied that special circumstances justify the granting of consent:
 - a) A variation to Clause 6.1 (General Height Control) to the maximum allowable building height of 8.5 metre to incorporate a 0.55 metre increase resulting in a 9.05 metre height sought for the proposed warehouse building is considered justifiable as it will not impede on the amenity of the area and is unlikely to cause built form impacts. The proposed building height is below the height of the existing cold store building (10.2 metres), and below the height of the approved cold / freezer store building (10.77 metres), which demonstrates the site can accommodate buildings of this scale without adversely impacting on the amenity of the broader area. Furthermore the height of the building is required to allow for pallet racking.
 - b) A variation to Clause 6.5.3 (Parking Layout), is considered justifiable given the five (5) tandem car parking bays represent a very minor percentage of the total number provided; and as tandem car parking bays have previously been provided and approved on the site. For these reasons the tandem bays are not considered to be a potential cause of great congestion or inconvenience.
 - c) A variation to Clause 9.1.1 (Industrial Setbacks) is considered justifiable given it is a unique situation where by the proposed development is required to replace a building that was destroyed by fire. The remaining non-fire damaged building and a building under construction constrain the size and setback of the new building, which has specific operational requirements. The applicant has incorporated awnings, various materials, feature green walls in order to cumulatively break up the bulk of the wall along Bishop Street; and to improve the pedestrian experience.

At the Development Consent Authority (DCA) meeting the applicant advised that to address Power and Water (Water Services) requirements they would be amenable to making the awnings detachable to enable the ongoing maintenance of the water and sewer infrastructure in the Bishop Street Road Reserve. They also advised that they had undertaken preliminary measurements of the existing power lines and power poles to ensure no major changes would be required to the awnings accommodate Power and Water (Electrical Services) setback requirements.

3. A reduction in car parking pursuant to Clause 6.5.2 (Reduction in Parking Requirements) is considered acceptable noting the unique nature of the existing use, being a food storage and distribution centre, is such that a high proportion of visitations occur by truck and delivery vehicles and a relatively low level of car parking demand to the site. The variation is minor and this shortfall can be accommodated in the 26 on-street car parking bays directly adjacent to the subject site.

4. Pursuant to section 51(n) of the *Planning Act*, 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 land is zoned to accommodate the proposed industry, warehouse and ancillary office uses; and will assist in providing for a diversity of industrial uses in this zone.

ACTION: Notice of Consent and Development Permit

**ITEM 5
PA2018/0436
APPLICANT**

**SUBDIVISION TO CREATE 283 LOTS IN 5 STAGES
LOT 9370 (544) LEE POINT ROAD, TOWN OF NIGHTCLIFF
NORTHERN PLANNING CONSULTANTS PTY LTD**

Pursuant to section 97(1) of the *Planning Act*, Mr John Gleeson a member of the Darwin Division of the Development Consent Authority declared a conflict of interest and was not present during and did not take part in any deliberations of the Division in relation to Item 5.

Mr Brad Cunnington (Northern Planning Consultants Pty Ltd), Ms Keeley Hutton and Mr Chris Grimm (DHA), and Mr David Bramley (Cardno) attended.

Mr Cunnington tabled 2x stormwater plans.

Submitters who sent their apologies: - Mr Jaemie Page, Ms Kym Tucker, Mr Graeme Hockey and Mr Jahde Dennis.

Submitters in attendance: - Ms Deborah Hall, Mr Andris Bergs and PPlan: The Planning Action Network, inc: represented by Ms Margaret Clinch attended.

Ms Karen White (Department of Infrastructure, Planning and Logistics) attended.

**RESOLVED
217/18**

That, pursuant to section 46(4)(b) of the *Planning Act*, the Development Consent Authority defer consideration of the application to develop Lot 9370 (544) Lee Point Road, Town of Nightcliff for the purpose of subdivision to create 283 lots in 5 stages, to enable the provision of the following information which is necessary in order to enable the proper consideration of the application:

- Further information and/or amended plans to address Recommendations 9 and 15 of the EPA's Assessment Report for the development, including:
 - Whether the conceptual stormwater infrastructure shown within the 7.02ha lot labelled 'open space / drainage' requires further consideration under the *Environmental Assessment Act*, on the advice of the Environment Division, Department of Environment and Natural Resources. Otherwise, a conceptual stormwater design which excludes infrastructure from this area.
 - Demonstration of the 15m buffer required to the monsoon rainforest area.
- Further information and/or amended plans to address Recommendation 9 of the EPA's Assessment Report for the development, including demonstration of the intended zone for any drains to allow the drain owner to carry out expedient maintenance, on the advice of the Environment Division, Department of Environment and Natural Resources.

- Further information and/or amended plans showing the lots affected by the 1.7km odour buffer referenced by Recommendation 8 of the EPA's Assessment Report for the development.
- Further information and/or amended plans showing the location of a road connection to the northern boundary of the site to comply with the road connections included in Clause 14.1.5 (Planning Principles for the Lee Point Area Plan). The inclusion of the road connection to the northern boundary is to have regard to increasing compliance with Clause 11.2.3 (Lot Size and Configuration in Residential Subdivisions) in relation to the lots proposed along the northern boundary of the subdivision.
- Further information and/or amended plans to address the interim treatment of the eastern side of the proposed subdivision to ensure that an adequate buffer is provided until such a time that the rural residential lots are developed within Stage 3, on the advice of Medical Entomology, Department of Health.

REASONS FOR THE DECISION

1. Pursuant to Section 46(4)(b) of the *Planning Act*, the consent authority may defer consideration of a proposal to allow the applicant to provide additional information it considers necessary to enable the proper consideration of the proposal and its impact on the site and surrounding area. Pursuant to Section 51(g) of the *Planning Act*, the consent authority must, in considering a development application, take into account that if a public environment report, and or environmental impact statement has been prepared or is required under the *Environmental Assessment Act*, in relation to the proposed development, the report or statement and the results of any assessment of the report or statement under the Act.

Further information is required to allow demonstration that Recommendations 9 and 15 of the Northern Territory Environment Protection Authority Assessment Report for the development will be met.

2. Pursuant to section 51(a) of the *Planning Act*, the consent authority must, in considering a development application, take into account any planning scheme that applies to the land to which the application relates.

The Northern Territory Planning Scheme includes Clause 14.1.5 (Planning Principles for the Lee Point Area Plan) and whilst the development is assessed as generally complying with this Clause, the road connection to the northern boundary of the site is not currently shown and the planning principles require the development provide for interconnected neighbourhoods, and this connection would allow for an interconnected development in the event of future changes of use or redevelopment of the land to the north. The consent authority request that the applicant review lot sizes along the northern boundary of the site as part of providing the northern road connection, with the view to increasing compliance with Clause 11.2.3 (Lot Size and Configuration in Residential Subdivisions).

3. Clause 14.15 (Planning Principles for the Lee Point Area Plan) shows an area of land within the subdivision to be developed as a rural residential buffer, which provides an open wind buffer between the uncontrolled mosquito breeding sites in Buffalo Creek and the urban residential lots. As the rural residential lots are proposed as a 3rd and final stage to the subdivision, the consent authority require further advice on the interim treatment (i.e. an open wind buffer) of this area to ensure that the urban lots contained within stages 1 and 2 are provided with an adequate buffer, until such time as the 3rd and final stage is constructed.

ACTION: Notice of Deferral

**ITEM 6
PA2018/0005

APPLICANT**

**RECONSIDERATION – 9 X 3 BEDROOM AND 1 X 5 BEDROOM MULTIPLE DWELLINGS IN AN 8 STOREY BUILDING
LOT 2458 (150) SMITH STREET, TOWN OF DARWIN
NORTHERN ABORIGINAL CULTURAL & EDUCATIONAL ASSOCIATION LTD**

Mr Samir Raut (NBC Consultants) attended.

**RESOLVED
218/18**

That, the Development Consent Authority vary the requirements of Clause 7.3 (Building Setbacks of Residential Buildings) and Clause 7.3.1 (Additional Setback Requirements for Residential Buildings longer than 18m and for Residential Buildings Over 4 Storeys in Height) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act*, consent to the application to develop Lot 2548 (150) Smith Street, Town of Darwin for the purpose of 9 x 3 bedroom and 1 x 5 bedroom multiple dwellings in an 8 storey building, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the applicant is to seek the following written consents:
 - (a) the City of Darwin for the changes affecting the Smith Street frontage including the relocated driveway and bin storage area; and
 - (b) the Water Services division of the Power and Water Corporation for treatments proposed within the sewer easement at the rear of the property. The above is to occur to the satisfaction of the consent authority.

2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a landscaping management plan prepared by a suitably qualified person 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 drawn to scale with dimensions and must be generally in accordance with the submitted landscape concepts, except that the plan must show:
 - (a) a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, sizes at maturity, and quantities of each plant;
 - (b) the provision of mature pot sizes for all plants that form part of the landscape planters at upper levels (green walls); and
 - (c) the provision of an irrigation system to all landscaped areas.All species selected must be to the satisfaction of the consent authority.

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In addition to the above, the landscaping management plan is to address the health and management of all plant species, including growing conditions to demonstrate that the landscaping will be maintained for the life of the development. The landscaping management plan is to confirm the species selected for the landscape planters (green walls) at upper levels will achieve a 'hanging creeper vine' effect.

3. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), a schematic plan demonstrating the on-site collection of stormwater and its discharge into the 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 stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected to the underground system.
4. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), the applicant is to ensure the driveway meets the City of Darwin standards, including that an engineer assessment has been provided with regard to adequate sightlines for pedestrians, cyclists and vehicles, 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 Policy 054 must be prepared, 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), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin.
7. Prior to the commencement of works (including site preparation), the applicant is to prepare an Environmental and Construction Management Plan (ECMP) to the requirements of the City of Darwin. The ECMP 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 ECMP should include details of the location of the crane and any holding areas.

CONDITIONS

8. The 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, drainage, sewerage, 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. 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 of site is to be created.
12. Prior to the use/occupation of the development and connection of services (i.e. power and water), the owner of the land must apply for unit/street addressing from the Surveyor-General of the Northern Territory. This will form the legal address and will be required to be placed on the doors and meters within the development in accordance with the allocation. An Occupancy Permit will not be able to be granted until such time as addressing is obtained.
13. Confirmation shall be provided to Development Assessment Services (in the form of an email addressed to the Power and Water Corporation) from a suitable qualified professional (being the Licensed Surveyor in most instances) confirming that all new UTS number labels have been correctly installed at the Customer's Metering Panel(s) and water meters (where applicable). Please provide a copy of an email addressed to both landdevelopmentnorth@powerwater.com.au and powerconnections@powerwater.com.au.
14. A Compliance Certificate under the Swimming Pool Safety Act issued by the Swimming Pool Safety Authority is required for the swimming pool/s prior to the commencement of the use/development to the satisfaction of the consent authority.
15. 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.
16. 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.
17. Before the occupation of the development starts, the areas set aside for the parking of vehicles and access lanes 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 driveways; to the satisfaction of the consent authority.Car spaces, access lanes and driveways must be kept available for these purposes at all times.
18. 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.

19. 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.
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, 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.
21. All balconies are to be internally drained and discharge is to be disposed of at ground level and in a manner consistent with stormwater disposal arrangements for the site to the satisfaction of the consent authority.
22. All pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the consent authority
23. 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.
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. The landscaping (including the landscape planters (green wall) at upper levels) must be maintained in accordance with the endorsed landscape management plan at all times.
25. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
26. Soil erosion control and dust control measures must be employed throughout the construction stage of the development to the satisfaction of the consent authority

NOTES:

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. 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.
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. The Northern Territory Environment Protection Authority advises that construction work should be conducted in accordance with the Authority's Noise Guidelines for Development Sites in the Northern Territory. The guidelines specify that on-site construction activities are restricted to between 7am and 7pm Monday to Saturday and 9am to 6pm Sunday and Public Holidays. For construction activities outside these hours refer to the guidelines for further information.
5. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act* 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. This development permit does not grant building approval. You are advised to contact a registered private Building Certifier to ensure that you have attained all necessary approvals before commencing construction works.
7. Professional advice regarding implementation of soil erosion control and dust control measures to be employed throughout the construction phase of the development are available from Department of Environment and Natural Resources.
8. 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>.
9. The Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5362 (surveylandrecords@nt.gov.au).

REASONS FOR THE DECISION

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

The land is located in Zone HR (High Density Residential) of which the primary purpose is to provide for high density housing options close to major roads, schools and other community facilities. The zone provides that the availability of services should be sufficient to accommodate high density residential development, and that development is generally not expected to exceed 8 storeys above ground level. The proposal generally aligns with the primary purpose as it comprises higher density housing along Smith Street in Larrakeyah.

The development was initially deferred by the consent authority to address residential density, building heights and the additional

setbacks required for buildings over 4 storeys in height. The development is now assessed as complying with Clauses 7.1.1 (Residential Density Limitations) and 7.1.2 (Residential Height Limitations).

The development has reduced setbacks to the ground level carports and pedestrian shelter to the front and side setbacks under Clause 7.3 (Building Setbacks of Residential Buildings and Ancillary Structures). The structures are limited to the ground level only, and are open in nature, and as such do not present as contributing to the overall massing of the building, with no adverse amenity impacts expected. The carport posts and roof will be partially obscured from the adjacent lots by the boundary walls proposed, and the pedestrian canopy to Smith Street expected to provide for improved wayfinding to the building entrance and is similar to other developments along Smith Street. Clause 2.5 (Exercise of Discretion by the Consent Authority) requires that special circumstances be found in varying this clause.

Clause 7.3.1 (Additional Setback Requirements for Residential Buildings longer than 18m and for Residential Buildings over 4 Storeys in Height) ensures that residential buildings respond to the potential adverse effects of building massing and visual bulk when viewed from adjoining land and the street. Additional setback requirements apply for buildings longer than 18m or taller than 4 storeys. The clause requires that for each additional 3m or part thereof in building length over 18m, an additional building setback applies to the affected boundary of 0.5m. Also, for each additional storey over 4 storeys, an additional building setback to that storey of 1.5m from all boundaries. The length of the building is exclusive of verandahs, balconies, carports and porticos that are integrated into the residential building and fully open to the affected boundaries. The clause also provides that the consent authority may consent to a development that is not in accordance with the requirements if it is satisfied that the design of the development adequately mitigates the adverse effects of building massing and visual bulk that may arise from the nonconformity.

The building does not meet the additional setbacks required to the four elevations. It is largely the 5th – 8th storey additional setbacks which are not met, noting a minor non-compliance with a corner of the ground – 4th storey from the rear boundary however noting the rear boundary is provided on an angle, this encroachment is not considered significant.

For the 5th – 9th storeys, the following additional setbacks are non-complying:

- Primary street, where a setback of 7.5m is provided, the following are required:
 - 5th storey: 9m
 - 6th – 8th storeys: 10.5m
- To both the north-west, and south-east side boundaries, the following are required/provided:
 - 5th storey: 4.5m required and 3.6m to the building wall plus 3m to the planters provided.
 - 6th storey: 6m required and 3.6m to the building wall provided.

- 7th storey: 7.5m required and 4.2m to the building wall plus 3.6m to the planters provided.
- 8th storey: 9m required and 4.2m to the building wall provided.
- Rear boundary, where the setback ranges from 3.08m to 7.2m, the following are required:
 - 5th storey: 4.5m.
 - 6th storey: 6m.
 - 7th storey: 7.5m.
 - 8th storey: 9m.

The application was initially deferred by the authority to address this clause and amended plans were provided with stepping and articulation to the 5th – 8th storeys now provided to the side boundaries. Previously the building was designed to meet the minimum required setbacks only.

The design includes landscape planters on each level to the Smith Street elevation, plus to the 5th and 7th storeys to the side boundaries. This provides articulation to the building, with the landscaping allowing the opportunity for softening of the built form, particularly when viewed from Smith Street.

Conditions are included to ensure the chosen species are appropriate for the growing conditions, plus that the landscaping will be maintained. The consent authority require that mature plants be selected for inclusion as part of the landscape planters at the upper levels to ensure that the green wall is established within a reasonable timeframe. In the event of unit titling the building, the consent authority would anticipate that the landscape planters form part of the common property to assist with ongoing management and maintenance.

The 7th - 8th storey penthouse dwelling includes more balconies and windows than the floors below, where the visual bulk of the building would have the potential to be most imposing. The rear of the building, particularly the 2nd – 6th storeys to the rear boundary and the rear corner as viewed from the side boundary does not provide much articulation, however the degree of measurable noncompliance is most affected at the 7th – 8th storeys where the more balconies and window openings are provided.

The location of balconies on the two corners of the building on almost every floor adjacent to Smith Street are noted, particularly with the use of glass balustrading, in having the effect of reducing the massing of the building when viewed on an angle and from the most visible angle along Smith Street.

Overall it is determined that the design of the development has adequately mitigated the adverse effects of building massing and visual bulk as a result of not meeting the additional setbacks required by this clause.

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

The development may be considered broadly consistent with the intent of Zone HR (High Density Residential), providing for high density residential development along Smith Street in Larrakeyah. The overall scale of the development is similar to that which may be anticipated and the impact on amenity should be considered as such.

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

The land is identified as being capable of accommodating the proposed development. Due to changes to the design of the development impacting on the Smith Street frontage plus the sewer easement, conditions have been included to seek the necessary consents of the relevant service authorities. All requests from service authorities have been addressed through conditions.

ACTION: Notice of Consent and Development Permit

ITEM 7
PA2017/0353
APPLICANT

RECONSIDERATION - SUBDIVISION TO CREATE ONE LOT FROM AN EXISTING UNIT TITLE SCHEMES SUBDIVISION
UNIT 9404 (12) SALONIKA STREET, TOWN OF DARWIN
MASTERPLAN NT

Mr Simon Tonkin and Mr Joseph Sheridan (Masterplan NT), Mr Mario Maddalozzo (Irwin Consult) and Mr Tim Jacobs (Jacob Krajsek Wauchope Lawyers) attended.

Mr Maddalozzo tabled a stormwater plan.

Submitter who sent his apologies:- Mr Scott Perkins (Chair - Body Corporate for the Avenue Principal Unit Title Scheme)

Submitters in attendance:- Mr David Hunt, Mr Geoff Sherley, Mr Kerry Osborne, Mr Mike Scott, Mr Dean Osborne and Mr Mark Monaghan.

Mr Scott tabled a letter from the Body Corporate for the Avenue Principal Unit Title Scheme.

Mr Kerry Osbourne tabled 3x photographs showing the interface between Lot 9404 and the existing development.

RESOLVED
219/18

That, pursuant to section 46(4)(b) of the *Planning Act*, the Development Consent Authority defer consideration of the application to develop Unit 9404 (12) Salonika Street, Town of Darwin for the purpose of a subdivision to create one lot from an existing unit title schemes subdivision to require the Applicant to provide the

following additional information that the Authority considers necessary in order to enable proper consideration of the application:

- How Unit B will integrate with the existing development in Stage 1, particularly how landscaping and maintenance requirements for Unit B will be achieved, including addressing the visual amenity of the Stage 1 basement car park, to adequately demonstrate that the proposal will not have a detrimental environmental effect on the land or result in a loss of amenity within the locality. The apparent overlap of body corporate property onto Lot 9404 (proposed Unit B), as shown on the illustrations tabled by Mr Kerry Osborne at the DCA meeting of 7 December 2018, also needs clarification.
- How the access to the Stage 1 basement car park through Lot 8559 may be legally assured as Lot 8559 is privately owned and the proposed subdivision of Lot 9404 to create Unit A and Unit B removes the only potential access the Stage 1 basement car park had to a public road (Salonika Street through Lot 9404), as originally envisaged in the Masterplan for Stages 1 and 2.
- With regard to the above two points in particular, how the proposed development achieves the object under section 2A(2)(e) of the *Planning Act*, through minimising adverse impacts of the development on existing amenity and, wherever possible, ensuring that amenity is enhanced as a result of the development.
- Given that body corporate approval must be obtained for any changes to the Principal Unit Title Scheme (i.e. the proposed re-subdivision/subdivision to create Units A and B), under the *Unit Title Schemes Act*, reasons as to why the Authority should not require Body Corporate approval for the proposal before the planning application is determined, or, in the alternative, if the applications are approved, why a precedent condition should not be included requiring such Body Corporate consent before any development permit is issued.

REASONS FOR THE DECISION

1. The Applicant presently holds freehold title to Unit 9404 Town of Darwin which title is created through Plan(s) UTS2014/055 registered in respect of 12 Salonika Street, Darwin. Unit 9404 forms part of a mixed use development, generally referred to as 'The Avenue', which was approved as a staged development under DP10/0494 and subsequent variations. Stage 1 of the development is constructed and Stage 2, which is largely intended to take place on Unit 9404, has not proceeded.

"The Avenue" was subdivided into units and common property in accordance with the Scheme Statement 'The Avenue Principal Unit Title Scheme' registered under the *Unit Title Schemes Act*. As per Schedule-2 sub-clause (B) The Avenue Principal Unit Title Scheme comprises the following:

- Spirit On The Avenue Commercial Unit Title Scheme (created from Unit 9131) comprising Unit 9258 to Unit 9401 and common property Unit 9402;
- Spirit On The Avenue Residential Unit Title Scheme (created from Unit 9705) comprising Unit 9134 to Unit 9171 and common property Unit 9173;
- Common Property comprising Unit 9403; and
- Unit 9404 (balance unit), which may be further developed in accordance with the Unit Title Schemes Act.

The Applicant seeks to sever the majority of the land contained in Unit 9404 from The Avenue Principal Unit Title Scheme in order to create a standalone freehold title that can be sold independently of the Unit Title Scheme. In order to achieve this purpose, the Applicant seeks to firstly create 2 units by resubdivision of Unit 9404 (Agenda Item 8).

The intent of such resubdivision is to create a small balance parcel of land, referred to as Unit B, essentially being a three metre wide strip along the boundary of the existing Stage 1 Avenue development for fire separation purposes between the existing development and the balance of the Unit 9404 land. Unit B, consisting of 333m², is intended to remain as part of The Avenue Principal Unit Title Scheme. The balance of Unit 9404, being 7913m², will be contained in Unit A.

Following creation of Units A and B the Applicant then seeks a further subdivision in order to excise the new Unit A from The Avenue Principal Unit Title Scheme (Agenda Item 7), and create a standalone title for the balance of Unit 9404 land which can then be sold.

2. The applications in Agenda Items 7 and 8, although presented as separate applications, can only be understood when considered together and are inextricably linked. Further both applications must be considered in the light of the Unit Title Scheme which created Unit 9404 and which will be substantially varied by the proposed resubdivision and subdivision.
3. Pursuant to section 51(n) of the *Planning Act*, the consent authority must take into account the potential impact on the existing and future amenity of the area in which the land is situated.
 - Unit A being 7913m² could potentially accommodate a range of future development opportunities allowed for under the provisions of Zone SD30. Unit B is proposed to be retained within the existing UTS. The application fails to demonstrate how Unit B will integrate with the existing development in Stage 1, particularly how landscaping and maintenance requirements for Unit B will be achieved, including addressing the visual amenity of the Stage 1 basement car park. Further information from the Applicant is required in this regard to adequately demonstrate that the proposal will not have a detrimental environmental effect on the land or result in a loss of amenity within the locality.
4. Pursuant to section 51(t) of the *Planning Act* the consent authority must take into account other matters it thinks fit.
 - Access to the basement car park for the existing Stage 1 development is a matter which needs to be considered as part of this application. This is because that access is currently through Lot 8559 which is privately owned by the Applicant and is not a road reserve.

The Masterplan for the site envisaged an additional access from the basement car park for Stage 1 through the Stage 2 basement car park to Salonika Street so access for Stage 1 would have been possible

though the proposed Unit A (and B), in the event access through Lot 8559 was denied.

To approve the sub-division leaving this potential issue unresolved leaves a level of risk that the access to the basement car park of the existing development could become an issue in the future. It is acknowledged that the risk may be low as any future development proposal for Lot 8559 would have to have regard to the existing access arrangement. However, without an assurance of that access now only leaves the matter to become a potential future issue.

As such, before any approval of the application the access to the Stage 1 car park through Lot 8559 needs to be assured either through the creation of a road reserve or an established right of way. There has been no indication from the Applicant to date that this matter is to be resolved and needs to be addressed.

- The planning merits of the proposal are unclear particularly in terms of the object under section 2A(2)(e) of the *Planning Act*. How the adverse impacts of the proposed development on existing amenity are minimised and that the amenity is enhanced as a result requires further clarification.
- The title to Unit 9404 exists entirely as a result of The Avenue Principal Unit Title Scheme and the current applications in regard to this Unit impact directly upon and are entirely dependent on making substantive changes to that Scheme. Those changes will be subject to the provisions of the *Unit Title Schemes Act* and the terms of that Act must be complied with in order to give effect to the Applicant's intended outcome of a standalone title for "Unit A".

It is evident from public submissions to the proposal - particularly from the 'Avenue' body corporate - that a number of outstanding concerns remain regarding the proposal. Given this, the Applicant needs to clarify why the approval of the 'Avenue' body corporate should not be obtained before the planning application is determined, particularly given that body corporate approval must be obtained under the *Unit Title Schemes Act* in order for the proposed re-subdivision/subdivision to occur.

ACTION: Notice of Deferral

**ITEM 8
PA2017/0352
APPLICANT**

**RE-SUBDIVISION OF AN EXISTING UNIT TITLE SCHEMES SUBDIVISION TO
CREATE ONE ADDITIONAL UNIT
UNIT 9404 (12) SALONIKA STREET, TOWN OF DARWIN
MASTERPLAN NT**

Mr Simon Tonkin and Mr Joseph Sheridan (MasterPlan NT), Mr Mario Maddalozzo (Irwin Consult) and Mr Tim Jacobs (Jacob Krajsek Wauchope Lawyers) attended.

Interested Parties: - Mr David Hunt, Mr Geoff Sherley, My Kerry Osborne, Mr Mike Scott, Mr Dean Osborne and Mr Mark Monaghan attended

Mr Scott tabled a letter from the Body Corporate for the Avenue Principal Unit Title Scheme.

Mr Kerry Osbourne tabled 3x photographs showing the interface between proposed Lot A and B and the existing development.

**RESOLVED
220/18**

That, pursuant to section 46(4)(b) of the *Planning Act*, the Development Consent Authority defer consideration of the application to develop Unit 9404 (12) Salonika Street, Town of Darwin for the purpose of the re-subdivision of an existing unit title schemes subdivision to create one additional unit to require the Applicant to provide the following additional information that the Authority considers necessary in order to enable proper consideration of the application:

- How Unit B will integrate with the existing development in Stage 1, particularly how landscaping and maintenance requirements for Unit B will be achieved, including addressing the visual amenity of the Stage 1 basement car park, to adequately demonstrate that the proposal will not have a detrimental environmental effect on the land or result in a loss of amenity within the locality. The apparent overlap of body corporate property onto Lot 9404 (proposed Unit B), as shown on the illustrations tabled by Mr Kerry Osborne at the DCA meeting of 7 December 2018, also needs clarification.
- How the access to the Stage 1 basement car park through Lot 8559 may be legally assured as Lot 8559 is privately owned and the proposed subdivision of Lot 9404 to create Unit A and Unit B removes the only potential access the Stage 1 basement car park had to a public road (Salonika Street through Lot 9404), as originally envisaged in the Masterplan for Stages 1 and 2.
- With regard to the above two points in particular, how the proposed development achieves the object under section 2A(2)(e) of the *Planning Act*, through minimising adverse impacts of the development on existing amenity and, wherever possible, ensuring that amenity is enhanced as a result of the development.
- Given that body corporate approval must be obtained for any changes to the Principal Unit Title Scheme (i.e. the proposed re-subdivision/subdivision to create Units A and B), under the *Unit Title Schemes Act*, reasons as to why the Authority should not require Body Corporate approval for the proposal before the planning application is determined, or, in the alternative, if the applications are approved, why a precedent condition should not be included requiring such Body Corporate consent before any development permit is issued.

REASONS FOR THE DECISION

1. The Applicant presently holds freehold title to Unit 9404 Town of Darwin which title is created through Plan(s) UTS2014/055 registered in respect of 12 Salonika Street, Darwin. Unit 9404 forms part of a mixed use development, generally referred to as 'The Avenue', which was approved as a staged development under DP10/0494 and subsequent variations. Stage 1 of the development is constructed and Stage 2, which is largely intended to take place on Unit 9404, has not proceeded.

“The Avenue” was subdivided into units and common property in accordance with the Scheme Statement ‘The Avenue Principal Unit Title Scheme’ registered under the *Unit Title Schemes Act*. As per Schedule-2 sub-clause (B) The Avenue Principal Unit Title Scheme comprises the following:

- Spirit On The Avenue Commercial Unit Title Scheme (created from Unit 9131) comprising Unit 9258 to Unit 9401 and common property Unit 9402;
- Spirit On The Avenue Residential Unit Title Scheme (created from Unit 9705) comprising Unit 9134 to Unit 9171 and common property Unit 9173;
- Common Property comprising Unit 9403; and
- Unit 9404 (balance unit), which may be further developed in accordance with the Unit Title Schemes Act.

The Applicant seeks to sever the majority of the land contained in Unit 9404 from The Avenue Principal Unit Title Scheme in order to create a standalone freehold title that can be sold independently of the Unit Title Scheme. In order to achieve this purpose, the Applicant seeks to firstly create 2 units by re-subdivision of Unit 9404 (Agenda Item 8).

The intent of such re-subdivision is to create a small balance parcel of land, referred to as Unit B, essentially being a three metre wide strip along the boundary of the existing Stage 1 Avenue development for fire separation purposes between the existing development and the balance of the Unit 9404 land. Unit B, consisting of 333m², is intended to remain as part of The Avenue Principal Unit Title Scheme. The balance of Unit 9404, being 7913m², will be contained in Unit A.

Following creation of Units A and B the Applicant then seeks a further subdivision in order to excise the new Unit A from The Avenue Principal Unit Title Scheme (Agenda Item 7), and create a standalone title for the balance of Unit 9404 land which can then be sold.

2. The applications in Agenda Items 7 and 8, although presented as separate applications, can only be understood when considered together and are inextricably linked. Further both applications must be considered in the light of the Unit Title Scheme which created Unit 9404 and which will be substantially varied by the proposed re-subdivision and subdivision.
3. Pursuant to section 51(n) of the *Planning Act*, the consent authority must take into account the potential impact on the existing and future amenity of the area in which the land is situated.
 - The application fails to demonstrate how Unit B will integrate with the existing development in Stage 1, particularly how landscaping and maintenance requirements for Unit B will be achieved, including addressing the visual amenity of the Stage 1 basement car park. Further information from the Applicant is required in this regard to adequately demonstrate that the proposal will not have a detrimental environmental effect on the land or result in a loss of amenity within the locality.

4. Pursuant to section 51(t) of the *Planning Act* the consent authority must take into account other matters it thinks fit.
- Access to the basement car park for the existing Stage 1 development is a matter which needs to be considered as part of this application. This is because that access is currently through Lot 8559 which is privately owned by the Applicant and is not a road reserve.

The Masterplan for the site envisaged an additional access from the basement car park for Stage 1 through the Stage 2 basement car park to Salonika Street so access for Stage 1 would have been possible though the proposed Unit A (and B), in the event access through Lot 8559 was denied.

To approve the sub-division leaving this potential issue unresolved leaves a level of risk that the access to the basement car park of the existing development could become an issue in the future. It is acknowledged that the risk may be low as any future development proposal for Lot 8559 would have to have regard to the existing access arrangement. However, without an assurance of that access now only leaves the matter to become a potential future issue.

As such, before any approval of the application the access to the Stage 1 car park through Lot 8559 needs to be assured either through the creation of a road reserve or an established right of way. There has been no indication from the Applicant to date that this matter is to be resolved and needs to be addressed.

- The planning merits of the proposal are unclear particularly in terms of the object under section 2A(2)(e) of the *Planning Act*. How the adverse impacts of the proposed development on existing amenity are minimised and that the amenity is enhanced as a result requires further clarification.
- The title to Unit 9404 exists entirely as a result of The Avenue Principal Unit Title Scheme and the current applications in regard to this Unit impact directly upon and are entirely dependent on making substantive changes to that Scheme. Those changes will be subject to the provisions of the *Unit Title Schemes Act* and the terms of that Act must be complied with in order to give effect to the Applicant's intended outcome of a standalone title for "Unit A".

It is evident from public submissions to the proposal - particularly from the 'Avenue' body corporate - that a number of outstanding concerns remain regarding the proposal. Given this, the Applicant needs to clarify why the approval of the 'Avenue' body corporate should not be obtained before the planning application is determined, particularly given that body corporate approval must be obtained under the *Unit Title Schemes Act* in order for the proposed re-subdivision/subdivision to occur.

ACTION: Notice of Deferral

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

SUZANNE PHILIP
Chair
18 December 2018