

Section 46 Planning Act Report

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

Addendum



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1 REASON FOR ADDENDUM

Under ss 46(3)(a) and 51(a) of the Planning Act, the application addressed the relevant provisions of the NT Planning Scheme 2020 (NTPS 2020).

Development Assessment Services (DAS) has stated that the application must be determined in accordance with the NT Planning Scheme 2007 (NTPS 2007), because the land is in a Specific Use Zone, SD46.

DAS cites Section 215 of the Planning Act as the authority for its position. Section 215 is as follows -

215 Specific use zone

- (1) **If requested by the applicant**, a development application in relation to a specific use zone, must be determined:
 - (a) in accordance with this Act in force immediately before the commencement; and
 - (b) in relation to the elements of the planning scheme applicable immediately before the commencement.
- (2) This section is repealed on the day fixed by the Administrator by *Gazette* notice.
- (3) The date fixed under subsection (2) must be at least 5 years after the commencement.

The applicant notes the opening words of this section, as highlighted above. The applicant did not request that the application be determined under the provisions of the Planning Act and Planning Scheme as at 31 July 2020, the commencement date of the Planning Amendment Act 2020 (Act No 19, 2020) and NTPS 2020.

The applicant contends that s 215 provides for the applicant to elect to have the application determined under the provisions that applied before 31 July 2020, but it is not mandatory for the application to be determined under the previous provisions.

In further support of its position, DAS cites clause 4.2 of NTPS 2020, which states : “The Specific Use Zones listed in the Table to this Schedule are subject to the relevant requirements contained in the former Northern Territory Planning Scheme (2007)”.

The applicant says that this clause refers to relevant requirements of NTPS 2007, and must necessarily refer to NTPS 2007, because there are no requirements whatsoever for the 2007 SU Zones in NTPS 2020. The clause does not reinforce

DAS' interpretation of s 215, but merely provides the practical means of determining the relevant requirements of each of the 2007 SU Zones.

Notwithstanding the clear words of s 215, to avoid doubt, the applicant provides the following assessment of the proposal against the provisions of the Planning Act prior to 31 July 2020 and NTPS 2007.

2. PLANNING ACT AND REGULATIONS

The effects of determining the application under the Planning Act prior to 31 July 2020 are set out in the table below.

PLANNING ACT AND REGULATIONS			
Item	Before 31 July 2020	After 31 July 2020	Implication for application if earlier provisions applied
Persons entering into agreements to acquire interest in the land, and persons with prescribed interests - s 46(3)(aa)	No provisions	Persons must be identified	No disclosure required
Contents of a development application - s 46(3)(a) to (l)		No material changes	None
Class of applications that may require only some of the information required by s 46(3)	No provisions	Class of application prescribed by regulation	None
Minimum submission period	14 days for all applications	28 days for a large range of applications	The submission period for the application will be 28 days, but only 14 days required

3 NTPS 2007 AND NTPS 2020

The effects of determining the application under NTPS 2007 are set out in the table below.

If assessment under NTPS 2007 is required, the clauses of NTPS 2007 in column 2 should be substituted for the corresponding clauses in NTPS 2020 in column 3 when reading the application report.

NT PLANNING SCHEME			
Item	NTPS 2007	NTPS 2020	Implication for application if earlier provisions applied
Area Plan	Considered as part of NTPS 2007 under cl 2.7 - Reference to Policy	Considered as part of NTPS 2020 under Part 2 - Strategic Framework	None
Overlays	Various provisions throughout NTPS 2007	Consolidated in Part 3 - Overlays	None
Zoning	SD46 provisions detailed	SD46 listed in Schedule to cl 4.2 but no provisions detailed. Refers to NTPS 2007 for "relevant requirements"	See comments under the other items
Definition of dwelling type	Multiple dwellings, no distinction between townhouses and apartments	Dwelling-multiple, dwellings vertically over or under another dwelling, intended to distinguish between townhouses and apartments	None. Dwellings in the proposal meet the definition of "dwelling-multiple"
Food premises	No distinction between types of restaurants	Distinguishes between restaurants, café, and fast food outlets	None. Café-restaurant meets the definition of "food premises-restaurant"

Parking	cl 6.5.1	cl 5.4	None. Parking provisions have not changed for the components in the proposal
Parking layout	cl 6.5.3	cl 5.2.4.4	None. Parking layout provisions have not changed. Special circumstances instead of consistency with zone and clause purpose and outcomes required
Loading bays	cl 6.6	cl 5.2.5	None. Loading bay requirements have not changed
Landscaping	SD46.9	cl 5.2.6	None. SD46.9 covers the field
End of trip facilities	No provisions	cl 5.3.7	Proposal includes end of trip facilities in excess of NTPS 2020, but is not required to provide any
Residential density	SD46.5	cl 5.4.1	None. SD46.5 covers the field
Building height	SD46.7	cl 5.4.2	None. SD46.7 covers the field
Building setbacks	SD46.12	cl 5.4.3	None. SD46.12 covers the field
Private open space	cl 7.5	cl 5.4.6	None. Provisions have not changed. Special circumstances instead of consistency with zone and clause purpose and outcomes required
Communal open space	cl 7.6	cl 5.4.7	None. Provisions have not changed.
Landscaping for multiple dwellings etc	cl 7.7	cl 5.2.6	None. No material changes to provisions. SD46.9 covers the field
Residential building design	cl 7.8	cl 5.4.8	None. No material changes

			to provisions.
Commercial building design	cl 8.2	cl 5.5.3	None. No material changes to provisions
Food premises	No provisions	cl 5.5.11	Applicant not required to comply with cl 5.5.11

4. SUBMISSIONS IN RELATION TO SPECIAL CIRCUMSTANCES

As noted in the application report, a waiver or variation is required for -

- A 1-m extension of the parking aisle of one parking bay, Bay 1, in the basement
- The provision relating to permeability of Area A of the private open space of the ground floor unit

NTPS 2007 required special circumstances to be demonstrated for variations or waivers.

Regarding the parking aisle extension, the Authority is requested to vary the parking layout provision, requiring a 1-m aisle extension for Bay 1, on the basis of the following special circumstances –

- Because the aisle width adjoining this bay is 2.4 m wider than required by clause 6.5.3 of NTPS 2007, there is sufficient space for a vehicle to enter and exit the bay conveniently.
- The length of the space behind the bay enables convenient entry and exit from the bay.
- The number of car parking bays provided in the development exceeds the number required by 11, so that removal of this bay to secure strict compliance with the 1-m aisle extension provision will not result in a parking shortfall for the development. However, removal of the bay simply for the sake of compliance would result in the unnecessary loss of a conveniently usable parking bay.

Regarding the permeability of Area A of the ground floor unit's private open space, the Authority is requested to waive this requirement, on the basis of the following special circumstances –

- The proposal, in which the ground floor dwelling is a small part, meets the purpose of clause 7.5.2(d) of NTPS 2007, to allow stormwater infiltration and lessen stormwater runoff from the site.
- 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. This is far in excess of the 5 m² required by clause 7.5 of NTPS 2007.
- 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.

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