

Section 46 Planning Act Report

**Lot 7820 Town of Darwin - 4 Blake Street, The Gardens
Application for development consent**



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1 FORMAL MATTERS

The application is made under section 46(1) of the Planning Act.

For the purpose of s 46(3)(aa), the application is made by June D’Rozario & Associates Pty Ltd on behalf of the owner of Lot 7820, Kalhmera Pty Ltd. No persons have entered into agreements to acquire an estate or interest in the application site. There are no interests prescribed by regulation.

2 BRIEF DESCRIPTION OF THE PROPOSAL

The application is for consent to develop Lot 7820 for 101 dwellings-multiple and 250 m² of ground floor retail and commercial floor space in a 7-storey building comprising two towers, set in landscaped surrounds, together with basement and undercroft parking.

The proposed development blends architecture, landscape, and streetscape into an integrated whole, to produce a landmark development in the Blake Street Precinct.

The proposal introduces several Territory-first high-rise residential design initiatives, including -

- Vertical gardens, landscaped platforms at each level, and green roofs. Horizontal landscaped surfaces will comprise 3,725 m² in area, which represents a landscape ratio of 0.59. Vertical landscaped surfaces will increase the landscape area ratio to 0.74.
- Recreation and leisure facilities available to the public. These facilities will include a piazza meeting place, herb garden, sensory garden, children’s playground, café-restaurant, and peacock roost.
- Public artworks, including an installation by Bruce Munro called “Tropical Bothy”, and works to be commissioned from indigenous artists.
- A NatHERS energy efficiency rating of 8.4 for apartments.
- 19% of apartments of universal design to Platinum Level of the Livable Housing Design Guidelines, and all apartments to Silver Level.
- Harvested rainwater to contribute to landscape irrigation.
- Rooftop solar arrays.
- Electric vehicle charging stations.
- Bicycle lockers.

The proposal is shown in the drawings sets, prepared by Archidiom and Mitchell Design, Architects, Form Landscape Architects, and Bruce Munro Studio.

3 A LANDMARK DEVELOPMENT

The site is subject to the provisions of Zone SD46 in the NT Planning Scheme. An essential requirement of Zone SD46 is that the development is to contribute to improving the amenity of the Blake Street Precinct as an inner-city mixed use area by creating a landmark development through high architectural quality and distinctive streetscapes – see clause 3(a) of SD46.

A proposal in 2018 was found by NT Civil and Administrative Tribunal (NTCAT) not to be a landmark development, and a Notice of Determination issued by DCA to consent to the application was revoked¹.

There is no definition of “landmark” or “landmark development” in the Planning Act or Planning Scheme. In the course of its review of the 2018 proposal, NTCAT considered numerous definitions of these terms put forward by various experts. It settled on the definition of “landmark development” articulated by architect Ian Mitchell, then Principal of Conrad Gargett Architects.

Conrad Gargett had been engaged by DCA to give its architectural opinion on the proposal and advise on what would constitute a landmark development. In giving this opinion and advice, Ian Mitchell stated² that a landmark building would –

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

NTCAT adopted this characterisation of a landmark building, stating : *“In our view these more aesthetic considerations are what is required by clause 3(a)”*³

In a subsequent application to the Supreme Court⁴ for leave to appeal [2018] NTCAT 984, the Court affirmed the qualitative characterisation of a landmark development, noting that NTCAT had considered the opinions of a number of

¹ Planning for People Inc v Development Consent Authority and Kalhmera Pty Ltd [2018] NTCAT 984

² Ian Mitchell LFRAIA, Principal, Conrad Gargett **Request for Architectural Opinion Development at Lot 7820 Blake Street Darwin** 12 June 2017

³ [2018] NTCAT 984 paragraph 64.

⁴ [2019] NTSC 85

experts as to the characteristics which would make a development a landmark development and had preferred the opinion of Ian Mitchell. The Court upheld NTCAT's finding on this point⁵.

With clarity from NTCAT and the Supreme Court as to what would constitute a landmark development, the proponent engaged Ian Mitchell, now of Mitchell Design, to prepare a design brief for the project design team to facilitate the design of a landmark development in the terms adopted by NTCAT and the Court, to provide significant contributions to design strategy and development, and to review the new design.

Ian Mitchell's Review Report is at Annexure 1. The report concludes that⁶ –

- The design of the current proposal addresses comprehensively the requirements of a landmark development as required by the Planning Scheme and the characteristics of a landmark development adopted by NTCAT and the Supreme Court;
- The proposal extends the landmark approach by including significant sustainability features and the incorporation of a landscape scheme that is inseparable from the architecture of the building; and
- The proposal is an exemplar for tropical architecture in Australia, and will be at the forefront of a new standard for residential development in the Territory and tropical Australia.

A detailed commentary of how the design responds to each of the characteristics that make a landmark development is contained in the Review Report at pp 6 – 9.

⁵ [2019] NTSC 85 paragraph 24

⁶ Ian Mitchell LFRAIA Mitchell Design **Review of the Revised Design for Elysium Green** 25 March 2021, p 14

4 TRIBUNAL AND COURT DECISIONS ON PREVIOUS APPLICATIONS

4.1 2017 NTCAT decision

In September 2016, the site owner made an application for 115 multiple dwellings and 250 m² of ground floor retail and commercial floor space in a 7-storey building comprising two towers, set in landscaped surrounds, together with basement and undercroft parking.

The application sought certain variations to provisions of the NT Planning Scheme, including to building setbacks specified in Zone SD46.

On 18 July 2017, the DCA issued a Notice of Determination, stating that it had determined to vary certain requirements of the NT Planning Scheme and consent to the proposal.

An objector to the application applied to NTCAT for a review of the determination. NTCAT found that the DCA had no discretion to approve development otherwise than in accordance with the specific requirements of Zone SD46. Accordingly, the DCA's determination of 18 July 2017 was revoked.⁷

In the same decision, NTCAT held that the 7-storeys referred to in SD46.7 relates to building height and that development of 7 storeys plus a basement complies with the requirement.⁸

4.2 2018 NTCAT decision

In February 2018, the landowner made a fresh application for the same combination of uses in a 7-storey building comprising two towers, set in landscaped grounds, and basement and undercroft parking. DCA issued a Notice of Determination in May 2018 that it had determined to consent to the application.

An objector group applied to NTCAT for a review of the determination. NTCAT's principal findings on this occasion were⁹ –

- i. That the development was not a landmark development as required by SD46; and
- ii. The reference in paragraph 3 of SD46 that development is to contribute to improving the amenity of the Blake Street Precinct was a separate requirement to the matters listed in paragraphs 3(a) to 3(e).

⁷ *Susanne Bradley v DCA and Kalhmera Pty Ltd* [2017] NTCAT 922

⁸ *Susanne Bradley v DCA and Kalhmera Pty Ltd* [2017] NTCAT 922 Paragraphs 99-101

⁹ *Planning for People Inc v DCA and Kalhmera Pty Ltd* [2018] NTCAT 984.

4.3 2019 Supreme Court decision

In the subsequent application to the Supreme Court¹⁰ for leave to appeal [2018] NTCAT 984, the Court affirmed the matter described in i. above, but found that NTCAT was in error in relation to the matter described in ii.

The Court found that the opening sentence of paragraph 3 of SD46 (“*Development is to contribute to improving the amenity of the Blake Street Precinct as an inner-city mixed use area by :*”) states the outcome which, it may be assumed, would be achieved if the development satisfied paragraphs (a) to (e).

Paragraph 3 of SD46 should therefore be interpreted such that it is to be taken for granted that a development will contribute to improving the amenity of the precinct if the criteria in 3(a) to 3(e) are satisfied. So, the introductory sentence does not contain any additional overriding requirement.¹¹

¹⁰ Kalhmera Pty Ltd v Planning for People Inc and DCA [2019] NTSC 85

¹¹ [2019] NTSC 85 paragraphs 9 - 10

5 LAND DESCRIPTION

The land is located at 4 Blake Street, The Gardens, as shown in the locality diagram in Figure 1.



Figure 1 : Locality Diagram

The land has an area of 6,300 m², and boundaries to Blake Street and Gardens Hill Crescent of 61.61 m and 83.855 m respectively.

Blake Street has a reserve width of 20.11 m. Gardens Hill Crescent has a reserve width of 18.29 m.

There are no easements registered on the site.

Lot 7820 was subdivided in 2008 from former Lot 5600, which was the site of a radio and television broadcast station. The television broadcast station now operates from the remaining parcel, Lot 7819. An extract of the registered survey plan is at Figure 2.

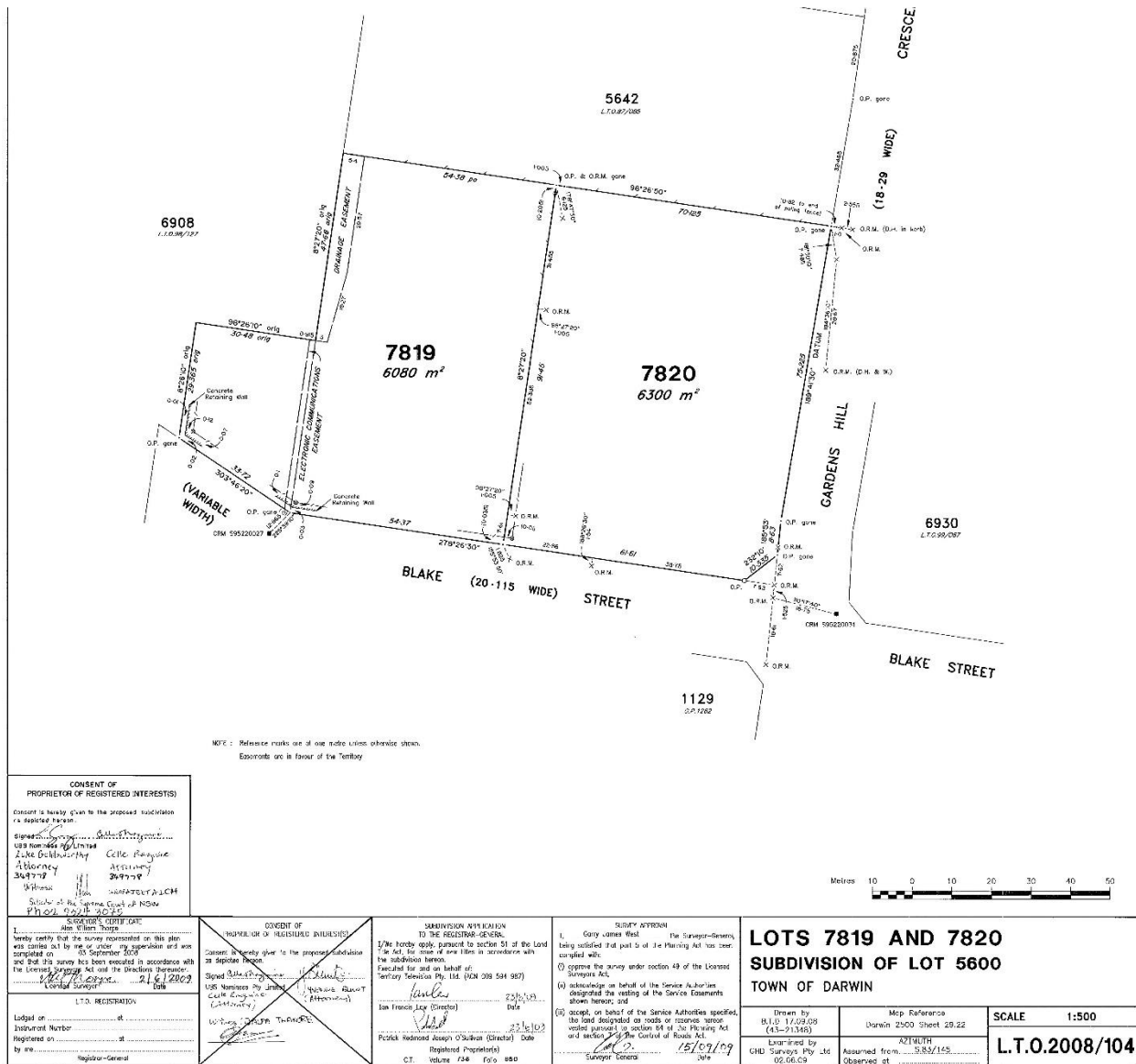


Figure 2 : Survey diagram

The site is at an elevation of about 27 AHD, and is level, cleared and vacant. The condition of the site is shown in the aerial image at Figure 3.



Figure 3 : Current site condition

Lot 7820 is in the near-city locality of The Gardens. It is located within a radius of about 600 m of the edge of Darwin's central business district (taken at the Daly Street/McMinn Street intersection). Driving distances to the Daly Street edge of the CBD are about 760 m via Gardens Hill Crescent, Gardens Road and McMinn Street, or 970 m via Gardens Hill Crescent and Gardens Road to the Cavenagh Street intersection.

The site is within a radius of 600 m of St John's College, and about 1.2 km of Darwin Middle and High Schools. Major sports and recreation facilities, including Gardens Golf Course, Mindil Beach Tennis Centre, Waratahs Sports Club, Mindil Beach, Gardens Oval, and Gardens Amphitheatre all lie within 750 m of the site.

The site is very close to public transport routes. A bus stop (Bus Stop 103) for outbound bus travel is located in Stuart Highway, approximately 390 m walking distance from the site. For inbound travel, the bus stop (Bus Stop 176) is located near the intersection of Stuart Highway and King Street, approximately 350 m from the site. The locations of bus stops in relation to the site are shown in Figure 4.



Figure 4 : Walk route to bus stops

Public transport routes accessible from Bus Stops 103 and 176 are :

- Route 5 – connecting Darwin and Casuarina via Stuart Highway and McMillans Road
- Route 7 – connecting Darwin and Stuart Park and Bayview
- Route 8 – connecting Darwin and Palmerston
- Route 10 – connecting Darwin and Casuarina via Bagot Road and Trower Road
- Route 21 – semi-express service connecting Darwin and Hospital Precinct
- Route 22 – semi-express service connecting Darwin and Leanyer
- Route 25 – semi-express service connecting Darwin and Karama

Blake Street is a no-through road at both its ends. It terminates at a former communications site, Lot 6908, at its western end. At its eastern end, Blake Street

terminates at the intersection with a proposed main road corridor. The proposed main road corridor contains a footpath and a few open car storage yards used by customers of car dealerships located on Stuart Highway.

Lot 7820 is zoned for Specific Use SD46, for predominantly residential development and complementary commercial activities in buildings up to 7 storeys.

The land on the northern boundary of Lot 7820 is zoned HR (High Density Residential). It is developed for two-storey dwellings-group.

The land on the eastern boundary is zoned SC (Service Commercial), and is developed for various warehousing and service business activities.

The land on the southern side of the Blake Street boundary is zoned LMR (Low-Medium Density Residential), and is developed predominantly for two-storey dwellings-group.

On the western boundary, the land is zoned CP (Community Purposes), and is developed as a television broadcast station.

The wider locality is characterised by expansive open spaces comprising the Botanic Gardens, Gardens Amphitheatre, Gardens Ovals, and Gardens Golf Course.

An extract of the zoning map is in Figure 5.

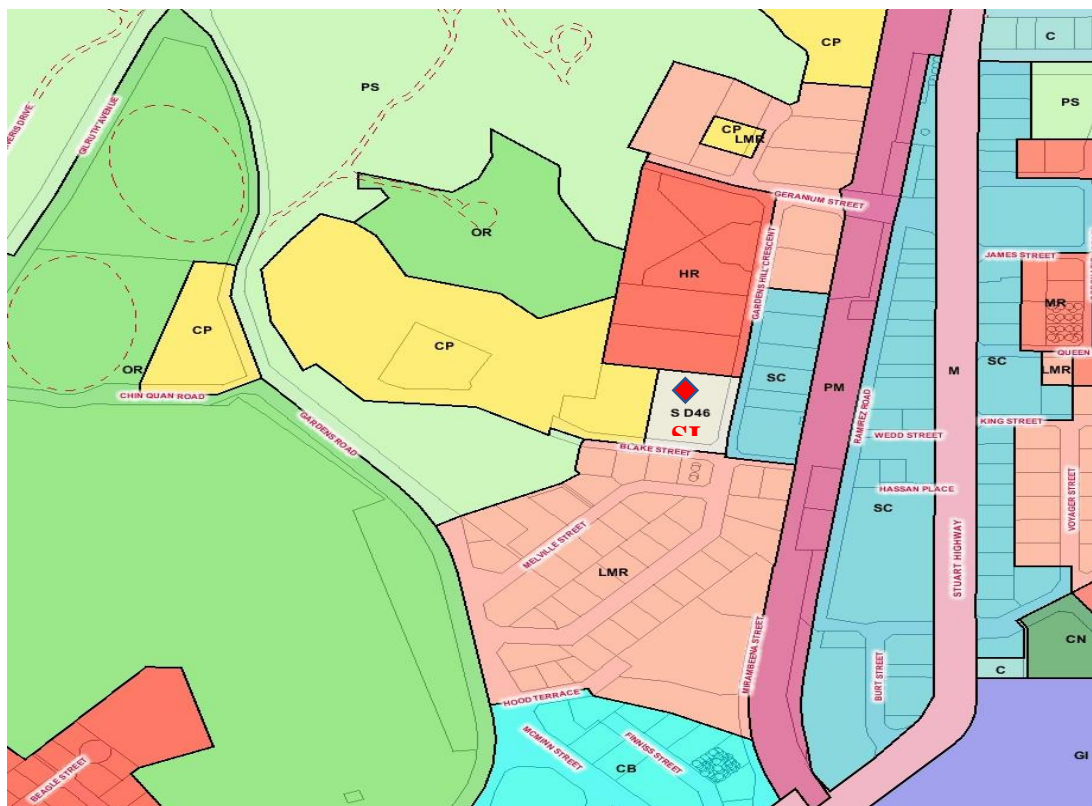


Figure 5 : Extract of zoning map

6 DETAILS OF THE PROPOSAL

The proposed development blends architecture, landscape, and streetscape into an integrated whole, to produce a landmark development in the Blake Street Precinct.

The proposal introduces several Territory-first high-rise residential design initiatives, and sustainability inclusions, which are detailed below.

The proposal is to develop Lot 7820 for 101 dwellings-multiple of various sizes in two towers over a podium, and 250 m² of ground floor retail and commercial floor space at ground level at the intersection of Blake Street and Gardens Hill Crescent.

The retail floor space of 120 m² will be a café-restaurant, and offices of 130 m² will comprise the commercial floor space.

The towers will contain 7 storeys above ground and a basement car park, and will be draped in vertical gardens and set in extensively landscaped grounds.

A highly granulated description of all the design features of the proposal, and their relationship to the requirements of SD46.3 is set out in the report entitled Elysium Green Design and Community Impact at Annexure 2.

6.1 Dwelling types

Dwellings will vary in size, as shown in Table 1.

Table 1 – Dwelling types

Dwelling type	Number
2-bedroom dwellings	31
2-bedroom accessible dwellings	6
2-bedrooms + study	30
3-bedroom dwellings	17
3-bedroom accessible dwellings	12
3-bedroom + study	4
3-bedroom accessible dwelling + study	1
Total	101

The dwelling size mix is intended to cater for a range of household sizes and space requirements, in a variety of floor plans.

Nineteen of the dwellings will be of universal design.

6.2 Architecture

The proposal blends architecture, landscaping and streetscape into an integrated design that will deliver a landmark development.

The architectural design approach is articulated in the Architect's Statement in the Architectural Drawings set. The building is designed as a green building and brings landscaping into the fabric of the building, with planting platforms at all levels to support vertical planting and a sky garden, and green roofs to the commercial and retail elements.

The proposal is designed to create pedestrian scale at the street edges. The features that contribute to pedestrian scale are :

- The single storey café-restaurant and office buildings, with green roofs, at the intersection of Blake Street and Gardens Hill Crescent. These buildings form a low-rise foreground to the taller buildings behind them.
- Diverse activities of pedestrian interest along the street edges, including small parks on the Blake Street frontage, a meeting place at Agostini Place at the intersection, a café-restaurant with outdoor seating, public seating in the site and adjoining the verge, and water station.
- Public artworks, including Bruce Munro's Tropical Bothy, and surface mosaics and fence poles to be commissioned from indigenous artists. See under Public Art below.
- A sky garden at Level 2.
- Deep building setbacks and porous fencing for most of the alignment of Gardens Hill Crescent, allowing visibility of activities at ground level.

The proposal is designed to reinforce the corner of the site. In addition to Agostini Place and Tropical Bothy, the residents' lounge at Level 1 and sky garden at Level 2 will mark this corner.

The proposal makes a generous contribution to, and extends, the public realm by incorporating features within the site that will be accessible to the public. Approximately 2,270 m² of space at ground level will be available to the public. This space includes gardens, café-restaurant, public plaza, public artworks, seating, parking and public toilets.

Facilities for residents include two swimming pools and decks, podium landscaping, including barbecue, outdoor kitchen and outdoor eating area, relaxation area, children's playground, turf terraces, vegetable garden and composting area.

Indoor recreation facilities for residents include a gymnasium and residents' lounge.

The residential buildings will feature a 5-m high entry lobby, and common corridors have been designed as an open atrium, with spaces for seating and

planting. Common spaces have been designed to maximise ventilation and natural light,

Apartments have been designed to give views to surrounding natural waters and open space and city skylines. Extensive use of louvre windows and large windows assist in this.

Apartments have been designed to maximise breeze penetration, cross ventilation and natural light. The apartments include ante-lobbies at their entrances, which enhance cross ventilation without loss of security or privacy.

All apartment types in the proposal have been assessed against the natural light and ventilation requirements of the Building Code, and all apartments exceed these requirements, and in many cases, by large margins. See Architectural Drawings 7.00 – 7.16.

Assessment of selected apartments for energy efficiency shows that the apartments will achieve a NatHers (Nationwide House Energy Rating System) of 8.4. This compares to 3.5 required in the Territory. A copy of the NatHERS Energy Rating Report is at Annexure 3.

Balconies will include stacked operable screens, to allow residents to moderate light, shade and views at will, and all window openings will be fitted with awnings.

The exterior appearance of the buildings will present as a harmonious composition of recessed facades and variety in materials and textures. The façade of the northern tower is split into two 15-m wide sections separated by a 7.5 m wide green wall of cascading plants. The façades of the southern tower are recessed at the corner, and also contain sections of green wall.

Vertical garden systems of high-strength lightweight structural panels will be fixed to the external walls. The structural panels will support modules containing planting mix and the irrigation and fertiliser systems.

Most planting platforms will be located at the ends of common corridors and will be maintained directly from these spaces.

Some planter beds will be incorporated in the balconies of individual apartments. To ensure a consistent standard of maintenance, these will be maintained by a contractor to the body corporate, using high access maintenance methods. The contractor will be engaged during construction to install safety anchor points on the roofs to enable high-access maintenance of the balcony planters.

6.3 Landscaping

The landscaping proposal is shown in the Landscape Architecture Drawings, prepared by Form Landscape Architects.

The proposal includes landscaping on both horizontal and vertical planes. The vertical gardens are an integral part of the identity of the development, and a significant contribution to the place-making outcome.

The landscape design approach is articulated in the Landscape Architect's statement. The landscape approach is to connect to the Botanic Gardens, emphasising proximity to the Botanic Gardens, and creating a focal point at the intersection of Blake Street and Gardens Hill Crescent.

Planting themes will be drawn from tropical species in the Botanic Gardens, and will include layered planting of shade trees, understoreys and ground covers.

Landscaping on horizontal planes will amount to 3,725 m², equivalent to 59% of the site area, and will be included on every level of the building.

Areas of deep soil will amount to 725 m², or 11.5 % of the site area.

Horizontal landscaping will be focused on three main areas of the site, including the Gardens Hill Crescent frontage at ground level, Agostini Place at the corner of the site, and the podium at the rear of the building. The corner of the site will also feature a sky garden.

Particular attention has been given to the interface with residential development on Lot 5642, where the landscape treatment will include dense screen plating in a deep soil zone.

As noted under the commentary on Architecture, common corridors on each level will include landscaping in planters and seating.

Landscape elements that will extend the public realm include gardens on Blake Street, a sensory garden, Agostini Place, public seating, water station, and public art works.

Agostini Place has been designed to be a focal point and a meeting place for residents and their neighbours.

At ground level, hardscape elements of the landscape design include feature pavements in Agostini Place and the forecourt, and will extend into adjoining footpaths. At the podium level, hardscape elements include decks and paved outdoor eating and seating areas.

Vertical landscaping covers an area conservatively estimated as 935 m², which will increase the landscape ratio to 74%. The vertical gardens will give the development a distinct identity, contribute to the development's civic image, and enhance the streetscape.

6.4 Streetscape works in public streets

Significant streetscape works are to be undertaken in the streets abutting the application site. These works will complement works within the site and will contribute to creating a very distinctive streetscape.

Streetscape works in the public domain will include –

- Kerb build-outs planted with street trees
- New street trees in the southern verge of Blake Street.
- New footpaths
- New pedestrian crossings at the corner of Blake Street and Gardens Hill Crescent
- Feature pavements adjoining the café-restaurant, office, and Agostini Place
- Public seating adjoining Agostini Place and near the café-restaurant
- Indent kerb-side parking bays

6.5 Publicly accessible features

The proposal includes 2,270 m² of space within the site boundary that will be accessible to the public. The spaces that will be open to the public include –

- Agostini Place, marking the corner of Blake Street and Gardens Hill Crescent
- a café-restaurant and outdoor eating space
- gardens, including a herb and vegetable garden, sensory garden, and cycad garden
- a lawn area
- children's playground
- peacock roost, providing a shelter for peacocks that roam in Blake Street
- e-bike station
- public seating
- parking and toilets

6.6 Sustainability features

The proposal incorporates significant sustainability features, including –

- NatHERS energy rating for apartments of 8.4. This compares to a rating of 3.5 required by the NT Building Code.
- Apartment design to maximise cross ventilation and natural light, thus reducing requirements for airconditioning and artificial lighting.
- A floor height of 3.1 m, allowing generous space for ceiling fans, and to maximise internal breeze circulation.
- A green building façade, which will reduce the surface temperature of external walls, reduce heat flow into the building, improve internal air quality, and provide a habitat for living creatures.
- Deep soil planting zones, comprising 725 m² or 11.5% of the site area.
- Planting zones on each floor level, and a sky garden on Level 2.
- Solar arrays of 250 m² on the roof of the building.
- Landscape irrigation partly by rainwater harvesting, with a collection tank located in the basement.
- Operable aluminium stacking shade screens to apartment balconies.
- Grey glass windows, to improve the thermal efficiency of the exterior building envelope.
- Window heights up to 2.5 m, compared to the standard height of 2.1 m, to maximise breeze circulation and indoor air quality.
- Extensive use of louvre windows, to maximise breeze penetration.
- Awnings to all windows.
- Vegetable and herb garden, and composting facility.
- Two electric car charging stations.
- Public e-bike station
- Bicycle lockers and storage.

6.7 Accessibility and universal design

The proposal includes 19 apartments of universal design. These apartments will be constructed to the Platinum Level of the Livable Housing Design Guidelines¹².

The core design principles of this housing level are :

- i. A safe continuous and step free path of travel from the street entrance and/or parking area to a dwelling entrance that is level.
- ii. At least one, level (step-free) entrance into the dwelling.
- iii. Internal doors and corridors that facilitate comfortable and unimpeded movement between spaces.
- iv. A toilet on the ground (or entry) level that provides easy access.
- v. A bathroom that contains a hobless shower recess.
- vi. Reinforced walls around the toilet, shower and bath to support the safe installation of grabrails at a later date.
- vii. Stairways are designed to reduce the likelihood of injury and also enable future adaptation.
- viii. The kitchen space is designed to support ease of movement between fixed benches and to support easy adaptation.
- ix. The laundry space is designed to support ease of movement between fixed benches and to support easy adaptation.
- x. Ground (or entry level) bedroom.
- xi. Switches and powerpoints located at heights that are easy to reach for all home occupants.
- xii. Home occupants are able to easily and independently open and close doors and safely use tapware.
- xiii. The family/living room features clear space to enable the home occupant to move in and around the room with ease.
- xiv. Windows sills are installed at a height that enables home occupants to view the outdoor space from either a seated or standing position.
- xv. Floor coverings are slip resistant to reduce the likelihood of slips, trips and falls in the home.

All other apartments will comply with the Silver Level of the Guidelines, which covers the design principles in i. to vii. above.

The proposal includes 14 car parking bays for use by disabled persons.

¹² Published by Livable Housing Australia

6.8 Public art

To enhance visual amenity and reinforce the identity of the proposed development, the proposal includes public art installations and features. These include Bruce Munro's "Tropical Bothy", a 4-m high installation forming the centrepiece of Agostini Place at the corner of Blake Street and Gardens Hill Crescent.

The installation is described by the artist, whose medium is light, as a stainless steel sculptural gazebo, with the lighting effect created by a host of fireflies in a form resembling the spider lily.



Figure 6a : Image of Tropical Bothy (Bruce Munro Studio)



Figure 6b : Hymenocallis, the inspiration for firefly form

Bruce Munro's work in the Territory includes "Field of Light" at Uluru, commencing in April 2016, and Tropical Light in Darwin CBD from November 2019 to March 2020.



Figure 7 : Image of Field of Light, Uluru (Image by Mark Pickthall)



Figure 8a : Image of an installation in the Tropical Light exhibition, Civic Square, Darwin CBD (Bruce Munro Studio)



Figure 8b : Image of an installation in the Tropical Light exhibition, Raintree Park, Darwin CBD (Bruce Munro Studio)

Bruce Munro is an internationally acclaimed artist. His works in the Territory have so far been exhibitions of finite duration. Tropical Bothy in the proposed development will be his first permanent installation in the Territory, and will establish a new benchmark for public art in residential developments.

In addition to Tropical Bothy, the proposal includes a 2-m high green wall, which will form the backdrop to the name of the proposed development, Elysium Green, and opportunities for indigenous artists to create a surface mosaic in the building's forecourt and a fence of crafted and decorated poles along part of the Gardens Hill Crescent alignment.

6.9 Parking and vehicle access

The development will include parking for 224 cars, with most parking (69%) provided in a basement. With the exception of four bays at the ground level, all car bays will be under cover.

Of the total parking bays provided, 14 will be accessible bays, and two are electric car stations.

In addition to car parking bays, the proposal includes 10 motorcycle bays, and 44 bicycle bays. Bicycle storage includes 5 public electric bike stations.

Vehicle access will be from two new crossovers in Gardens Hill Crescent, and there will be no vehicle access from Blake Street.

7 MATTERS TO BE TAKEN INTO ACCOUNT

Section 46 (3) sets out the matters to be addressed in a development application. Section 51 sets out the matters to be considered by the consent authority.

(a) the Planning Scheme as it applies to the land to which the application relates - s. 46(3)(a) and s. 51(a);

Strategic framework and Overlays

The application site is within the area covered by the Darwin Inner Suburbs Area Plan.

The site is shown as High Density Residential in the Area Plan.

The land is not subject to any of the overlays listed in the table to clause 3.1

Zoning

The land is zoned SD46 under the NT Planning Scheme.

Clause 4.2 of the NT Planning Scheme 2020 states that Specific Use Zones listed in Schedule 4.2, which includes SD46, are subject to the relevant requirements contained in the former NT Planning Scheme 2007. A copy of SD46 is in Annexure 3.

The proposal is consistent with the zone purpose to facilitate the use and development of the land for a predominantly residential development, with complementary commercial activities.

Multiple dwellings, office, restaurant, and shop are permissible in SD46.

Multiple dwellings referred to in paragraph 2(b) of SD 46 are now referred to as “dwellings-multiple” in the NT Planning Scheme 2020, and the definition has changed to mean : “a dwelling or serviced apartment that is wholly or partially vertically over or under another dwelling on a site and includes any dwellings above the ground floor in a mixed use development, and includes a dwelling on a unit title with common property”.

All the dwellings in the proposal answer this definition.

SD46.13 says that, unless specifically provided for in SD46, the provisions of the NT Planning Scheme applicable to Zone HR apply to the development.

Clauses 5.2.4, 5.2.6, 5.3.7, 5.4.1, 5.4.2, 5.4.3, 5.4.4, 5.4.6, 5.4.7 and 5.4.8 apply to dwelling-multiple in Zone HR.

Office and shop are prohibited in Zone HR, but permissible by SD46.2.

In the former Planning Scheme under which SD46 was introduced, restaurant was defined as : “premises (other than a shop, or part of a hotel or a motel) in which meals are served to the public whether or not the premises provides a drive-

through service or requires a licence under the Liquor Act”. Café and take-away restaurants were not defined separately.

The NT Planning Scheme 2020 contains separate definitions for various types of food premises, including “food premises-café/take away”, “food premises-fast food outlet” and “food premises-restaurant”

“Restaurant” in SD46 has been replaced by “food premises-restaurant” in the NT Planning Scheme 2020, which is permissible in Zone HR and is subject to the additional clauses 5.2.5, 5.5.3 and 5.5.11.

Clause 5.2.4 – Vehicle Parking

Parking required by this clause is –

Table 2 : Parking required by clause 5.2.4

	Number or sq m	Parking ratio	Bays required
Dwelling-multiple	101	2.0	202.00
Café-restaurant, 6 bays/100 m ² net floor area	120	6.0	7.20
Office, 2.5 bays/ 100 m ² net floor area	130	2.5	3.25
Total			212.45

The proposal requires 213 parking bays, and will provide 224 parking bays.

Most of the parking bays, 154 bays or 69%, of the total number of bays will be located in the basement. With the exception of three bays at ground level, all car bays will be under cover.

Of the total parking bays provided, 14 will be accessible bays, and two are electric car stations.

In addition to car parking bays, the proposal includes 10 motorcycle bays.

Clause 5.2.4.4 - Parking layout

The layout of the parking areas will comply with this clause as follows –

- (a) Parking levels will be level, with ramps of a gradient suitable for safe and convenient parking.
- (b) Parking areas will be sealed and drained.
- (c) Each bay will be independently accessible.
- (d) There will be two vehicle crossovers, to minimise entry of parking associated with the non-residential components of the development into residential parking areas.
- (e) All vehicles will be able to enter and exit the site in forward gear.
- (f) Sight lines for vehicles leaving the site will be maximised by low verge planting and street trees where the canopy will not impede sight lines at site exits.
- (g) The small parking area consisting of four parking bays adjoining the forecourt will be located 6.0 m from the road boundary. The landscape treatment between the road and this parking area consists of shade trees, lower-storey plantings, and a 2-m high green wall forming the backdrop for the building's name.

The undercroft parking area is set back 5.75 m from Blake Street. It will be screened by landscape components consisting of a children's playground, vegetable and herb garden and peacock roost, as well as a commercial tenancy.

- (h) All parking bays will have minimum dimensions of 5.5 m x 2.5 m.
- (i) The width of driveways to the street will be 6.0 m.

The minimum width of parking aisles will be 6.0 m, with some aisles varying between 6.1 m and 8.0 m.

- (j) With the exception of one bay in the basement car park, all bays meet the requirement of this paragraph.

Regarding the matter in clause 5.2.4.4(g), the treatment of the space between car parking areas and roads is covered by SD46.10 and SD46.11(b).

SD46.10 and SD46.11(b) require landscape screens to ground floor parking areas and screening of parking areas from adjoining roads. The requirements for landscape screening from roads are met, as detailed in clause 5.2.4.4(g) above.

Regarding the requirement in SD46.10 for landscaping at ground level in the setback from the boundary with Lot 7819, the table to SD46.12 specifies a minimum setback of 2.0 m from the boundary with Lot 7819. The landscape

treatment of this space is shown at p 15 of the Landscape Drawings, which shows the setback to be planted with shade trees and other plantings.

Regarding the matter in clause 5.2.4.4(j), which would ordinarily require a 1-m extension at the end of a parking aisle, one such bay does not have a 1-m aisle extension. This bay is Bay 1 in the basement car park. All other end-of-row bays are configured on parking aisles that continue past the end bays.

The purpose of requiring a 1-m extension at the end of blind aisles is to ensure that there is sufficient manoeuvring space for a vehicle to enter and exit the bay. Bay 1 meets this objective, because the aisle width adjoining Bay 1 is more than 8.0 m, which provides sufficient space to enable a vehicle to enter and exit the bay conveniently.

The Authority is requested to vary clause 5.2.4.4(j), taking into account the matters listed in clause 5.2.4.4.1, namely that the variation will not result in adverse impacts on the local road network or internal functionality of the car park, and would not unreasonably impact the amenity of the surrounding locality.

In relation to the impact on the local road network, the number of car parking bays provided in the development exceeds the number required by 11, so that removal of Bay 1 to secure strict compliance with the 1-m aisle extension provision will not result in a parking shortfall for the development. However, removal of Bay 1 simply for the sake of compliance would result in the unnecessary loss of a usable parking bay.

Clause 5.2.5 - Loading bays

This clause asks for one loading bay for every 2,000 m² of floor space used as office or food premises-restaurant.

Floor space of this type is 250 m², which would require one loading bay.

The proposal includes a loading bay at the rear of the retail and commercial corner, with dimensions of 3.5 m wide and 7.5 m in length. The overhead clearance is about 4.8 m.

Clause 5.2.6 – Landscaping

SD46.9 covers the matter in clause 5.2.6.4. SD46.9 requires a landscape ratio of 0.45, compared to clause 5.2.6, which requires 0.3.

The proposal includes horizontal landscaped areas of 3,725 m², equivalent to 59% of the site area. The distribution of landscaped areas is shown in Table 3.

Table 3 : Landscape areas

Location	Area, sq m
Ground floor	1,436
Level 1	2,004
Level 2	77
Level 3	50
Level 4	54
Level 5	50
Level 6	54
Total	3,725

In addition to landscaping on horizontal surfaces, the proposal includes vertical gardens, which will cover a conservatively estimated area of 935 m² of vertical planes on the external faces of the building, which will increase the landscape ratio to 74%.

The proposal answers clause 5.2.6.3 as follows –

- (a) Planting is focused on the area within the setbacks to Gardens Hill Crescent and Blake Street, and on the podium communal open space area. In addition, dense screen planting is proposed in the northern and western setbacks. Four uncovered parking bays are screened, as described under clause 5.2.4.4(g).
- (b) The landscape theme is based on tropical plantings and is appropriate to the local climate. Rainwater harvesting to partially meet irrigation requirements will maximise water efficiency.
- (c) There is no landscape strategy for the area. SD46.3 requires the proposal to create distinctive streetscapes, which necessarily means that the proposal is not required to take into account the existing streetscape.
- (d) There are no significant trees or vegetation on the site.
- (e) The proposal includes areas for deep soil planting, enabling the establishment of shade trees. Green building façades will reduce the surface temperature of external walls and reduce heat flow into the building.
- (f) Landscaping will include layered planting, and will permit surveillance of public places and communal areas.

- (g) Deep soil planting areas will facilitate on-site stormwater infiltration. Stormwater is to be reused for irrigation, and will be collected in a tank located in the basement.

Clause 5.3.7 – End of trip facilities

This clause requires end of trip facilities as set out in Table 4.

Table 4 : End of trip facilities

Type of development	Number	Area, sq m	Ratio for bicycle spaces	Number of bicycle spaces required	Ratio for showers	Number of showers required
Dwellings-multiple	101		1/3 dwellings	33.67	0.00	0.00
Café-restaurant		120	1/300 sq m	0.40	1/50 staff	1.00
Office		130	1/300 sq m	0.43	1/1,500 sq m	0.09
Total				34.50		1.09

The proposal requires 35 bicycle spaces, and includes 44 spaces, distributed as follows –

- 32 bicycle lockers near the northern boundary
- 05 E-bike station on Gardens Hill Crescent near the pool
- 03 spaces near the café-restaurant
- 04 staff bicycle lockers at the rear of the café-restaurant

Separate male and female staff showers and lockers are located at the rear of the café-restaurant and office.

The end of trip facilities answer the requirements in clause 5.3.7.3 as follows –

- (a) Bicycle spaces are in convenient and safe locations. They will have adequate security for storage either in lockers or with racks to which the bicycles can be secured.
- (b) There is an appropriate mix of long and short term parking, having regard to the relatively small non-residential uses.
- (c) A 5-unit e-bike station is provided, which is capable of incorporating a charging station.
- (d) No steps are required to access the spaces.
- (e) All except 3 spaces near the café-restaurant and the e-bike node are under cover.

- (f) The selection of bicycle racks from the manufacturer will ensure that bicycles can be secured without damage.
- (g) Bicycle storage areas are not located in pedestrian movement paths.
- (h) Bicycle storage areas are easily accessible from the road.
- (i) With the exception of staff bicycle storage, bicycle storage areas are not located near parking bays. The staff bicycle lockers are likely to be long-term storage, which will minimise interaction with parking and manoeuvring vehicles.
- (j) With the exception of staff bicycle lockers, there are no storage areas that require protection from manoeuvring vehicles and opening car doors. The staff bicycles storage is protected by columns abutting the car parking bay.
- (k) Bicycle storage is as close as practicable to the cyclists' destination.
- (l) Lighting of all places available to the public and residents' common areas will be incorporated in the design.
- (m) The design of bicycle storage areas will be consistent with the high quality of design employed in the development.

The proposal answers the requirements in clause 5.3.7.4 as follows –

- (a) Bicycle lockers will be supplied by market leading Australian manufacturers, eg. Securabike, Cora. The lockers supplied by these manufacturers are of suitable volume and dimensions to accommodate bicycles, and are provided with hooks for helmets and bags.
- (b) For Security Level A, lockers supplied by manufacturers like those mentioned above are secure and lockable. They are not generally ventilated, as the focus is on security, weather proofing and corrosion resistance.

Security Level A is the highest level of storage defined in AS2890.3. It is suitable for long-term or overnight storage, for example, by apartment residents.

For Security Level B, where secure cages are appropriate, there may be a higher level of ventilation. This security level is suitable for day storage for employees, and some overnight parking in residential buildings.

All products comply with AS2890.3.

- (c) Bicycle storage for staff of the café-restaurant and office is located at the rear of these facilities and is close to the showers, which are also in this location.

The proposal answers the requirements in clause 5.3.7.6 as follows –

- (a) See 5.3.7.4(c) above.
- (b) One change space per shower is provided.
- (c) Separate male and female showers are provided.

Clause 5.4.1 – Residential Density Limitations

This matter is covered in SD46.5.

SD46.5 requires the development to include multiple dwellings in a variety of sizes to a maximum of 118 multiple dwellings.

The proposal is for 101 dwellings, in sizes as follows –

- | | | |
|---|---------------------|---|
| ▪ | 2-bedroom dwellings | 37, varying in size from 106 m ² to 133 m ² |
| ▪ | 2-bedroom + study | 30, varying in size from 132 m ² to 147 m ² |
| ▪ | 3-bedroom dwellings | 29, varying in size from 134 m ² to 147 m ² |
| ▪ | 3-bedroom + study | 05, varying in size from 160 m ² to 174 m ² |

Clause 5.4.2 – Residential Height Limitations

This matter is covered in SD46.7.

SD46.7 permits buildings up to 7 storeys to be constructed on the land.

The proposal includes 7 storeys above ground level and a basement car park.

The 2017 application for review to NTCAT argued that the basement should be counted as a storey, and on that basis, the building is an 8-storey building, which is not permitted by SD46.

The terms “basement” and “storey” are defined in the Planning Scheme 2020, and in the former Planning Scheme under which NTCAT’s 2017 decision was handed down, as follows –

- “basement” means “a storey either below ground level or that projects no more than one metre above ground level”.
- “storey” means “that part of a building between floor levels. If there is no floor above, it is the part between the floor level and the ceiling. It may comprise an attic, basement or be built over area for car parking”.

The last sentence of the definition of “storey” states that it may comprise a basement rather than it does include a basement, and that a basement can project one metre above ground level and still be classed as a basement. On this point, NTCAT said : *“the terms in which ‘storey’ is defined [...] do not demand a conclusion that a basement, if there is one, is always to be counted as a storey. Had this been the intention, words other than ‘may comprise’ could have been used.”*¹³

It is submitted that the proposal complies with SD46.7, on the following bases –

- SD46.7 is plainly about the height of the buildings. Height refers to the part of the building that is above ground, because parts below ground do not contribute to height.

This is consistent with the way in which building heights are expressed in the table to clause 5.4.2, where height is expressed either in a combination of metres and storeys above ground level for rural, low and low-medium density residential development, or in storeys above ground level for other residential zones.

Table to Clause 5.4.2: Residential Height Limitations	
Zone	Maximum Number of Storeys and Maximum Dwelling Height above Ground Level for Residential Buildings
LR and for a dwelling-single in Zones CL, CV and T	2 – to a maximum height of 8.5m
LMR and for dwellings-group in Zones CL, T and for dwellings-multiple in Zone T	2 – to a maximum height of 8.5m
MR other than in Alice Springs	4 maximum
MR and TC in Alice Springs	3 maximum
HR	8+
RR, RL and R	2 – to a maximum height of 8.5m
C	3

- The proponent’s application for a planning scheme amendment, which resulted in SD46, was for two 9-storey buildings and basement car park, and all application documents referred to storeys above ground level.

The Minister amended the proponent’s application, with the reduction in building height being expressed as *“reducing the building heights from nine to seven storeys”*.¹⁴

¹³ NTCAT Susanne Bradley v DCA and Kalthmera Pty Ltd File No 21736457 30 November 2017, paragraphs 99.

¹⁴ Notice of Amendment No 384 and Reasons for Decision

As the 9 storeys referred to in the Amendment were storeys above ground level, it is plain that the intention of SD46.7 is that the number of storeys in the building is the number above ground level.

In the application to the NTCAT for review of the DCA's determination of 18 July 2017, the applicant argued that the words used in SD46.7 were clear and unambiguous, and that the ministerial statements on the planning scheme amendment were not relevant.

NTCAT decided that there is sufficient uncertainty about the meaning of SD46.7 that recourse to the planning scheme amendment notice and the Minister's Reasons for Decision is permissible. Once those materials are considered, NTCAT said, it is clear that the 7-storey maximum relates to building height and that the proposed development of 7 storeys plus a basement complies with the requirement.¹⁵

Clause 5.4.3 – Building Setbacks of Residential Buildings and Ancillary Structures

Building setbacks are covered in SD46.12

The table to this paragraph distinguishes between the podium (to 5.0 m above ground level) and the towers, which are defined as the parts of the building above 5.0 m.

In the proposal, the podium height will be at 5.0 m.

SD46.12 says that building setback is measured from site boundaries to :

- the wall of a residential building;
- the outer surface of the railings of a balcony or a verandah of a dwelling; and
- the outer surface of any support column of a ground level verandah of a dwelling.

The setbacks required by this clause and the compliance of the proposal with the setbacks are summarised in Table 5.

¹⁵ NTCAT *Susanne Bradley v DCA and Kalhmera Pty Ltd* File No 21736457 30 November 2017, paragraphs 99-101.

Table 5 : Building Setbacks

	Minimum setback required, m	Setback provided, m
PODIUM		
Lot boundary		
Gardens Hill Crescent	6.00	14.00
Side boundary (common boundary with Lot 5642)	6.30	7.50
Rear boundary (common boundary with Lot 7819)	2.00	2.00
Blake Street	2.00	5.75
TOWER		
Lot boundary		
Gardens Hill Crescent, for a distance of 40 m measured from the boundary with Lot 5642	13.50	13.50
Gardens Hill Crescent, beyond 40 m measured from the boundary with Lot 5642	4.10	4.10 to 9.50
Side boundary (common boundary with Lot 5642)	7.50	7.50 to 8.64
Rear boundary (common boundary with Lot 7819)	17.00	17.00
Blake Street	5.75	5.75
DISTANCE BETWEEN TOWERS	9.00	9.00 to 10.2
	Maximum setback permitted, m	Setback provided, m
SHOPS, RESTAURANTS, OFFICES	1.00	0.70 to 0.90

Clause 5.4.6 – Private open space

This clause requires a minimum of 12 m² of private open space for each dwelling above ground level, with a minimum dimension of 2.8 m.

The size of the balconies of dwellings above the ground floor will vary in area between 17 m² and 27 m².

Each balcony contains an “envelope” of 3.0 m x 4.0 m. All balconies will comply with the area and dimension requirements of this clause.

All dwellings above the ground floor satisfy the requirements of clause 5.4.6.4, as follows –

- (a) They satisfy the area and minimum dimensions of the table to this clause.
- (b) They are directly accessible from the dwelling and will enable an extension of the living area of the dwelling.
- (c) They provide views to communal open spaces in the development, and most of the dwellings will have views to one or more of Mindil Beach, Cullen Bay, Gardens Golf Course, Gardens Oval, Botanic Gardens, and Frances Bay.

The ground floor dwelling will have private open space of 85 m². Area A in the table to this clause is an area of 47 m² open to the sky. The minimum dimension of the open to sky area is 1.7 m.

Area B is a covered private open space of 28 m², with dimensions of 4.0 m x 7.0 m.

The application requests waiver of the provision that half of Area A must be permeable, on the following bases –

- The private open space provided for the ground floor dwelling is consistent with the zone purpose of SD46, which is to facilitate the use and development of the land for a predominantly residential development, with complementary commercial activities.
- The subject open space is consistent with the clause purpose of ensuring private open space. It is almost twice the size required by the clause.
- The subject open space is appropriately sited, as it will provide outlook to the landscaped communal open space.
- The proposal, in which the ground floor dwelling is a small part, contains deep soil planting areas of 725 m², or 11.5% of the site area.
- The proposal, in which the ground floor dwelling is a small part, includes harvesting rainwater for irrigation of landscape areas and vertical gardens, which will reduce runoff from the site.

Clause 5.4.7 – Communal open space

Communal open space and landscaping are covered by SD46.9, which requires landscaped areas equivalent to at least 45% of the site area.

As noted under clause 5.2.6, the proposal will provide a total of 3,725 m² of landscaped communal open space, which amounts to 59% of the site area. Landscaping is provided on all levels of the buildings, with the majority at ground and podium levels.

As noted under clause 5.2.6, the proposal also includes vertical gardens, entry arbour and a green wall, of about 935 m² which will increase the landscape ratio to 74%.

The area of landscaped communal open space noted above does not include the gymnasium and residents' lounge. These additional facilities comprise a total of 243 m² of floor space.

To the extent that the requirement of clause 5.4.7.3 applies to the proposal, communal open space wider than 6.0 m at any point comprises 37.3% of the site area, as detailed in Table 6.

Table 6 : Communal open space > 6.0 m

Ground floor	
• Northern boundary	173.00
• Pool and surrounding gardens	433.00
• Agostini Place	191.00
Level 1	1,554.00
Total	2,351.00

Communal open space in the development addresses the matters in clause 5.4.7.4 as follows –

- (a) Communal open space is provided far in excess of that required by SD46.9 and communal open space wider than 6.0 m is far in excess of that required by clause 5.4.7.3.

The design of communal open space includes a public plaza, two swimming pools, sky garden, vegetable and herb garden, sensory garden, cycad garden, children's playgrounds, podium outdoor eating area, and a bird roost.

Communal recreation facilities also include a gymnasium and residents' lounge. Communal open space and recreation facilities are sufficiently varied to meet a wide range of residents' interests.

- (b) The site is close to regional open space, including the Botanic Gardens. Agostini Place is designed to honour the memory of Jack Agostini, who is credited with restoring and rehabilitating the Botanic Gardens after the destruction of the city in World War 2.

- (c) Communal open space is clearly distinguished from private open space.

The privacy of nearby dwellings is not affected by communal open space on the ground level.

At the podium level, the privacy of nearby dwellings will be maintained by the 6.3 m width of the setback on the northern boundary, and by landscaping in the setback, as shown in the Landscape Drawings.

Site landscaping along common boundaries will include dense layered planting, to provide a visual screen to adjoining development. Boundary planting along the northern boundary will be layered with ground covers, massed plantings of understory plants and trees, to give a continuous landscaped screen.

At the southern end of the podium, privacy of nearby dwellings will be maintained by the 5.75 m wide setback, and by planting along the southern edge of the podium.

The private open space of the ground floor dwelling will be clearly delineated by fencing.

- (d) See (a) above.
- (e) Children's outdoor play areas are provided at both ground and podium levels.
- (f) Deep soil planting zones will be planted with shade trees. See the Landscape Architects Statement and Landscape Drawings.
- (g) All communal areas will be well lit, and dwelling balconies and activities at ground level will assist in passive surveillance of these areas.
- (h) On-site traffic circulation paths are clearly delineated, and pedestrian entry to the buildings is by an entry arbour separate from vehicle paths.
- (i) Communal open space has been designed to ensure maintenance to a very high standard to reinforce the image of the development.

Clauses 5.4.8 – Building design for residential buildings

Building design addresses the matters in clause 5.4.8 as follows –

3. The buildings are oriented correctly for solar access. A solar analysis is included in Architectural Drawing No 1.02.
4. The effects of building mass is minimised by –
 - Fenestration on all faces of the building, which will present active facades to adjoining public places.
 - Varying setbacks, including very deep setbacks for most of the length of Gardens Hill Crescent.
 - Indented facades, separated by green wall sections, which break building mass.
 - Vertical gardens on several walls, and planting platforms on every level.
 - Operable balcony screens, which will present dynamic facades to the street.
 - The café-restaurant and office corner, which presents as a pedestrian-scale foreground.
 - Variety of external materials and textures, which will add interest and aesthetic appeal.
 - Wide separation of the towers.
5. Airconditioners will be accessible from the balconies.
6. Building services will be integrated in the design of the building, and building service infrastructure at the street edge will be minimal.
7. The buildings are designed such that there is minimal or no overlooking of private open space and habitable rooms of adjacent dwellings. Apartments facing the northern boundary will be fitted with privacy screens to limit overlooking. Balconies between dwellings are screened from each other, and there is no overlooking of habitable rooms of dwellings on adjacent sites.
8. The bedrooms and balconies of most dwellings are well setback from the street. The balconies and some bedrooms of dwellings near the intersection of Blake Street and Gardens Hill Crescent are closer to the street; however, balconies facing the street are supported by other design principles, such as views and passive surveillance of the public realm, active facades, and outdoor living preferences.
9. Walls between apartments and floor slabs between floor levels will be designed to avoid or reduce sound transmission between apartments.

10. The application site is near Darwin Amphitheatre, which hosts live music and other events. The proponent intends to register cautionary notices on titles, alerting buyers to potential noise issues from these events.
11. The building has been designed to include significant passive climate control features, including –
 - Open atriums.
 - Vertical gardens.
 - Maximum cross ventilation and natural light.
 - Ante-lobbies to individual apartments, enhancing cross-ventilation without loss of privacy and security.
 - Extensive use of louvres.
 - Operable balcony screens.
 - High ceilings.
 - Fans in all rooms, including bathrooms and walk-in robes.

Visual and acoustic privacy is balanced with these passive climate control features by inclusion of operable balcony screens, screening of balconies from each other, and design of floor slabs and separation walls to reduce noise transmission between apartments.

12. The design of the buildings maximises breeze penetration and circulation, as detailed in 11. above, and illustrated in Architectural Drawing No 3.12.
13. The materials schedules included in the Architectural Drawings shows minimal use of reflective surfaces. The largest reflective surfaces are balcony doors, and these are well recessed.
14. All balconies will include internal drainage.

Clause 5.5.3 – Commercial and Other Developments

Building design addresses the matters in clause 5.5.3 as follows –

1. The proposal has considered community safety principles in that –
 - The proposal is designed for activity at street level, including by users of recreation facilities and facilities open to the public.
 - Dwellings on the site will have views over adjoining streets, and there will be casual surveillance of adjoining streets and places from all sides of the buildings.

2. There are no vistas along streets to buildings and places of architectural, landscape or cultural significance.
3. The proposal is required by SD46 to create a landmark development, which necessarily means that it will be distinguishable and distinct from other buildings in the immediate vicinity.
4. The café-restaurant and office component does not have expanses of blank walls visible from the streets.
5. The office and café-restaurant component, which includes outdoor seating, provides variety and interest at street level. Agostini Place adjoins this part of the development, and is intended to be a meeting place.
6. The café-restaurant and office components will have green roofs and surrounding shade trees.
7. The office component is likely to include acoustic design to minimise noise intrusion from activities in this part of the site.
8. All building services will be integrated in the fabric of the buildings.
9. Glazing to the café-restaurant and office facades facing the street is desirable to produce an active interface with the street. However, awnings and street landscaping in this corner of the site will reduce reflection.
10. On-site traffic circulation paths are clearly delineated. Streetscape works include new pedestrian crossings on Gardens Hill Crescent and Blake Street near Agostini Place – see p 15 of the Landscape Drawings.

As well as new pedestrian crossings, streetscape works include new footpaths adjoining the site, new street trees and kerb build-outs, water station, and public seating.

11. Pedestrian entry to café-restaurant and office is directly from the adjoining footpaths, and pedestrian paths are level and step-free.
12. The café-restaurant and office buildings will have deep awnings – see Architectural Drawing No 5.00.
13. A loading dock is included at the rear of the café-restaurant and office buildings.
14. See the Landscape Drawings.

There are no expanses of pavement and car parking. The vehicle forecourt is to be treated with hardscape comprising mosaic work of indigenous design, and the 4-bay car park adjoining the forecourt is screened by a green wall and shade trees.

15. Public toilets are provided at the rear of the café-restaurant and office buildings.

Although the size of the café-restaurant/office component does not warrant child minding facilities, the proposal includes a children's playground in Blake Street.

16. See the commentary under clause 5.3.7

Clause 5.5.11 – Food Premises

The proposal addresses the requirements of this clause as follows –

3. The proposal includes landscaping as shown in the Landscape Drawings.
4. The northern boundary of the application site adjoins land in Zone HR. The proposal will include a 1.8 m high solid acoustic fence along the full length of this boundary.
5. The café-restaurant building is a single-storey structure, facing Zone SC. Its lighting is unlikely to adversely affect any adjacent residents or present a traffic hazard.
6. The outdoor seating area is located away from adjoining dwellings, and noise from the café-restaurant is unlikely to unreasonably affect the amenity of the locality.
7. The al fresco area of the café-restaurant is not located adjacent to a dwelling.
8. A waste collection area is located near the loading dock at the rear of the café-restaurant and office buildings.
9. The net floor area of the café-restaurant, including outdoor seating is 120 m². If characterised as a restaurant, as specified in SD46, the floor space limit of 80 m² in this clause does not apply.

This component of the development is described as a café-restaurant, to signify that it will be an informal restaurant, serving café-style meals in a family-friendly environment. It will most likely sell take-away coffee, as is permitted under the ancillary reference in the definition of “food premises-restaurant”.

Summary of variations/waiver requested

The provisions for which variation or waiver is requested are –

- Clause 5.2.4(j) – vary the provision for a 1-m extension to a parking aisle affecting one parking bay only.
- Clause 5.4.6 – waive the provision relating to permeability of Area A for the ground floor dwelling only.

SD46 – Paragraph 3

This provision requires development to contribute to improving the amenity of the Blake Street precinct as an inner-city mixed use area by :

(a) Creating a landmark development through high architectural quality and distinctive streetscapes

This paragraph requires the development to be a landmark, and to possess high architectural quality and distinctive streetscapes.

Landmark development

An essential requirement of Zone SD46 is that the development is to contribute to improving the amenity of the Blake Street Precinct as an inner-city mixed use area by creating a landmark development through high architectural quality and distinctive streetscapes – see clause 3(a) of SD46.

DCA’s determination in 2018 to consent to a previous proposal for the site was reviewed by NTCAT¹⁶, which found that the proposed development was not a landmark development. A Notice of Determination issued by DCA to consent to the application was revoked.

There is no definition of “landmark” or “landmark development” in the Planning Act or Planning Scheme. In its review of DCA’s determination on the 2018 proposal, NTCAT considered numerous definitions of these terms put forward by various experts. NTCAT settled on the description of “landmark” articulated by Ian Mitchell, who was at the time Principal of Conrad Gargett Architects.

Conrad Gargett had been engaged by DCA to give its architectural opinion on the proposal and advise on what would constitute a landmark development. In giving this opinion and advice, Ian Mitchell stated¹⁷ that a landmark building would –

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

¹⁶ Planning for People Inc v Development Consent Authority and Kalthmera Pty Ltd [2018] NTCAT 984

¹⁷ Ian Mitchell LFRAIA, Principal, Conrad Gargett **Request for Architectural Opinion Development at Lot 7820 Blake Street Darwin** 12 June 2017

NTCAT adopted this characterisation of a landmark development, stating : “*In our view these more aesthetic considerations are what is required by clause 3(a)*”¹⁸

In its decision on a subsequent application to the Supreme Court¹⁹ for leave to appeal [2018] NTCAT 984, the Court affirmed the qualitative characterisation of a landmark development, noting that NTCAT had considered the opinions of a number of experts as to the characteristics which would make a development a landmark development and had preferred the opinion of Ian Mitchell. The Court upheld NTCAT’s finding on this point²⁰.

With clarity from NTCAT and the Supreme Court as to what would constitute a landmark development, the proponent engaged Ian Mitchell, now of Mitchell Design, to prepare a design brief for the project design team to facilitate the design of a landmark development in the terms adopted by NTCAT and the Court, to provide significant contributions to design strategy and development, and to review the new design.

Ian Mitchell’s Review Report (at Annexure 1) concludes that²¹ –

- The design of the current proposal addresses comprehensively the requirements of a landmark development as required by the Planning Scheme and the characteristics of a landmark development adopted by NTCAT and the Supreme Court;
- The proposal extends the landmark approach by including significant sustainability features and the incorporation of a landscape scheme that is inseparable from the architecture of the building; and
- The proposal is an exemplar for tropical architecture in Australia, and will be at the forefront of a new standard for residential development in the Territory and tropical Australia.

A detailed explanation of how the design responds to each of the characteristics that make a landmark development is contained in the Review Report at pp 6 – 9.

¹⁸ [2018] NTCAT 984 paragraph 64.

¹⁹ [2019] NTSC 85

²⁰ [2019] NTSC 85 paragraph 24

²¹ Ian Mitchell LFRAIA Mitchell Design **Review of the Revised Design for Elysium Green 25** March 2021, p 14

Architectural quality

The architectural qualities of the development are detailed in Section 6.1 of this statement, and in the Design and Community Impact statement at Annexure 2.

The Mitchell Report notes that the design establishes a site planning approach which defines and enhances the corner location, and includes treatments that will reinforce the landmark quality in the evening.

Although there is emphasis on the corner, the entrance is clearly identifiable, and the café-restaurant and office are articulated from the main building to present a low-rise foreground and a relationship to the existing context.

The Mitchell Report also notes that the treatment of the building facades acknowledges the tropical context with shade, screening, and significant greening of the building in circulation and public areas at all levels.

Contributing to the high quality of the architecture are significant sustainability features, as detailed in Section 6.6 of this statement.

Landscaping of the development is inseverable from the architecture. The landscape features are detailed in the Landscape Architectural Drawings, and the Landscape Architect's statement, and in Sections 6 and 7 of this statement.

The street appeal and landmark quality of the development is enhanced by the landscape treatment of public space, vertical gardens, and the sky garden.

As noted in the Mitchell Report, landscape treatment has been used in the design of the development to increase the amenity for both residents of the development and the community.²²

The Mitchell Report also distinguishes the proposed development from other high-profile green buildings in Australia, such as One Central Park, where greening is focused on the external walls. In the proposed development, internal landscaping on every level in public and circulations spaces provides a high level of amenity to residents.²³

²² p 9
²³ p 10

Distinctive streetscapes

Streetscape refers to the assemblage of buildings, landscaping, and street treatment that contribute to the design quality and visual effect of the street.

The architectural and landscape quality of the proposed development is depicted in the Architectural Drawings and Landscape Drawings, and the design principles elucidated in the Architects' statements, the Mitchell Report and this statement.

The streetscapes will be distinctive in the following ways –

- Building, landscape and streetscape design of a very high standard will present as an integrated whole when viewed from Blake Street and Gardens Hill Crescent.
- Landscaping will extend to the adjoining street verges. Street landscaping will include street trees in kerb buildouts, footpaths on both Blake Street (where there is no footpath) and Gardens Hill Crescent adjoining the site, and indent kerbside parking in small clusters. The design objective is to present the sections of streets adjoining the site as part of a distinct place, rather than simply part of a local traffic corridor.
- Streetscape works in the public domain include feature pavements adjoining the café-restaurant, office, and Agostini Place, and public seating adjoining Agostini Place and near the café-restaurant.
- Works within the site at ground level that will contribute to a distinctive streetscape include a public meeting place in Agostini Place with public art by Bruce Munro and feature paving, deep shade planting, public seating, indigenous art, green wall bearing the building name, water station, and e-bike station.
- The physical and visual porosity of the boundaries between public realm and private property and the activities near these boundaries will encourage social interaction and a community-friendly sense of place, and will reinforce an ethos of sharing. This has not been done before outside key mixed-use precincts in the CBD.
- Design details of sculptural public art in Agostini Place, planter beds, seating, paving, green building identification wall, and indigenous art poles will impart a feature-rich montage of pedestrian interest.

In summary, the proponent has assembled a design team that has articulated the characteristics of a landmark development, considered carefully how these characteristics should inform the design of the development, and applied excellence in design skills, to ensure a very high quality of architectural and landscape design, and the production of distinctive streetscapes.

(b) Providing high levels of pedestrian amenity

The proposal meets the requirements of this provision in the numerous ways detailed in Sections 6.4, 6.5, 6.8, and under Distinctive streetscapes above.

The proposal will vastly improve existing conditions for pedestrians in Blake Street and Gardens Hill Crescent. There is currently no footpath in Blake Street, and the footpath in Gardens Hill Crescent adjoining the site is not in good condition. There is very little vegetation in the Blake Street verge adjoining the site, and virtually none in Gardens Hill Crescent. There are very few street trees in Blake Street. Images showing the existing condition of verges adjoining the site are shown in Figures 9a and 9b.

The proposal will include new pedestrian crossings, footpaths, street trees, public art, gardens, feature paving, seating, water point, and visible activity of interest to pedestrians as detailed in the sections mentioned above and in the Landscape Drawings.



Figure 9a : Existing condition of verge on north side of Blake Street



Figure 9b : Existing condition of verge on west side of Gardens Hill Crescent

(c) Designing buildings with active interfaces

The proposal meets this criterion in the following ways –

- The building will have active interfaces, as detailed under consideration of SD46.11 below.
- The corner café-restaurant and office node, Agostini Place, and small gardens facing Blake Street will be gathering places that will promote activity. The street edges adjoining the site are designed to be part of a place that will encourage people interaction rather than simply as part of a local traffic corridor.
- Tropical Bothy in Agostini Place and the residents' lounge on Level 1 will impart a lantern effect to the street, and the lounge balcony will provide further animation to the building's edge.
- Activity in the sky garden will be visible from the street.
- Fenestration on all faces of the building, and balconies from most faces of the building, which provide visual connection to the street and enhance animation and vitality of the building's street-facing edge

(d) Designing buildings to take advantage of views while taking into account potential view corridors of future development reasonably to be expected in the surrounding precinct

Potential view corridors are taken to mean the view corridors for future development in the abutting Zone HR, where buildings of 8 storeys (or more in some cases) could be constructed.

Potential view corridors from the land zoned SC (Service Commercial) on the eastern side of Gardens Hill Crescent from the site have not been considered, because the combination of the applicable height limit of 8.5 m, plot ratio of 1.0, and prohibition of dwellings other than for a caretaker in Zone SC makes view corridors from this land of limited relevance.

The proposal meets this criterion in the following ways –

- The proposal includes a view analysis as part of a site analysis and urban design study – see Architectural Drawing No DA 1.02. The view analysis shows that collectively the dwellings in the proposed building will have 360-degree views. Views from individual dwellings will have reasonably wide view depending on their location in the building.
- The location of the proposed building indicates that, for new 8-storey buildings constructed on the land to the north of Lot 7820, there would be a potential reduction of about 12.5 degrees in the angle of views caused by the proposed building. The unimpeded angle of view would be about 347.5 degrees. A new building on the land abutting the project site's northern boundary would have unimpeded views over the Botanic Gardens, Mindil Beach, Cullen Bay, Tipperary Waters, Bayview and

Sadgroves Creek, and the reduction of potential views would be to views of parts of the CBD.

(e) Designing buildings to ensure that all building services, plant rooms, elevator shafts, roof-top elements and the like are integrated in the design of the building

Except for electrical substations, the building has been designed so that building services will be integrated in the design of the building. Substation locations are determined by Power and Water Corporation and are required to be located near site boundaries. Substations have been located in site corners to maximise site edges free of service installations.

SD46 - Paragraph 4

The requirements of this paragraph are met as follows –

Paragraphs (a), (b) and (c)

These paragraphs refer to the circumstance of the proposed development being undertaken in stages. As the development is to be undertaken in a single stage, it is not necessary to submit a staging plan (paragraph (b)), or a plan showing the provision of facilities to be shared between stages (paragraph (c)).

It may be necessary to obtain a staging permit for the purpose of unit title issue for completed dwellings in the event that some units are not at the same stage of completion as the rest of the development. However, construction of both towers will commence and proceed at the same time, so that a staging plan is not required under this provision.

Regarding paragraph (a), the drawings for this development application cover the whole site, and represent the master plan for the site.

Paragraph (d)

A site analysis and urban design study are included the Architectural Drawings No DA 1.00 to 1.05. The design of the proposal has developed from the Design Review Brief prepared by Mitchell Design, appended to the Review of the Revised Design Report in Annexure 1.

The application demonstrates that the proposed development meets paragraph 3(a) to (e). The Supreme Court has determined that it is to be taken for granted that a development will contribute to improving the amenity of the

precinct if the criteria in 3(a) to 3(e) are satisfied.²⁴ Accordingly, the proposed development will contribute positively to the neighbourhood.

The requirements of paragraphs 5 to 10 are dealt with later in this statement.

Paragraph (e)

The application documents include a set of Landscape Architectural Drawings for the proposed development and the adjoining streets.

Paragraph (f)

A schedule of external materials, depicting type and colour, is included as Architectural Drawings DA 4.00, 4.01, and 5.01.

Paragraph (g)

A traffic study, conducted by traffic engineers by i3 Consultants, is included in Annexure 5.

The traffic study was conducted as part of the previous development application. As the scope of the proposed development has reduced from 115 dwellings to 101 dwellings, and non-residential floor space remains unchanged, the findings of the traffic study remain valid.

The traffic study was referred to the City of Darwin (CoD), which had the traffic study independently peer reviewed.

CoD advised on 10 May 2021 that the traffic report is suitable, but that it would need to reflect the issue year of 2021, and design horizon year of 2031. On 11 May 2021, CoD confirmed that CoD will accept an updated traffic report as a condition precedent, in view of the delay between now and the commencement of construction. A copy of CoD's advice is included with Annexure 5.

SD46 – Paragraph 5

The requirements of this paragraph are dealt with under clause 5.4.1.

²⁴ [2019] NTSC 85 paragraphs 9 - 10

SD46 – Paragraph 6

This paragraph limits the floor area of office, restaurant, and shop to 250 m².

Architectural Drawing No DA 5.00 shows the detail of the café-restaurant and office area, with 120 m² for the café-restaurant (including outdoor seating), and 130 m² for the office.

SD46 - Paragraph 7

This matter is dealt with under clause 5.4.2.

SD46 – Paragraph 8

This paragraph limits the site coverage ratio from the third storey above ground level to 0.5.

The term “site coverage” is not defined in the Planning Scheme 2020. The term was defined in the former Planning Scheme between the date of its introduction into the Scheme on 29 July 2016 and its removal on 6 October 2017. During this time, it was defined as meaning : “the proportion of a site that is covered by buildings and structures, expressed as a percentage. It does not include :

- access ramps, driveways, pathways or paving
- awnings or eaves that are outside the external walls of a building, to a maximum depth of 0.9 m
- basements
- swimming pools, spas or ponds”

The floor plates of the northern and southern towers at the third storey will have gross floor areas of 1,350 m² and 1,380 m² respectively, giving a site coverage ratio of 0.433. At storeys above the third storey, site coverage is slightly less.

SD46 – Paragraph 9

This matter is dealt with under clauses 5.2.6 and 5.4.7.

SD46 – Paragraph 10

This paragraph requires landscape screens to parking areas at ground level, and ground level landscaping in the setback from the boundary with Lot 7819.

The landscape drawings show a 2-m wide landscape screen in the setback with Lot 7819.

The landscape screen at the Blake Street edge of the ground floor parking area is 5.75 m wide, and includes shade trees in deep soil zones, a vegetable and herb garden, playground, peacock roost, all forming the foreground to a perforated decorative screen wall, as well as street trees in kerb build-outs.

The four parking bays in the forecourt, accessed from Gardens Hill Crescent, are screened by shade trees and a green wall, in a landscape zone approximately 6.0 m wide, as well as street trees in kerb build-outs.

SD46 – Paragraph 11

The requirements of this paragraph are met as follows –

(a) “Active street frontage” is defined in the NT Planning Scheme as :

“means any frontage of a building that creates activity on the adjacent street or another public place. Unless otherwise specified, ***active street frontage***:

- (a) contains active uses such as retail, entertainment and dining uses for a minimum of 75% of the street front boundary,
- (b) is built to the street front boundary at ***ground level***;
- (c) has windows and door openings to the adjacent street or public place; and
- (d) minimises driveway and servicing ***access*** across the ***active street frontage***;

This paragraph requires an active street frontage of at least 75% of the Gardens Hill Crescent.

In the context of the application site, the limitations imposed by SD46 fall within the phrase “unless otherwise specified”. These limitations include –

- The restriction of non-residential uses to 250 m².
- The specification on the location of non-residential uses in SD46.12.3.
- The permissible setback for shops, restaurants and offices specified in SD46.12.3

Taking into account the specifications in SD46, the active street frontage is characterised by –

- visual connection between the street and activities conducted on the site at ground level, including the café-restaurant and commercial corner, Agostini Place, and the residents' pool deck and associated recreational activity, and landscaping; and
- windows and balconies of dwellings on the upper levels of the building, which provide visual connection to the street and enhance animation and vitality of the building's street-facing edge.

The length of the active street frontage of the Gardens Hill Crescent boundary is approximately 65.4 m, which is 77.94% of the length of the boundary.

- (b) On-site car parking areas will be screened from view from adjoining roads, as indicated in the commentary under SD46.10 above.
- (c) Mature trees will be planted in deep soil zones along street boundaries and in street verges adjoining the site. Planted kerb build-outs will be part of streetscape works, as shown in the Landscape Drawings.
- (d) Foot paths are shown as part of the streetscape works to be undertaken as part of the development, as detailed in Section 6 under the heading Streetscape works in public streets, and shown in the Landscape Drawings.

The proposal also includes variety and interest by the assemblage of landscape features, public art, and public seating at both street edges, and new pedestrian crossings in Blake Street and Gardens Hill Crescent, as detailed under consideration of SD46.3(c).

SD46 – Paragraph 12

This matter is dealt with under clause 5.4.3.

- (b) any proposed amendments to the Planning Scheme - s. 51(b);**
- (c) an interim development control order, if any, in respect of the land to which this application relates - s. 46(3)(b) and s. 51(c); and**
- (f) a matter that the Minister has, under section 85, directed it to consider in relation to development applications generally - s. 51(f)**

There are no proposed Planning Scheme amendments, interim development control orders or ministerial directions relevant to this land.

- (d) an environmental protection objective within the meaning of the *Waste Management and Pollution Control Act* that is relevant to the land to which this application relates - s. 51(d);**
- (g) if a public environmental report, or an 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 that Act by the Minister administering that Act - s. 46(3)(c) and s. 51(g); and**
- (s) any beneficial uses, quality standards, criteria, or objectives, that are declared under section 73 of the *Water Act* - s. 51(s)**

No report or statement under the Environmental Assessment Act has been sought and none is expected.

By s 18 of the *Waste Management and Pollution Control Act*, any beneficial use, quality standard, criterion or objective declared under s 73 of the *Water Act* is an environmental protection objective.

The land is within the area for which a declaration for beneficial uses is current for Darwin Harbour Region.

The declared beneficial uses for saline waters between Charles Point and Gunn Point are aquaculture, environment, and cultural.

The declared beneficial uses for natural waterways are agriculture, environment, cultural, and rural stock and domestic.

Under the declared beneficial uses and objectives, water quality objectives are those specified in *Water Quality Objectives for the Darwin Harbour Region Background Document*, and *ANZECC Guidelines for Fresh and Marine Water Quality*.

The proposal will include stormwater drainage works, and erosion and sedimentation control works during construction and operations, and these will be required under conditions of any development permit issued as a result of this

application. It is unlikely that the proposal will adversely affect the declared beneficial uses.

There are no other environmental protection objectives that are relevant to this land.

(e) any submission made under section 49 in relation to the development application - s. 51(e)

It is expected that the proposal will be referred to the relevant persons and authorities and that submissions from these parties will become known after the proposal has been notified in accordance with Section 47.

Any issues raised from public notification of the proposal will be dealt with prior to or at the meeting of the Development Consent Authority at which this application will be considered.

(h) the merits of the proposed development as demonstrated in the application - s. 46(3)(d) and s. 51(h); and

(n) the potential impact on the existing and future amenity of the area in which the land is situated- s. 46(3)(h) and s. 51(n)

Most of the amenity issues have been dealt with in other parts of this statement.

The proposal is consistent with the Planning Scheme and with the development envisaged by SD46.

The proposal demonstrates that it will contribute to improving the amenity of the Blake Street precinct by satisfying the matters specified in SD46.3(a) to (e).

The proposed development has been designed to the brief prepared by the author of the definition of a landmark development, Ian Mitchell, and that definition has been accepted by NTCAT and the Supreme Court. The design of the development has been reviewed by Ian Mitchell, and has been found to satisfy the criteria for a landmark development. The Mitchell Report concludes that the development is a landmark development, and an exemplar for tropical architecture in Australia, and it will be at the forefront of a new standard for residential development in the Territory and in tropical Australia.

The design of the development is unprecedented in the Territory. It includes vertical gardens and landscaping on every level, enhancing the internal amenity for residents of the building.

The design of the development blends architecture, landscape, and streetscape into an integrated whole, and the proposal will contribute positively to the amenity and visual quality of the precinct in which it is located and to adjoining streetscapes.

The proposal makes generous provision for a range of facilities within the development site that will be available for the enjoyment of the public.

The proposal will include a permanent installation of public art by renowned and internationally acclaimed artist, Bruce Munro, and will be the first such permanent piece by this artist.

Apartments in the building have been designed to maximise energy efficiency and passive climate control. The energy rating of the building will be very significantly higher than the NT requirement.

The apartment designs have been assessed against NSW design guidelines and exceed the guidelines in all parameters covered by the guidelines, in most cases by large margins.

The development includes significant sustainability features, including roof-top solar arrays, rainwater harvesting for irrigation, measures to increase the thermal performance of the building envelope (vertical greenery, grey glass glazing, operable screens, window awnings etc), and provision for electric vehicles.

The apartments will have views across scenic open spaces, coastlines, and the city skyline, without significant loss of views from other potential buildings.

The development includes significant improvements to local streetscapes and pedestrian amenity, and will be undertaken with the concurrence of the City of Darwin.

The site is very well served by public transport, and is within walking or cycling distance of the central business district.

It is submitted that an objective assessment of the amenity effects of the proposal should lead to a conclusion that the proposed development is unlikely to present any undue adverse effect on the amenity of the locality, and will contribute positively to public amenity and enjoyment of the precinct.

In summary, the proposed development will be an exemplar of near-city contemporary living in a location that has all the attributes required to support it.

(j) 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 - s. 51(j)

The land is zoned for and is suitable for the proposed development.

There are no physical constraints that limit the development of the site in the manner applied for.

The proposed development will not affect the physical characteristics of any other land.

(k) the public facilities or public open space available in the area in which the land is situated and the requirement, if any, for the facilities, or land suitable for public recreation, to be provided by the developer - s. 46(3)(f) and s. 51(k)

The application site is in very close proximity to large open spaces and recreation facilities of outstanding quality, including Botanic Gardens, Gardens Golf Course, Gardens Oval, Waratahs Sports Club, Mindil Tennis Centre, and Mindil Beach.

The site is also in proximity to community facilities, including schools (St John's College and Darwin Middle and High Schools), and the retail and entertainment precincts of the central business district.

(m) 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 - s. 46(3)(g) and s. 51(m)

The site is serviced by all necessary urban infrastructure, or is capable of being serviced by necessary infrastructure.

The servicing requirements were made known to the proponent as part of assessments carried out for previous proposals. No service agencies raised any objection to the previous proposals. As the scope of the proposal has reduced from 115 to 101 dwellings, it is unlikely that there will be any major changes to service agencies' requirements.

The proponent expects to upgrade existing services and provide required services to the development as conditions of development consent.

(p) the public interest - s. 46(3)(j) and s. 51(p)

Public interest issues were given intense consideration during the rezoning proposal that resulted in the present zoning of the land. As a result of community concern, the original development concept was amended to reduce building height and the number of dwellings.

All submissions made during assessment of previous applications were taken into consideration and weighed in the balance, which resulted in the DCA's previous determinations in favour of the proposal. With the benefit of NTCAT and Supreme Court decisions in their reviews of DCA's determinations, the matters which resulted in the determinations being revoked have been remedied in the current application.

The public interest will be served by developing the site in the manner intended by the zoning to offer a housing quality that will be at the forefront of a new standard in a near-city strategic location, in close proximity to places of employment, and retail, community and entertainment services.

The building incorporates CPTED principles by providing for activity on the ground and podium levels, facilitating pedestrian interest at street level, and affording passive surveillance of the adjoining streets and public places from residents' leisure spaces and the balconies and windows of dwellings.

Water safety will be achieved by pool fencing to the approved standard.

The proposal includes 19 dwellings of universal design. These dwellings will comply with the Platinum Level of the Livable Housing Design Guidelines. All dwellings will comply with the Silver Level of these Guidelines.

The building will be fully accessible to people with disabilities as all floors will be accessible by lifts, parking bays are shown for disabled users, and pedestrian access will be directly at ground level on level and barrier-free paths.

(q) in the case of a proposed subdivision of land on which a building is situated - whether the building will cease to comply with the *Building Act* if the proposed development were to proceed - s. 46(3)(k) and s. 51(q)

The proposal does not require subdivision.

(r) any potential impact on natural, social, cultural or heritage values - s. 51(r)

There are no natural, social, cultural or heritage items on the land.

The application site is near the Botanic Gardens, and the proposal has taken into consideration the effect on the Botanic Gardens. The proposal celebrates the site's proximity to the Botanic Gardens by its landscape theme, and by commemorating an identity closely associated with their post-war rehabilitation.

Some objectors to the previous applications were concerned that the proposal would destroy the Botanic Gardens and its wildlife. However, it should be recognised that the Botanic Gardens are a major regional and recreation facility which does not limit the number of visitors, who may visit from anywhere. There are numerous function areas, and many events are held in the Botanic Gardens each year. Some of these events are attended by thousands of people.

There is no reason to believe that local residents in Blake Street will have a greater effect on the Botanic Gardens than anyone else visiting or attending functions and festivals there.

It is also noteworthy that the NT Government has recently completed a major upgrade to facilities in the Botanic Gardens as part of its “Turbocharging Tourism” initiative. The facilities include a new multi-purpose visitor and event centre, offering all-season conferences and events, including multi-stage events. At the time of announcing this project, NTG said that the Botanic Gardens “will form part of the unique suite of cultural experiences aimed at revitalising Darwin’s CBD” and provide a link to MAGNT, Mindil Beach and Myilly Point.

It is highly unlikely that this initiative was intended to keep people away from the Botanic Gardens.

Regarding live music and other events at Darwin Amphitheatre, the proponent intends to register cautionary notices on titles, alerting buyers to potential noise issues. This is consistent with the approach adopted in Darwin Inner Suburbs Area Plan (DISAP), which states that a cautionary notice on the title is an acceptable response to the objective of ensuring continued unrestricted use of the Amphitheatre.

(t) other matters it thinks fit

There are no other matters that have not been dealt with under other heads of consideration.

JUNE D’ROZARIO

Annexures

Annexure 1 - Ian Mitchell LFRAIA **Review of Revised Design for Elysium Green** Mitchell Design 25 March 2021

Annexure 2 - Archidiom and Makrylos Group **Elysium Green Design and Community Impact** 13 May 2021

Annexure 3 - NatHERS Report

Annexure 4 - SD46

Annexure 5 - City of Darwin emails and Traffic Impact Assessment