

# STATEMENT OF EFFECT

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## North One – Lot 7651 Town of Darwin



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## STATEMENT OF EFFECT – LOT 7651 TOWN OF DARWIN

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### 1. INTRODUCTION

This report accompanies an application for Development Permit for the development and use of land at 25 Gilruth Avenue, The Gardens, for a Biophilic integrated tourism accommodation facility, consisting of beachfront and lagoon villas, a hotel, serviced apartments and complementary dining facilities, market, function facilities, bar and recreation facilities. Built form and landscape design consists of four integrated components – the hotel, foreshore villas and serviced apartments, lagoon villas and garden villas, emphasising the natural assets and outlook available to the site from Little Mindil Beach, Little Mindil Creek (also known as Casino Creek) and the southern escarpment. A central access driveway will provide vehicle and service access to all four components.

The subject land comprises lot 7651 Town of Darwin, land known as 'Little Mindil', situated between the escarpment adjacent the southern boundary of the site, and bordered by Little Mindil Beach / Mindil Beach to the north-west, and Little Mindil Creek to the north / north-east. The proposal seeks to respond to the existing landforms and features within and adjacent the site by avoiding disturbance or encroachment into Little Mindil Creek, reducing building heights in close proximity to the escarpment (noting the presence of the Myilly Point Heritage Precinct atop the escarpment) and maintaining public access and public space along Little Mindil Creek, along the foreshore and throughout the site.

Intrinsic to the development is the biophilic design approach, with a fundamental feature being the incorporation of green roofs on each building. The roofs will include carefully selected plant species responding to the harsh top end coastal environment, and together with the ground level and public space landscape design outcomes, respond to the beachside remnant monsoon vine forest with cascading vegetation and shady landscaped spaces intended to soften and obscure the appearance of the built form from surrounding and nearby locations.

The proposal includes a number of land uses per the definitions in **Schedule 2** of the Northern Territory Planning Scheme, both as primary and ancillary components, including:

- *Residential buildings* comprising a *hotel/motel* and *serviced apartments (dwellings-multiple)*, including a range of ancillary components normally associated with a luxury tourist accommodation facility, including restaurants, recreation and function areas;
- *Bar-Public* as an ancillary and associated component to the *hotel motel*; and
- *Market*, comprising a range of (predominantly) food stalls on the ground level, publicly accessible and showcasing local ingredients and suppliers.

The subject land is zoned TC (Tourist Commercial), with **Clause 4.13** of the Planning Scheme providing the Zone Purpose, Zone Outcomes and Assessment Table for Zone TC.

The range of land uses proposed are identified as either *Merit Assessable* or *Impact Assessable* in the Assessment Table, and as such the development requires *consent* at the level of *Impact Assessable*. The development is also *Impact Assessable* by virtue of the potential storm surge inundation, per **Clause 3.1(4)** of the Scheme.

As the proposed development and use of the land requires *consent* per the Planning Scheme, a development permit is required pursuant to **Section 44** of the Northern Territory Planning Act. This report details the nature of the subject land and locality, the proposed land use, considers the proposal against the relevant provisions of the Planning Scheme, and the relevant components of **Section 46** of the Northern Territory Planning Act.

This report is to be read in conjunction with the following attachments to the Development Application Package:

- Design Response Package (Architectural Plans), Hachem Architects
- Landscape Concept Presentation, Clouston Associates Landscape Architects
- Visual Impact Study, Clouston Associates Landscape Architects
- Stormwater Management Plan, ADG Engineers (Australia)
- Engineering Services Report, ADG Engineers (Australia)
- Hydraulic Assessment, ADG Engineers (Australia)
- Erosion and Sediment Control Plan, ADG Engineers (Australia)
- Bulk Earthworks, Roadworks and Drainage Plan, ADG Engineers (Australia)
- Traffic Impact Assessment, SJ Traffic Consulting
- Preliminary Site Investigation – Contamination, SLR Consulting Australia
- Biting Insect Management Plan, BPL Environmental
- Noise Impact Assessment, SLR Consulting Australia
- Desktop Environmental Wind Study, SLR Consulting Australia
- Bar-Public Plan of Management, Urbanscope (Australia)
- Small Scale Archaeological Assessment Report, Ellengowan Enterprises Archaeological Consultants
- Heritage Impact Assessment, Ellengowan Enterprises Archaeological Consultants
- List of Stakeholder Engagement Meetings, Urbanscope (Australia) Pty Ltd
- NT Planning Scheme Amendment No. 16 (27 May 2021)

- Title Documents – Lot 7651
- Site Covenants 731711 and 731712
- NTG Survey, Lots 7651 and 7656

## **2. SECTION 46(3)(AA) – INTERESTED PARTIES**

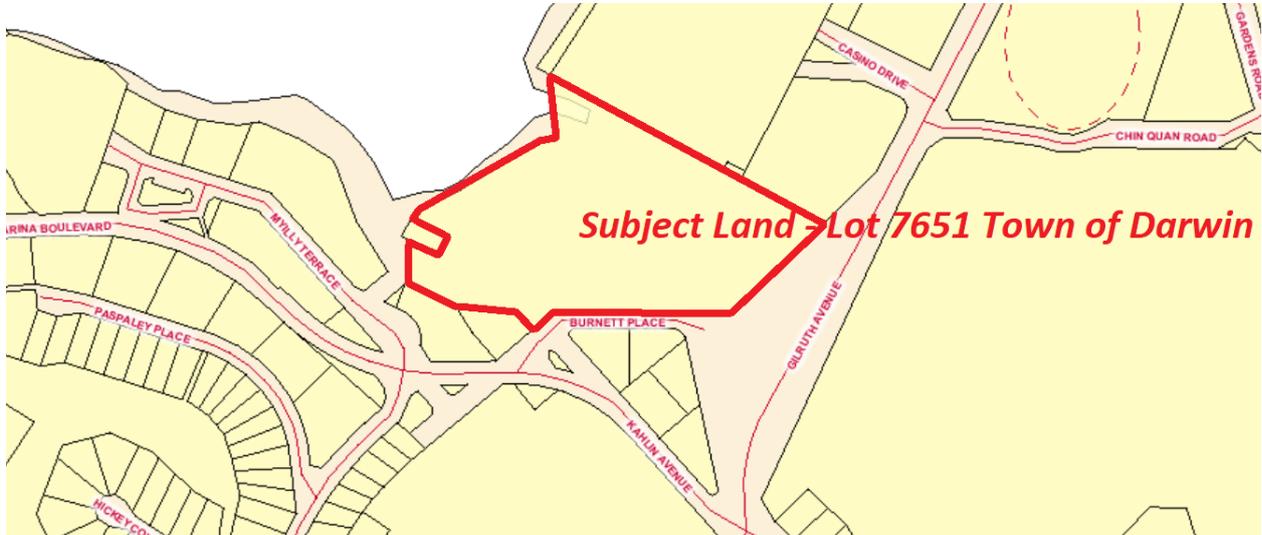
*Applicant* Urbanscope (Australia) Pty Ltd, Masaaki Ikeda, 02 9042 0600

*Landowner* SKYCITY Australia Pty Ltd, Railway Station Building, North Terrace, Adelaide SA 5000

*Landowner (road reserve)* City of Darwin, GPO Box 84, Darwin NT 0801

*Proponent* KTT Investments Pty Ltd, Anh Tua Ndo and Nguyen Duy Kien

### 3. SUBJECT LAND



**Figure 1:** Lot 7651 Town of Darwin (25 Gilruth Avenue, The Gardens)



**Figure 2:** Zoning - Subject and Surrounding Land

<b>Address:</b>	Lot 7651 Town of Darwin (25 Gilruth Avenue, The Gardens)
<b>Title Reference and Land Tenure:</b>	CUFT 845 965 Estate in Fee Simple (Freehold)
<b>Landowner:</b>	SKYCITY Australia Pty Ltd
<b>Land Area (under title):</b>	5.13 hectares (51,300m <sup>2</sup> )
<b>Easements:</b>	Electronic Communications Easement to Telstra Corporation Limited Right of Way Easement to Power and Water Corporation

Electricity Supply Easement to Power and Water Corporation

Sewerage Easement to Power and Water Corporation

Right of Way Easement to Northern Territory of Australia

*Zone (subject site / lot):* TC (Tourist Commercial) / TC and PS (Public Open Space)

The subject land comprises lot 7651 Town of Darwin, situated at 25 Gilruth Avenue, The Gardens. The title covers the area known as Little Mindil, as well as Little Mindil Creek (also known as Casino Creek), discharging into Fannie Bay to the north of the site. The site currently consists of a sealed car parking area, access from adjacent lot 5722 and Casino Drive (from Gilruth Avenue) via a two-way vehicle and pedestrian bridge over Little Mindil Creek. The western portion of the site consists of an open grassed area directly adjacent to and overlooking Little Mindil Beach, with the eastern portion containing an open car parking area with overflow parking for the Mindil Beach Casino. A pedestrian pathway extends through the site, connecting the shared path along Gilruth Avenue to the foreshore, with the foreshore path (outside the site) adjacent the north-western boundary, extending further north along Little Mindil and Mindil Beach via a public pedestrian footbridge. A separate service vehicle bridge within the subject land provides access from the site to the Mindil Beach Casino and Resort (on the adjoining lot 5244) back of house area. The southern area of the site includes a heavily vegetated escarpment extending along the entire southern site area, rising to Burnett Place. The escarpment is also known as the Gilruth Avenue Cliffs.

Lot 7651 directly fronts the Gilruth Avenue road reserve, however evident from the image in **figure 1**, the subject land (comprising the development area) extends into the road reserve given the existing boundary orientation. Initial consultation with the City of Darwin (the agency responsible for the care and control of Gilruth Avenue) confirm in-principle support for the application to be lodged, noting the support is provided subject to Council reviewing and approving the design details of any road reserve encroachment.

### **3.1. Statutory and Legal Considerations**



**Figure 3:** Lot 7651 Primary Storm Surge Area



**Figure 4:** Lot 7651 Secondary Storm Surge Area

The subject land is currently zoned TC (Tourist Commercial) and PS (Public Open Space). The majority of the site, including the existing car park and grassed area, is zoned TC, with the Little Mindil Creek and vegetation corridor zoned PS. Evident in **figures 3** and **4**, the subject land is affected by both Primary and Secondary Storm Surge Areas (PSSA and SSSA), effectively covering the entire area of the site to the base of the escarpment.

The site is subject to a number of encumbrances and easements (identified in **TP0.03** and **TP0.11** of the Architectural Plans) including:

- Approximately 30 metre wide (variable width) Electricity Supply Easement extending across the site (east-west) containing the high voltage above ground power lines also extending across the subject land;
- Two 5-7 metre wide Electronic Communications Easements containing fibre optic cables;
- Electricity Supply Easements encroaching into the southern (at the top of the escarpment), western (immediately adjacent the Gilruth Avenue frontage) and eastern (immediately adjacent PWC lot 7656) extents of the lot;
- Sewerage Easement adjacent Little Mindil Creek (in the PS portion of the site);
- Right of Way Easement in favour of the Power and Water Corporation, providing access to the high voltage power lines from lot 5772 (adjoining the northern boundary of the subject land);
- Covenant Dealing Number 731711 comprising an Easement in Gross in favour of the Northern Territory of Australia. The covenant secures an easement to the Territory for the purpose of a right of way for the benefit of the Territory and members of the general public, and aligns with the existing concrete shared path extending east-west across the site and connecting the Gilruth Avenue shared path with the foreshore path along Little Mindil and Mindil Beach;
- Covenant Dealing Number 731712 comprising a Covenant in Gross in favour of the Northern Territory of Australia.

The covenant contains the Little Mindil Creek corridor and associated vegetation, and the cliff, cliff base and associated vegetation, and requires the owner rehabilitate the covenant area; and preserve and maintain the “Tidal Creek and Escarpment”; and

- Registered Sacred Site 5073-89 comprising a sacred burial ground. The sacred site is situated within the PS Zoned area of the subject land.

The location and extent of the abovementioned easements, covenants and sacred site are shown in the Architectural documents.

### **3.2. Planning History**

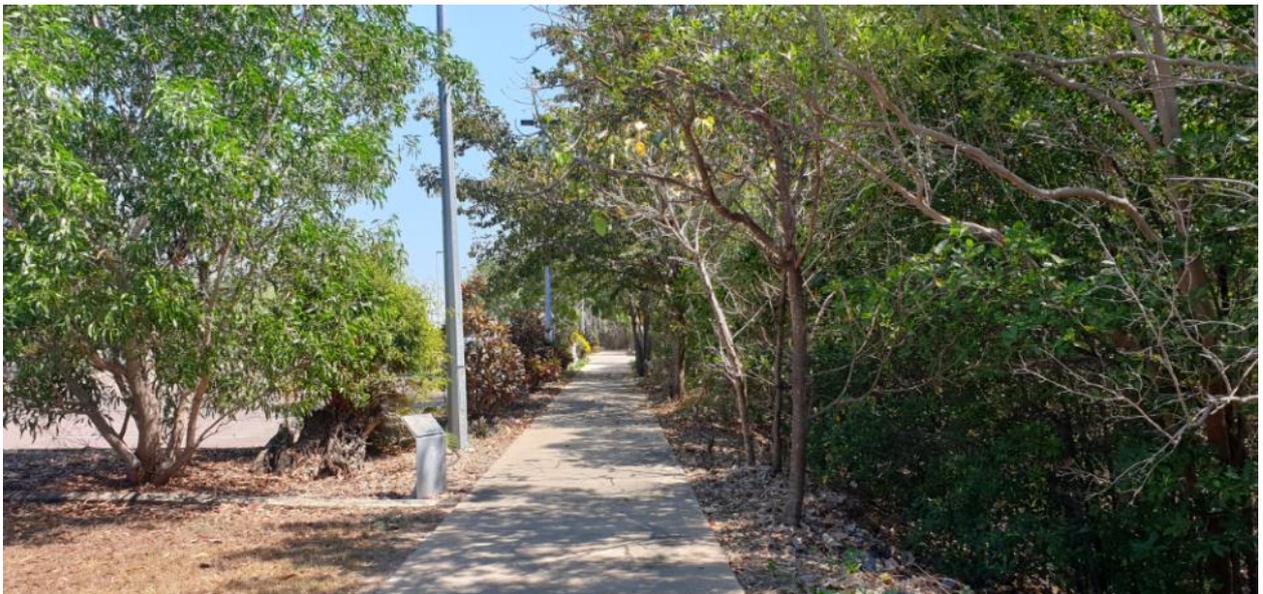
Title documents for the subject land reveal the following planning history:

- *Northern Territory Planning Scheme 2020 Amendment Number 16*, issued 27 May 2021. Amendment 16 was undertaken on the initiative of the delegate of the Minister for Infrastructure, Planning and Logistics, to rezone part of the subject land from Zone PS to Zone TC, and part of the subject land from Zone TC to Zone PS. The amendment rezoned the entire Little Mindil Creek corridor from TC to PS, the remainder of lot 7651 from PS to TC (only a small portion of 7651, comprising a triangular area adjacent the foreshore boundary, was zoned PS as a boundary anomaly) and the foreshore area (crown land adjacent 7651) in its entirety from TC to PS. The reasons for decision accompanying Amendment 16 indicated that the amendment:
  - *Is an administrative correction of misaligned zones along the subject land’s western boundary with adjacent Crown Land;*
  - *Formalises the intention to retain a portion of the land with environmental and heritage values within the realm of public open space in recognition of the protection of the existing covenant;*
  - *Will retain the existing public walkways within public open space in recognition of the existing right of way easement;*
  - *Will not result in restricting public access to and along the foreshore; and*
  - *Meets the intent of the Planning Act 1999 and is consistent with the strategic framework of the NT Planning Scheme 2020.*
- *Development Permits DP09/1004, DP09/1004A and DP09/1004B*, approved in December 2009, February 2010 and July 2010 respectively – DP09/1004 and associated variations A and B approved the use of the subject land for the purpose of *leisure and recreation* (largely comprising outdoor events), including an outdoor entertaining area, landscaping and car parking (being the existing car park in the eastern portion of the subject land). Variations A and B approved changes to the pedestrian and vehicle access bridge to minimise environmental impacts on the creek, and a minor reconfiguration of the car park. The permits reflect the site in its current form.

### **3.3. Site Photographs**



**Image 1:** *Subject Land from Gilruth Avenue frontage*



**Image 2:** *Shared Path adjacent Little Mindil Creek*



**Image 3:** Existing Car Park within subject land



**Image 4:** Existing grassed area within subject land



*Image 5: Little Mindil Creek with pedestrian bridge*



*Image 6: Pedestrian bridge over mouth of Little Mindil Creek*



**Image 7:** Site Panorama from Little Mindil Beach



**Image 8:** Escarpment, existing residential development atop the escarpment and existing electrical infrastructure



**Image 9:** Subject land from atop the escarpment

#### 4. LOCALITY

**Figure 1** in **section 2** of this report identifies the site and surrounding locality. The immediate locality comprises a range of community, open space, tourism / accommodation, commercial, residential, recreation and natural areas, including the Little Mindil and Mindil Beach, Mindil Beach Casino Resort, The Gardens Tennis Club and the Gardens Park Golf Links. To the north of the site, the Mindil Beach Casino Resort is located lot 5244, immediately north of the Little Mindil Creek. The site includes a casino, restaurants, bars, a hotel and resort. Lot 5772, between lot 5244 and Gilruth Avenue, is owned by the City of Darwin and provides public car parking for the casino. Further north is the Mindil Beach public recreation and markets area, and the Gardens Tennis courts. The Gardens Park Golf Links, a nine-hole golf course with associated pro-shop, bar, beer garden, driving range and mini-golf course, is located on the eastern side of Gilruth Avenue, opposite the subject land, and the southern side of Chin Quan Road.

On the northern side of Chin Quan Road and eastern side of Gilruth Avenue is the Gardens Oval complex, including Gardens Oval one and two, with the main oval, grandstands, toilets / changerooms and sporting club located on lot 3477, with Gardens Oval two and the cricket training nets located on the adjacent lot 5943. Gardens Oval one is the primary field within the complex, comprising a full-size AFL and cricket oval, with the playing surface bordered on the south-western side by two grandstands (the Tiger Brennan Stand and the Hunter Harrison Stand), the Waratahs Sports Club and additional undercover seating / coaches and player interchange area. Additional tiered seating is provided to the south of the playing surface, with a grassed mound and amenities block to the north, and scoreboard to the north-east.

To the south of the site, commencing atop the escarpment, the Myilly Point Heritage Precinct consists of a number of dwellings built for high-ranking public servants in the 1930's, designed by architect B C G Burnett specifically adapted to climatic conditions of the Top End, including extensive use of lightweight materials and louvres to allow adjustment to suit prevailing weather conditions. The group of five allotments are bordered by Kahlin Avenue, Burnett Place and Gilruth Avenue. The precinct contains four dwellings – Audit House, Burnett House, Magistrates House and Mines House. To the west of the heritage precinct (south-west of the subject land) is the commencement of the suburb of Cullen Bay, containing residential development at low, medium and high densities, with a small commercial centre at the western end of Marina Boulevard. The area atop the escarpment immediately south-west of the site includes *dwellings-group* to two-storeys and *dwellings-multiple* to 11 storeys.

To the south-east of the site, on the opposite side of Kahlin Avenue, is the Kahlin Compound / Old Darwin Hospital Site, with the development of a playground / recreation facility currently underway. To the west of the site, the To the east of the site, on the eastern side of Gilruth Avenue, is the Gardens Park Golf Links, with the residential suburb of Larrakeyah to the south east.

In the broader locality, the George Brown Darwin Botanic Gardens are located on the eastern side of Gardens Road, opposite Gardens Oval, and fronting the eastern side of Gilruth Avenue and Gardens Road, between Salonika and Melville Streets, with some 42 hectares of North Australian and other tropical plant species. Visitor facilities include an information centre, ornamental ponds and fountain, rainforest waterfall, public amenities and facilities, picnic areas and Eva's Café (in the old Wesleyan Church building).

Northern Territory Planning Scheme Zones within the locality generally reflect established land uses, including extensive areas of TC (Tourist Commercial), as well as HT (Heritage), PS (Public open Space), OR (Organised Recreation) and residential zones HR (High Density Residential), LMR (Low-Medium Density Residential) and LR (Low Density Residential). The immediate locality is shown in **Figure 2**.

## 5. PROPOSED DEVELOPMENT

The proposed development comprises a biophilic integrated tourism accommodation facility, consisting of beachfront and lagoon villas, a hotel, serviced apartments and complementary dining facilities, market, function facilities, bar and recreation facilities. Built form consists of four integrated components – the hotel, foreshore villas and serviced apartments, lagoon villas and garden villas, emphasising the natural assets and outlook available to the site from Little Mindil Beach, Little Mindil Creek and the Gilruth Avenue Cliffs. Specific details of each component are as follows:

- 7 storey (6 above ground plus semi-basement) villa / serviced apartment building located parallel to the foreshore (north-western) boundary of the site, overlooking Little Mindil and Mindil Beach and Fannie Bay, with **7 three-bedroom foreshore villas, 22 two-bedroom, 22 three-bedroom and 2 four-bedroom serviced apartments**:
  - Semi-basement shared with the hotel building, with 151 car parking spaces, administration offices, housekeeping facilities, staff ablutions, fire-fighting tanks, with a connected basement towards the eastern extent of the lot providing ablutions, management and control areas;
  - Ground level with 7 three-bedroom foreshore villas (*serviced apartments*), each with open plan living, dining and kitchen area, private ensuite to each bedroom, private pool and terrace lounge, and a four-car garage. In addition to the villas, the ground level includes (in the undercroft area to the rear of the building) 83 car parking spaces, water and gas meter enclosures, pump room, substation and switch room;
  - On the first floor, common swimming pool and pool deck area, sauna, ablutions, shared lounge, gymnasium, service and storage areas, and individual serviced apartment storage cubicles, along with 2 three-bedroom serviced apartments and 6 two-bedroom serviced apartments;
  - Levels 2-5 with (collectively across levels 2-5) 16 two-bedroom serviced apartments, 20 three-bedroom serviced apartments and 2 four-bedroom serviced apartments, with each level including lift / lobby areas and storage;
  - Green roof with plant and lift over-run enclosure.

- 7 storey (6 above ground plus semi-basement) hotel building integrating with northern end of the villa / serviced apartment building and extending towards the eastern boundary, located south of Little Mindil Creek and the public pedestrian access, with **131 hotel rooms**:
  - Semi-basement shared with the hotel building, with 151 car parking spaces, administration offices, housekeeping facilities, staff ablutions, fire-fighting tanks, with a connected basement towards the eastern extent of the lot providing ablutions, management and control areas;
  - Ground level consisting of open areas connecting the porte-cochere to the lift lobby (providing access to the hotel reception on level 1), food market area with 6 market stalls, beachfront bar, lift and stair access, ablutions, hotel gym and function lobby;
  - First floor with swimming pool and adjoining lounge / deck area, bar, hotel reception and lobby, back of house areas, dining and associated bar area, food and beverage back of house and function areas;
  - Second floor with 11 hotel rooms (in the north-western wing) and open function and amenities area;
  - Levels 3-6 with 138 hotel rooms, lift and lobby areas; and
  - Green roof with plant and lift over-run enclosure.
- Single storey lagoon villas situated adjacent the base of the escarpment with **16 two-bedroom hotel rooms**:
  - 16 two-bedroom lagoon villas (*hotel / motel* rooms), each room with private ensuite, and including lounge and lagoon deck area, and a private buggy for travel throughout the site via the raised walkways / driveways;
- Single storey garden villa / service building, situated to the east of the hotel building, immediately south of Little Mindil Creek and the pedestrian footpath, with **3 two-bedroom hotel rooms**:
  - 3 two-bedroom garden villas (*hotel / motel* rooms), each room with private ensuite, and including lounge and lagoon deck area, and a private buggy for travel throughout the site via the raised walkways / driveways;
  - Enclosed service area in the eastern portion of the building, including storage areas, waste and recycling areas, direct lift and stair access to the basement, refuse collection area and loading docks and linen area; and
  - Undercroft service and service vehicle access area with additional loading docks and secure bicycle storage for 80 bicycles.

Fundamental to the development is the biophilic design approach, with the incorporation of green roofs on each building including include carefully selected plant species responding to the harsh top end coastal environment.

Together with the ground level and public space landscape design outcomes, the integrated landscape response considers and reflects the beachside remnant monsoon vine forest with cascading vegetation and shady landscaped spaces intended to soften and obscure the appearance of the built form from surrounding and nearby locations. The Site design and construction works include:

- The retention, protection, and enhancement of existing vegetation along the creek and escarpment through the continued rehabilitation, preservation and maintenances in accordance with the covenant requirements;
- A clear public realm connecting the eastern and western extents of the site, retaining and improving upon legal access requirements ensuring open views and high visibility through palm and shade trees, laws and mass planting to welcome and direct visitors through the development;
- Hotel gardens including large shade trees in deep soil zones aimed at cooling the environment, with dense planted garden spaces and hidden fencing creating a distinction between public and private areas;
- Lagoon pool connecting the garden and lagoon villas and providing a major site landscape feature;
- Green roofs (accessible for maintenance only) to each building designed to maximise amenity for private and public areas overlooking the proposed development, including the Myilly Point Heritage Precinct and apartments in Larrakeyah and Cullen Bay. Services will be hidden in the structures under the green rooftops to minimise visual intrusion. The green roofs have been designed to absorb and slow stormwater runoff while adding to the buildings' energy efficiency through their insulative and shading properties reducing energy consumption. Selected plant species respond to the coastal top end environment. Per the landscaping concepts, the biophilic nature of the architecture responds to the beachside remnant monsoon vine forest with the green roofs, cascading greenery over structural walls, and lush shady landscapes that soften and obscure the built form from above and distant views; and
- A two-way driveway from Gilruth Avenue will provide vehicle access to the site, centrally located between the proposed buildings with direct ramp access to the basement diverging from the entry driveway, and again adjacent the porte-cochere. The driveway will provide access to the service area, the bridge and footpath accessing lot 5772, a circular porte-cochere servicing the hotel, the undercroft parking and service area for the serviced apartments and 13 ground level open car parking spaces.

### ***5.1. Site Construction and Servicing***

In accordance with the Engineering Services Report, Hydraulic Assessment, Stormwater Management Plan and the Traffic Impact Assessment referred in **Section 1** of this report:

- The development will be connected to reticulated water, sewerage, stormwater drainage, NBN and electrical infrastructure, with a contribution required to be paid by the developer to permit connection to the existing sewer pump station. The existing sewer rising main in Gilruth Avenue will need to be upgraded to facilitate the proposed development;

- The existing overhead 66kV electrical transmission line within the subject site will be relocated underground as part of the proposed development;
- The site will be filled to 5.80m AHD to protect against inundation during a primary storm surge event (5.47m AHD), with no anticipated impact on peak storm surge levels to surrounding areas;
- The development will result in an increase in the total impervious area across the site increasing the total volume and peak flow rate of stormwater runoff from the catchment. Notwithstanding, due to the sites immediate proximity to an open water body, no detention measures are required. The quality assessment within the stormwater management plan has identified that the development should include best practice measures for stormwater quality management standards and guidelines. All relevant standards and guidelines are addressed in the stormwater management plan including criteria from the City of Darwin Subdivision and Development Guidelines, QUDM and Water by Design Guidelines as well as the requirement of Australian Standard AS 3500.3; and
- The Traffic Impact Assessment finds:
  - The on-site car parking spaces have been designed in accordance with the Northern Territory Planning Scheme and the relevant clauses of Australian Standard AS 2890.1:2004;
  - The proposed access point location will have sufficient sightlines, in excess of standard requirements;
  - Implementing a left in, left out restriction at the intersection (with Gilruth Avenue) will require a full length Auxiliary left turn lane;
  - Allowing full movements at the site access point will require a short Auxiliary left turn lane and a channelised right turn lane;
  - As such it is recommended to implement a left-in, left-out restrictions at the site access point; and
  - The additional traffic generated by the development is not likely to result in adverse impacts in the surrounding road network.

The traffic assessment further identifies that the proposed car parking provision falls short of the requirements of the Northern Territory Planning Scheme, however concludes that the parking provision is expected to cater for the estimated peak parking demand. It is noted that the assessment is based on the Northern Territory Planning Scheme 2007 rather than the Planning Scheme 2020, and does not separately consider parking spaces for serviced apartments. Refer **Section 6.5** of this report for detailed consideration of the car parking requirements per the Planning Scheme 2020 and the proposed development.

## 6. SECTION 46(3)(A) - NT PLANNING SCHEME

The relevant provisions within the Northern Territory Planning Scheme (the Scheme) are referred to below.

### 6.1. Nature of Development

The proposed development consists of an integrated tourist accommodation facility primarily comprising *hotel / motel* and *dwelling-multiple* in the form of *serviced apartments* in accordance with the definitions in **Schedule 2** of the Planning Scheme:

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

***serviced apartments** means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and which is regularly serviced or cleaned;*

***dwelling-multiple** means a **dwelling** or **serviced apartment** that is wholly or partially vertically over or under another **dwelling** on a **site** and includes any **dwelling**s above the ground floor in a mixed use development, and includes a **dwelling** on a unit title with common property;*

In accordance with the definition of *hotel/motel*, the restaurant and adjoining bar area, function areas and ancillary components (such as the gymnasium) are all part of the *hotel/motel* and not stand-alone uses. The ground level bar area meets the definition of *bar-public*, thus is considered as a separate, albeit ancillary, use.

The *hotel/motel*, including the garden and lagoon villas, along with the *serviced apartments*, are all *residential buildings* in accordance with the definition.

***residential building** means a building or part of a building used or developed or proposed to be developed for a **dwelling-community residence**, **dwelling-caretakers**, **dwelling-grouped**, **dwelling-independent**, **dwelling-multiple**, **dwelling-single**, **hotel/motel**, **residential care facility**, or **rooming accommodation**;*

In accordance with the definition in **Schedule 2.2**, the *hotel/motel* and *dwelling-multiple* for the purpose of *serviced apartments* are *primary* uses, as “the use of land or premises to which all other uses are ancillary” per the definition in **Schedule 2.2** of the Planning Scheme. The *bar-public* and *market* facilities are *ancillary* uses per **Schedule 2.2** as “associated with, but auxiliary and subordinate to the primary land use.” The proposed *bar-public* and *market* are entirely subordinate (i.e. lower in rank or position) and auxiliary to the *primary* uses.

***bar-public** means premises primarily used to sell alcoholic beverages to the public for consumption on the premises, where the maximum capacity is more than 100 persons at any one time. The use may include **ancillary** sale of food for consumption on the premises and entertainment activities, but does not include a **bar-small**, **club**, **hotel/motel**, **nightclub entertainment facility**, or **restaurant**;*

*market means premises or land managed and used for the sale of goods, food and drink to the public on a regular basis, where the items are primarily sold from a number of vehicles, trailers or temporary structures such as stalls, booths or trestle tables. The use may include entertainment provided for the enjoyment of customers;*

The above uses are located entirely within Zone TC, and are either *merit assessable (hotel/motel, bar-public)* or *impact assessable (serviced apartments, market by virtue of **Clause 1.9(c)(ii)***.

## **6.2. Strategic Framework**

**Part 2** of the Planning Scheme relates to the Strategic Framework. **Clause 2.2(4)** provides:

*The Strategic Framework guides the interpretation of all Parts of the Planning Scheme.*

*Where there is inconsistency between the components of the Strategic Framework, Area Plans, providing the most detailed level of guidance, prevail over higher-order Land Use Plans and Strategic Planning Policies to the extent of any inconsistencies.*

*Subregional Land Use Plans, Regional Land Use Plans and Strategic Planning Policies will guide interpretation of the Planning Scheme when:*

- a) there is no applicable Area Plan;*
- b) the Area Plan does not provide guidance on a particular issue;*
- c) a use or development does not accord with an Area Plan; or*
- d) a new Area Plan is being created or a change is proposed to an existing Area Plan.*

The Regional Land Use Plan applicable to the site is the Darwin Regional Land Use Plan. There is also an applicable Area Plan, being the Darwin Inner Suburbs Area Plan.

### **6.2.1. Darwin Regional Land Use Plan**

The *Darwin Regional Land Use Plan* was prepared by the NT Planning Commission and incorporated into the Northern Territory Planning Scheme as a policy document in 2015. The plan provides a vision, goals and intended outcomes for development of the Darwin Region, identifies regional opportunities and the intention for development into the medium and long term. The Land Use Structure on Page 13 of the Plan identifies the subject land as *Open Space / Natural Area*. Page 27 of the Plan considers *Open Space and Natural Areas*, and seeks to:

- *Retain the region's natural landscapes, vegetation and habitats where compatibility with appropriate urban and rural development can be maintained.*
- *Minimise the impact of development on the natural environment during the construction phase and ongoing use.*

- *Recognise and promote Darwin Harbour as the region's most valuable natural asset, minimising detrimental impacts from development in the harbour catchment and on its foreshore.*
- *Provide appropriate open space reserves for the conservation of natural environment and heritage features, and for resident and visitor recreation in active and passive activities.*
- *Recognise the role of remnant vegetation corridors in providing interconnectivity of open space and protecting amenity.*
- *Recognise the role of urban green space in reducing urban heat impacts and providing community amenity.*

With regard to the objectives and identification of the land in the Regional Land Use Plan as *Open Space / Natural Area*, the proposal is partially consistent with the identified objectives, in that:

- The natural environment, being the escarpment vegetation and Little Mindil Creek corridor, is retained and protected in accordance with the existing covenants, with the development outcomes seeking to minimise impact thereon and preserve the existing natural corridors;
- The development preserves the foreshore area as public space whilst recognising and developing in response to Darwin Harbour as the region's most valuable natural asset; and
- The development recognises the role of urban green space in reducing urban heat impacts and providing community amenity by designing in response to existing natural areas and adding significantly thereto via the Landscape Concept.

Whilst partially consistent above, there are inconsistencies between the Regional Land Use Plan and the proposed development, however in accordance with **Clause 2.2(4)** above, the provisions of the *Darwin Inner Suburbs Area Plan* take precedence (considered in detail in **Section 6.2.2** below).

In addition to the objectives relating to *Open Space / Natural Areas*, the Plan also provides Desired Regional Outcomes relating to Regional Landscape and Natural Resources, and particularly provides the following *Key Environment and Heritage Objectives*:

- *Protect prescribed archaeological places and objects, including sites of Aboriginal and Macassan origin via the provisions of the Northern Territory Aboriginal Sacred Sites Act (NT).*
- *Protect and manage regional culture and heritage (particularly WWII sites), recognising their capacity to enrich lives and provide a sense of connection for locals and visitors via the provisions of the Heritage Act (NT).*

There are two primary archaeological considerations regarding the above, namely the preservation of Registered Sacred Site 5073-89 comprising a sacred burial ground within the PS Zoned area of the subject land, and the potential for design / development impacts on the Myilly Point Heritage Precinct atop the escarpment.

The Registered Sacred Site is protected in accordance with the Aboriginal Sacred Sites Act. Further, and the Archaeological Assessment noted:

- *The archaeological survey of the proposed hotel site at Little Mindil Beach found no surface finds. The historical assessment of the site, however, indicates that the entire length of Mindil Beach may have been used for burial purposes.*
- *Despite the disturbance to the site, it is still used by Aboriginal people today as a food resource. If there is any archaeology remaining, it will be found subsurface as no artefactual material was found on the surface layer.*

And made the following recommendations:

- *The developer will have to instigate an archaeological monitoring programme for any ground disturbance work, at least to a depth of 1 metre, as there is a chance that prehistoric burials may still exist at the site.*
- *The site has the potential to reveal information about Aboriginal funeral practices and the early Chinese settlement of Darwin. Research should focus on locating the Chinese wells and dwellings, which may still contain archaeological material.*

The proposed works will be undertaken in accordance with the recommendations in the Archaeological Assessment in addition to any conditions imposed by the Aboriginal Areas Protection Authority.

In addition to the Archaeological Assessment, a Heritage Assessment considered the proposed development's impact, if any, on the Myilly Point Heritage Precinct. The assessment concluded:

*The results of this report indicate that there is no significant conflict with the proposed Little Mindil Beach development on the Myilly Point Heritage Precinct. It is crucial that any developments at Little Mindil Beach be sympathetic to the context of the adjacent Myilly Point Heritage Precinct. This proposal, in its current design, will have minimal impacts on the Myilly Point Heritage Precinct, as the site is screened by existing vegetation along the escarpment, which preserves the site's context and as the six storey component of the development is located approximately 100 metres from Burnett House, the wind impact assessment demonstrates that due to this separation, there will be negligible impact on sea breezes reaching Burnett House, thereby maintaining the integrity of the passive cooling design concepts.*

Based on the above, the proposal is consistent with the relevant *Key Environment and Heritage Objectives* of the Regional Land Use Plan.

#### **6.2.2. Darwin Inner Suburbs Area Plan**

The *Darwin Inner Suburbs Area Plan* was finalised in June 2016 and incorporated into **Schedule 2** of the NT Planning Scheme.

The Plan provides a framework to guide progressive growth and development within the Inner Suburbs of Darwin.

The subject land is adjacent the southern extent of the Area Plan, and identified as *Tourist Commercial Area* per the District Wide Land Use Plan on Page 8. **Section 2.2** of the Plan provides the following goal for Activity Centres and Tourist Commercial Area:

*To provide opportunities for people to live, work, play and shop in a location characterised by excellent public and active transport, service infrastructure, prosperous economic conditions, safe streets and a strong sense of place.*

Given the location of the site, access to transport options and shared paths, service, recreation and relaxation opportunities, design consideration to CPTED and built form design, the proposal is consistent with the above goal.

**Section 3.2** of the Area Plan provides an objective and acceptable response for Tourist Commercial areas.

<b>Tourist Commercial Areas</b>	
<p><b>Objectives</b></p> <p>1. <i>Limiting development of Tourist Commercial Areas to uses that service tourism, including commercial and residential activities.</i></p>	<p>The maintenance of public access to the foreshore and beach reserves.</p> <p>Development is to be in accordance with the provisions of the NT Planning Scheme.</p>

Clearly, the proposed development provides a facility servicing tourism as the primary function of the site, including accommodation and recreational uses. The proposal maintains public access to the foreshore and identified reserves (including the covenant areas) as well as through and within the site itself. The development is consistent with the relevant provisions of the Planning Scheme with variations appropriate and clarified where sought (per the remainder of **Section 6** of this report). Accordingly, the proposed development is consistent with the Darwin Inner Suburbs Area Plan.

### **6.2.3. Central Darwin Area Plan**

The *Central Darwin Area Plan* was finalised by the Northern Territory Planning Commission and incorporated as a policy document in the Planning Scheme in late 2019. The Plan provides a framework for land use and development outcomes within the Central Darwin Area (i.e. Cullen Bay to the Darwin Waterfront). The subject land is not within the extent of the Central Darwin Area Plan, however land atop the escarpment, adjacent the southern boundary of the site, is. Given the Area Plan recognises the importance of historic and culturally significant places, including approaches to preserve and revitalise such places so that they continue to be enjoyed by the Darwin community, the location of the site adjacent the Myilly Point Heritage Precinct is such that consideration of the Area Plan for this purpose is appropriate.

The Land Use Vision map on page 13 of the Plan reflects the *heritage* nature of the Myilly Point Precinct, with the Culture and Heritage Themes on page 25 providing the following:

Objectives	Acceptable Responses
<p>4.1 New development responds to and respects places and sites listed on the Northern Territory Heritage Register and other places of heritage interest.</p>	<ul style="list-style-type: none"> <li>i. Building design responds to significant features of adjoining heritage sites, buildings or objects to all extent reasonable and practical. This may include a response to the scale, colours, textures and materials of heritage features. Alternatively, the response may provide juxtaposition with the heritage feature to emphasise heritage significance and distinguish the difference in time and style.</li> <li>ii. Setbacks of new development adjoining heritage listed features are sensitive to heritage elements by considering the interface with regard to bulk, setback and materials, and maintain view corridors.</li> <li>iii. Development on, or adjoining a place or item of cultural and social interest indicated on the Social Infrastructure, Culture and Heritage Map supports ongoing public access and is designed in a manner that shows consideration of that place or item.</li> </ul>

In order to consider and respect the value of the heritage place per **Objective 4.1**, the proposed development seeks to maximise the setback of the multi-storey building elements to the southern boundary, ensuring the serviced apartment and hotel buildings are concentrated in the north and western portions of the site, well away from heritage items at the top of the escarpment. Further, the overall height of the buildings ensures a relative height from the heritage precinct at the top of the escarpment of two storeys. Finally, the design approach, particularly the Landscape Concept for upper building and roof levels, seeks to respond to the existing heritage buildings. The development does not restrict access to the heritage places, and given the existing zoning (TC), parameters of and development allowed by the Planning Scheme and consistency with the Inner Suburbs Area Plan, the proposed development, on balance, gives appropriate consideration to the existing heritage items.

**Objectives 4.2, 4.3 and 4.4** apply to the development and adaptive reuse of heritage places, and as such are not relevant to the current application. The proposal does not affect the evolution, recognition, celebration or adaptive reuse of the Heritage Precinct.

### 6.3. Zoning

#### 6.3.1. Zone TC

The subject land is located within zone TC (Tourist Commercial) per **Clause 4.13** of the Northern Territory Planning Scheme. **Clause 4.13** provides the following in relation to development in Zone TC:

##### Zone Purpose

*Facilitate commercial and residential development that caters for the needs of visitors, supports tourism activities, and is of a scale and character compatible with surrounding development.*

### Zone Outcomes

1. *A mix of uses focused on providing services to tourism comprising:*

- a) **bar-small, bar-public, food premises, hotel/motel, serviced apartments, shop, rooming accommodation, caravan park, resort complexes and short-term accommodation;**
- b) *entertainment and personal services for guests, residents and visitors, including **leisure and recreation** facilities; and*
- c) *a mix of other business activities including **club, passenger terminal, exhibition centre and leisure and recreation.***

The provision of an integrated *hotel/motel, serviced apartment*, ancillary *bar-public* and *market* development is consistent with the primary objective for development in Zone TC.

2. *Limited residential, commercial and community uses, such as **dwelling-multiple, child care centre and community centre**, where the nature of the activity does not compromise the **primary use** of the locality for tourist commercial activities.*

Whilst the proposal includes *dwelling-multiple* comprising *serviced apartments*, *serviced apartments* are consistent with the primary uses anticipated in **subclause 1** above, and are consistent with the provision of services to tourism.

3. *The design, operation and layout of development:*

- a) *makes a positive contribution to the locality by incorporating a high quality of built form and landscape design;*

The built form and landscape design approach is detailed in the Architectural Plans and the Landscape Concept, comprising a biophilic architectural design outcome intended to minimise the impact of the development's overall appearance on the surrounding area. Together with the emphasis on planting across multiple levels detailed in the Landscape Concept, the overall built form outcomes ensure a high quality integrated building and landscape design responding to the site and locality.

- b) *minimises unreasonable impacts to the **amenity** of surrounding premises;*

Both **Section 3** of the Northern Territory Planning Act and **Clause 2.2** of the Planning Scheme define *amenity* as:

*Amenity, in relation to a locality or building, means any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable*

The nature of the locality, including buildings within, are such that there are a number of "*qualities, conditions or factors*" that make or contribute to making the locality / buildings "*harmonious, pleasant or enjoyable.*" Broadly:

- The impact of the foreshore, including the beach and waters, as a primary visual and use component of the locality.

Whilst the proposed development will not limit the use of the foreshore area (as distinct from the existing use of the property, considered below), it will alter the view of both the site and, to some extent, the foreshore from the surrounding locality;

- The existing state of the land, particularly Little Mindil Creek, the vegetated southern escarpment the open grass area comprising the western portion of the site and the established trees bordering the existing car parking area in the eastern portion of the site, are such that the site itself presents an attractive outlook when viewed from the public realm. Views of the site occur from all aspects but are particularly prevalent from the east (beach / foreshore), west (Gilruth Avenue) and public areas overlooking the site to the south, as well as aspects of the site overlooked from and existing residential uses to the south and, to a lesser extent, south-east; and
- The use of the site, particularly the shared paths, Little Mindil Creek and the open grassed area in the western portion of the site. The proposed development will enable the use of the shared paths and Little Mindil Creek to continue, however will fundamentally alter the nature of the open grassed area.

Based on the above, the impacts on amenity can be broadly divided into two groups – the visual impact of the development and the impact on the use of lot 7651. **Subclause 3(b)** specifically requires consideration of amenity impacts on *surrounding premises* rather than on the site itself, however given the potential public interest matters, both have been considered herein.

The built form and landscape design approach is covered in detail in the Architectural Plans and Landscape Concept, including the design response to surrounding public and private areas and the site context itself. The Visual Impact Study submitted with the application identified and evaluated the existing key views to determine the overall implications of the development, finding:

- *The development site itself will be heavily modified;*
- *Development land use is compatible with the surrounding commercial area;*
- *Existing vegetation along the escarpment and within the grounds of the 2 heritage properties provides varying levels of screening of views which has a significant impact on the visual assessment;*
- *The primary visual impact relates to long views to East Point Reserve and the horizon, views of Fannie Bay and glimpses of the Mindil Beach. Where these views occur, the continued growth of the existing vegetation along the cliff top and the completed development will combine to obscure these views; and*
- *On balance it is the professional opinion of the authors of this assessment that the scale, character and visual catchment of the proposal will result in a moderate impact overall. On the basis that the proposal complies with the relevant planning heights and set-backs associated with the parcel of land, it is our opinion that the visual impacts on the heritage properties of the proposal does not constitute reasons to hinder planning approval.*

The Visual Impact Study primarily considers the potential impact on views from the Myilly Point Heritage Precinct to the south of the site. Given the similar location relative to the Heritage Precinct, the above findings are likely to be similar (i.e. moderate) to the existing two-storey dwellings on lot 2422, and less (minor-moderate) to the existing apartments on lot 7260, given the height of the existing Myilly Terrace building and location further west. Visual impacts on other residential areas within Larrakeyah, predominantly south-east of the site, are likely to be minor given the height difference between the subject land and existing apartments (apartment buildings along Smith Street, Warrego Court, Beagle Street and Houston Street are elevated above the golf course) and distance to the site.

Whilst the development will be a significant addition to the existing landscape, it will not be a first intrusion. Evident in **image 9**, there are a number of buildings that visually contribute to the foreshore, including the Mindil Beach Casino and Resort, Darwin High School, Museum and Art Gallery of the Northern Territory, along with prominent buildings set back from the foreshore itself (including Hastings over Mindil, The Avenue, various apartment buildings in Larrakeyah and the existing building at 4 Myilly Terrace). As such, built form either immediately adjacent to, or visually impacting on (or both) the foreshore is not unprecedented in the locality.

Whether the proposed development will visually impact existing development must consider whether such impact is *unreasonable*, and if so, whether *unreasonable impacts* are *minimised*. Amenity impacts must be considered in the context of the established statutory and strategic planning framework, namely the existing TC (Tourist Commercial) zoning of the land, identification in the Inner Suburbs Area Plan as *Tourist Commercial Area*, and corresponding development and land use objective outcomes within both the Scheme and the Area Plan. Such recognition allows a reasonable assumption that impacts can occur without being unreasonable. Given the compliance with the land use, plot ratio and boundary setback requirements (with the exception of the Gilruth Avenue boundary) of the Planning Scheme, it is likely that visual impacts are not unreasonable. In the alternative, the siting of the buildings away from more sensitive receptors to the south, retention of important visual areas in Little Mindil Creek and the southern escarpment, and the built form and landscape approach (particularly the site landscaping outcomes and green roofs) are considered to adequately *minimise* impacts. The extent and nature of built form and landscape design is above and beyond that required by the Planning Scheme, and is considered a suitable response to the potential amenity impacts of the proposed development.

With regard to the use of the 'Little Mindil' site, it is acknowledged that parts of the site are highly valued by parts of the community for public use and recreation. The development seeks to retain and/or protect/incorporate into the design the valued Little Mindil Creek corridor and shared pedestrian / cycle paths, however will remove the open grass area. Public access areas will be provided within the site, however the removal of the grassed area will impact the existing use of the site.

Notwithstanding, and as with the consideration of views, public use amenity impacts must be considered in the context of the established statutory and strategic planning framework, namely the existing TC (Tourist Commercial) zoning of the land, identification in the Inner Suburbs Area Plan as *Tourist Commercial Area*, and corresponding development and land use objective outcomes within both the Scheme and the Area Plan. Given the proposed development areas within the subject land are privately owned, not constrained by caveats restricting development or use (distinct from the retained escarpment and creek areas) and zoned for commercial use. As such, commercial development is *reasonably anticipated*.

Whether the proposed commercial development is appropriate requires consideration of the relevant legislative, statutory and strategic planning provisions addressed elsewhere in this report. In summary, amenity impacts are not considered unreasonable, and the proposed development incorporates sufficient measures to ensure amenity impacts are minimised by incorporating public access areas and shared path routes throughout the site.

*c) mitigates the potential for land use conflict with existing and intended surrounding development;*

The proposed uses consist of a range of tourist accommodation, including hotel, villa and self-contained serviced apartment accommodation, along with ancillary recreation and tourism-related facilities. The proposed uses are consistent with the zoning and Inner Suburbs Area Plan, consistent with existing tourism and recreation facilities to the north, with existing residential development to the south, and the development appropriately integrates with the surrounding public realm.

*d) avoids adverse impacts on the local road network;*

The Traffic Impact Assessment confirms that the proposed access will have sufficient sightlines, in excess of standard requirements, and that the additional traffic generated by the development is not likely to result in adverse impacts in the surrounding road network.

*e) provides safe and convenient pedestrian and bicycle **access** within the development and strong connections to external transport networks; and*

The Public Domain-Circulation plan within the Landscape Concept demonstrates the level of consideration to pedestrian / cycle movement throughout the site, connecting to vital shared pathways along the foreshore and Gilruth Avenue.

*f) allows passive surveillance of public spaces.*

The proposed development ensures significant exposure to the public realm in the form of interaction with and passive surveillance of the foreshore and beach, Gilruth Avenue and Little Mindil Creek, along with elevated views of the internalised common areas. The car parking areas are secure and / or obtain passive surveillance from the serviced apartments, foreshore villas and lagoon villas. The combination of accommodation / dwelling balconies, windows, function and gathering space all overlooking public and communal areas ensures a high level of passive surveillance is obtained throughout the site.

*4. Development avoids or minimises adverse impacts on ecologically important areas through location, design, operation and management.*

The development area avoids impacts on the Little Mindil Creek and escarpment vegetation. In accordance with the Stormwater Management Plan, stormwater capture and disposal will ensure relevant quality targets are met.

5. *Development does not impose unsustainable demands on surface water and groundwater.*

The development will be serviced via mains water, with the engineering services report confirming sufficient capacity to accommodate the anticipated demand. As such, the proposed development will not impose unsustainable demands on surface or groundwater.

6. *Subdivision primarily provides for lot sizes capable of accommodating the uses expected in the zone.*

No subdivision is proposed.

7. *Subdivision and development is integrated as far as possible with reticulated electricity, water and sewerage (where available), stormwater drainage, and telecommunication infrastructure. If lots are unsewered, provision for the disposal of effluent must be made on-site so that the effluent does not pollute ground or surface waters.*

The engineering services report confirms the development will be connected to reticulated water, sewerage, stormwater drainage, NBN and electrical infrastructure, with a contribution required to be paid by the developer to permit connection to the existing sewer pump station. The existing sewer rising main in Gilruth Avenue will need to be upgraded to facilitate the proposed development, otherwise the proposed development can be serviced via existing infrastructure.

8. *Development that is not defined in Schedule 2 (Definitions) may occur only when assessment has determined that the development is appropriate in the zone, having regard to the purpose and outcomes of this zone and such matters as the location, nature, scale and intensity of the development.*

The development and proposed land uses therein are defined in **Schedule 2** of the Scheme.

### **6.3.2. Zone PS**

Whilst the development works are located within the Zone TC area, the subject allotment includes land in Zone PS, comprising the Little Mindil Creek corridor and burial ground. Accordingly, the provisions of **Clause 4.17** are considered herein.

#### Zone Purpose

*Retain and enrich open space areas for public use and enjoyment, and the enhancement of public amenity.*

#### Zone Outcomes

1. *Public open space enriches the amenity of the surrounding area and primarily caters for the informal outdoor recreation needs of the community.*

The proposal seeks to preserve the PS area and facilitate (and improve) public access through the site along the routes secured through existing covenants. The PS area will continue to enrich the amenity of the surrounding area and provide for informal recreation needs via its retention and continued function.

2. *Temporary or periodic uses, such as markets or outdoor entertainment events, that can be reasonably accommodated by the existing facilities and do not unduly impact on the amenity and character of the surrounding area.*

No additional uses, aside from public recreation, are proposed within the Zone PS area.

3. *Uses which are complementary to and support the use and enjoyment of open space, including community centre, leisure and recreation activities, food premises-café/take away and food premises restaurant, may be established if of a scale and intensity that does not detrimentally impact on the amenity or integrity of the zone.*

No additional uses, aside from public recreation, are proposed within the Zone PS area.

4. *All development, including public infrastructure and outbuildings, is located, designed, operated and maintained to:*
  - a) *retain or enhance the character and amenity of the open space;*
  - b) *minimise encroachment on the publicly-accessible open space in a way which would unreasonably reduce its function for informal recreation;*
  - c) *respond to the local climate, including minimising the ongoing consumption of energy and water;*
  - d) *integrate with natural systems; and*
  - e) *minimise unreasonable impacts on the amenity of surrounding residential land*

The proposed development will retain the existing public access at the southern extent of the Zone PS area, enabling continued public access and exposure to Little Mindil Creek, as well as the connection between Gilruth Avenue and the Little Mindil foreshore. The proposal will not encroach on the publicly-accessible open space, is designed to both protect and take advantage of the visual, natural and social values within the PS area, and with the exception of the construction of new footpath connections leading into the proposed development from the existing public access footpath, does not include any new works in the PS area. As such, there will be no impact on natural systems, the amenity of the surrounding areas, the function of the PS area or overall sustainability as a result of the minor works within Zone PS.

5. *Development avoids any adverse impacts on ecologically important areas within or nearby the zone.*

Development works within Zone PS are limited to pedestrian path connections, thus will not impact ecologically important areas within or nearby the zone.

6. *Development that is not defined in Schedule 2 (Definitions) may occur only when assessment has determined that the development is appropriate in the zone, having regard to the purpose and outcomes of this zone and such matters as the location, nature, scale and intensity of the development.*

Not applicable.

## **6.4. Overlays**

### **6.4.1. Clause 3.4 – Coastal Reclamation**

#### Purpose

*Ensure that landfill of coastal areas does not adversely affect adjacent land or waters, or the quality of adjacent waters, and is suited to its intended purpose.*

#### Administration

- 1. The placement of fill material below the level of the highest astronomical tide requires consent.*

In accordance with the Hydraulic Assessment, the subject land will be filled to 5.80m AHD in order to provide immunity during a primary storm surge event, and enable sufficient inclusion for freeboard. The filling area, in part, is below the level of HAT, thus **Clause 3.4** is relevant to the consideration of the application.

- 2. The consent authority in considering an application for coastal landfill must have regard to the advice of the agency responsible for natural resources and the environment.*

Advice is anticipated in the form of a response to the service authority referral.

#### Requirements

- 3. An application for the placement of fill material is to demonstrate how the fill material will:*
  - a) suit the future use of the reclaimed land;*
  - b) minimise the impact of fill works on adjoining land and waters;*
  - c) provide appropriate edge treatment of the fill in order to prevent future erosion and siltation of adjacent waters; and*
  - d) prevent the formation of acid sulphate leachates*

Both the hydraulic assessment and the engineering services report confirm the placement of fill to ensure immunity during storm surge events and enable sufficient freeboard for construction. Fill will consist of clean, suitable and certified material, placed over the existing site areas with landscaped batters to existing boundaries. Shoring will be utilised where required adjacent site boundaries to facilitate basement construction and services trenching. In relation to the impact of the fill, the hydraulic assessment confirms that:

- The flooding behaviour of the catchment is not affected by the filling required over the site to provide storm surge immunity;*
- The filling works are located outside of the creek flowpath; and*

- *Peak flood levels, depths, and velocities are unchanged within the creek and across the catchment.*

The engineering services report considers Acid Sulfate Soils, and confirms that mitigation measures will need to be undertaken during construction to eliminate or minimise the hazards associated with acid sulfate soils. It is expected that a Geotechnical Engineer will be engaged prior to the commencement of the construction works to provide an Acid Sulfate Soils Management Plan to assess the likelihood of an acid sulfate soil hazard within the site and provide recommendations on the mitigation measures required to eliminate or reduce the risk.

#### **6.4.2. Clause 3.7 – LSSS – Land Subject to Storm Surge**

##### Purpose

*Identify areas with a known risk of inundation from primary or secondary storm surges and ensure that development in these areas demonstrates adequate measures to minimise the associated the risk to people, damage to property and costs to the general community caused by storm surge.*

##### Administration

1. *This Overlay applies to land subject to the PSSA and/or the SSSA.*
2. *This Overlay does not apply to:*
  - a) *outbuildings and extensions to existing dwellings; or*
  - b) *extensions to existing commercial or industrial buildings; or*
  - c) *a use or development within the SSSA that would otherwise be Permitted, and complies with the requirements of Part 5.*
3. *In this Overlay:*
  - a) *“AEP” means Annual Exceedance Probability, which is the likelihood, in percentage terms, of inundation by storm surge;*
  - b) *“PSSA” means Primary Storm Surge Areas, which are those coastal areas within a 1% AEP of inundation by storm surge as defined on mapping produced by the NT Government;*
  - c) *“SSSA” means Secondary Storm Surge Areas, which are those coastal areas adjacent to the PSSA with a 0.1% AEP of inundation by storm surge as defined on mapping produced by the NT Government; and*
  - d) *“storm surge” means the elevation in sea level which accompanies the movement of a cyclone particularly near, or over, a coastline, attributed to a cyclone’s intensity and wind stress build-up.*
4. *Land within the PSSA is to be used or developed only with consent.*

5. *The consent authority may consent to a use or development that is not in accordance with sub-clauses 7-9 only if it is satisfied that the application demonstrates that there is no increased risk to people and property, including adjoining property.*
6. *The use or development of land within the SSSA should have regard to sub-clauses 8 and 9.*

#### Requirements

7. *Development in the PSSA should be limited to uses such as open space, recreation, non-essential public facilities (wastewater treatment works excepted) and short-stay tourist camping/ caravan areas. Northern Territory Planning Scheme 2020 Part 3-9*
8. *Development within the SSSA should be confined to those uses permitted in the PSSA as well as industrial and commercial land uses.*
9. *Residential uses, strategic and community services (such as power generation, defence installations, schools, hospitals, public shelters and major transport links) should be avoided in the PSSA and the SSSA.*

The subject land is affected by both Primary and Secondary Storm Surge Areas (PSSA and SSSA) to the extents shown in **figures 3** and **4**. The hydraulic assessment undertaken by ADG confirms the site will be filled to 5.80m AHD to ensure the land is no longer affected by the PSSA (at 5.47m AHD). The proposed filling will not alter peak flood levels, depths or velocities in the creek or across the catchment.

In relation to the SSSA, the hydraulic assessment notes the level of inundation within the SSSA is between 5.75m AHD and 5.86m AHD. The architectural plans note all building floor levels at 6.00m AHD, with the serviced apartment car park, open hotel ground level, service areas and plant areas (where on ground level) also at 6.00m AHD. Accordingly, all internal (with the exception of the basement) and service areas are above the maximum SSSA level. Access to and from all components of the premises has been nominated at 5.85m AHD above the SSSA level within the corresponding (majority) of the site area, to likewise ensure access / egress to / from the site will remain unimpeded during SSSA inundation. With regard to **subclause 7, 8 and 9**, the proposal includes a *residential building*, however the proposed site fill will ensure the site is no longer affected by the PSSA. Whilst a *residential building* will be located on land affected by the SSSA, the minimum floor and various site levels ensure the protection of occupants, goods, materials and equipment, and the driveway will ensure access and egress is not impeded during an SSSA event. The hydraulic assessment confirms that the proposed filling will not alter peak flood levels, depths or velocities in the creek or across the catchment, and as such the proposed development will not increase risk to people and property, including adjoining property.

## **6.5. General Development Requirements**

### **6.5.1. Clause 5.2.4.1 – Parking Requirements**

#### Purpose

*Ensure that sufficient off-street car parking, constructed to a standard and conveniently located, is provided to service the proposed use of a site.*

#### Administration

- 1. The consent authority may consent to a use or development that is not in accordance with the table to this clause only if it is satisfied the use or development is appropriate to the site having regard to the purpose of this clause and the potential impact on the surrounding road network and the amenity of the locality and adjoining property.*
- 2. If a proposed use or development which is not listed in the table to this clause requires consent, the number of car parking spaces required for that use or development is to be determined by the consent authority.*
- 3. The consent authority may require the provision of car parking spaces for any ancillary use or development in addition to that specified for the primary use or development in the table to this clause.*
- 4. Despite anything to the contrary in this clause, on land within an area depicted as 'Activated Frontages' within the 'Residential and Mixed Use Map' of the Central Darwin Area Plan, an alfresco dining area that results in the loss of up to 25 ground level car parking spaces associated with any existing development is exempt from providing replacement car parking spaces ordinarily required by this clause.*
- 5. A change of use from an alfresco dining area (including the provision of air conditioning) will result in the new use being subject to full car parking requirements of this clause.*

#### Requirements

- 6. A use or development specified in column 1 of the table to this clause is to provide the number of car parking spaces (rounded up to the next whole number) required for that development and is to be calculated in accordance with the formula specified opposite in column 2 or, if the development is within Zone CB in Darwin, column 3.*

In accordance with the table to **Clause 5.2.4.1**, the proposed development requires and provides car parking in accordance with the following table.

The following should be noted with regard to the table:

- With regard to serviced apartment *net floor area* not within a dwelling, the below assessment excludes the pool area (does not meet the definition of *net floor area*), common corridor areas (excluded in *definition of net floor area*) and the individual storage units (considered part of the individual dwellings and will not affect car park generation). Other exclusions (for example ablution areas) are consistent with the exclusions under the definition of *net floor area*.

Use	Component	Area / Number	Car Parking Rate (C5.2.4.1)	Required Car Parking	Car Parking Provided
Serviced Apartments	Foreshore villas	7	1 per dwelling	7	26
	Apartments	46	1 per dwelling	46	251 (including 4 spaces in Porte Cochere)
	Area not within apartment (services area, gym, lounge, BOH and storage areas)	448m <sup>2</sup>	3/100m <sup>2</sup> NFA	13.44	
Hotel / motel	Hotel Rooms	131	1 per suite	131	
	Lagoon / Garden Villas	19	1 per bedroom	38	
	Area used for Dining (1 <sup>st</sup> floor bar and dining)	688m <sup>2</sup>	3/100m <sup>2</sup> floor area used for dining	20.64	
Ancillary	Bar-Public (lounge bar)	105m <sup>2</sup>	16/100m <sup>2</sup> NFA	16.8	
	Market	6	1.5 per max number of stalls	9	
<b>Total</b>				<b>282 (281.88)</b>	<b>277</b>

The above table indicates an overall demand of 282 car parking spaces, with an on-site provision of 277 spaces, thus a theoretical shortfall of 5 car parking spaces. In effect, the 26 spaces within individual garages provide for the 7 foreshore villas only. The actual car park generation excluding the foreshore villas is 275 spaces, with 251 spaces provided on site, thus a shortfall of 24 car parking spaces.

**Clause 5.2.4.2** below considers shortfall to car parking requirements per **Clause 5.2.4.1**.

### **6.5.2. Clause 5.2.4.2 – Reduction in Parking Requirements outside of Zone CB Darwin**

#### Purpose

*Provide for a use or development with fewer car parking spaces than required by clause 5.2.4.1 outside of Zone CB in Darwin.*

#### Administration

1. *The consent authority may consent to a use or development with fewer car parking spaces than required by column 2 of the table to clause 5.2.4.1 (Parking Requirements) if it is satisfied that a reduction is appropriate for the use or development, having considered all the matters at sub-clause 2.*

#### Requirements

2. *An application to reduce the number of car parking spaces is to demonstrate the reduction is appropriate with regard to:*
  - a) *the zoning of the land, the use or development or proposed use or development of the land and the possible future use or development of the land;*
  - b) *the provision of car parking spaces in the vicinity of the land; and*
  - c) *the availability of public transport in the vicinity of the land; or*
  - d) *the use or development relates to a heritage place and the Minister responsible for the administration of the Heritage Act 2011 supports the reduced provision of car parking spaces in the interest of preserving the significance of the heritage place.*

The above provisions a) and c) are most relevant to the proposed car parking on site.

- a) The integrated nature of the proposed uses are such that the actual demand for car parking is unlikely to be equivalent to a sum of the individual components, and the location of the site, in close (walkable) proximity to tourism attractions, the Darwin CBD and with access to alternative transport options is such that the actual demand for car parking is well below that required by **Clause 5.2.4.1**, specifically:
  - i. The *bar-public* and *market* are entirely ancillary to the primary tourist accommodation development to the extent that visitation is likely to primarily consist of hotel and serviced apartment patrons. As a conservative estimate, the *bar-public* and *market* are likely to generate (at most) 50% of the demand that would apply to stand-alone *bar-public* and *market* uses, reducing the actual demand by (at least) 12 spaces;
  - ii. The subject land is within immediate proximity to major tourism facilities such as the Mindil Beach Markets and Mindil Beach Casino Resort. The proposed development integrates with the surrounding pedestrian / cycle path network, enabling a high level of walkability and reducing

reliance on motor vehicles. In addition to the aforementioned attractions, the site is also close to the Gardens Park Golf Links, Gardens Oval and George Brown Darwin Botanic Gardens;

- iii. The location of the site, in close proximity to the Darwin CBD, access to public transport (refer below) along with the concentration of and access to surrounding attractions (point ii. above) is such that the hotel rooms are unlikely to require the provision of car parking at the rate of 1 space per hotel room, or 2 spaces per villa. The Lagoon and Garden Villas are intimate, two-bedroom hotel rooms, with no self-contained facilities (no kitchen or laundry) and will generally (overwhelmingly) be occupied by a single group of travellers (i.e. two couples travelling together) or families. Accordingly, the demand for car parking is likely to be well below 2 spaces per villa. A conservative estimate of 1.5 spaces per villa is likely to be well above the actual demand, resulting in a reduction of at least 9 spaces; and
  - iv. As with the villas, it is unlikely the hotel rooms will generate a demand for 1 space per hotel room. Noting the Zone CB (Darwin) parking requirements for *hotel/motel* at 0.4 spaces per suite, a conservative demand of 0.9 spaces per suite would result in a reduction of 13 spaces.
- c) The subject land is within immediate proximity of Darwin bus routes 4, 6 and 15. Bus stops 76 (outbound) and 237 (inbound) are located on Gilruth Avenue a short distance (less than 100 metres) from the subject land, and are serviced by the following routes:
- i. Route 4, connecting Darwin CBD to the Casuarina Interchange, via Fannie Bay, Nightcliff, Rapid Creek and Charles Darwin University. Route 4 runs frequently (approximately half-hourly) from early morning (6:38am) to late evening (9:39pm, later Friday and Saturday nights, earlier Sundays) both during the week and on weekends;
  - ii. Route 6, connecting Darwin CBD with various inner suburbs and attractions, including the Museum and Art Gallery of the Northern Territory, Mindil Beach, George Brown Darwin Botanic Gardens, Fannie Bay and Parap. Route 6 runs Mondays to Fridays 10 times daily between 7:10am and 5:35pm; and
  - iii. Route 15 providing access between the Darwin CBD and Mindil Beach Sunset Markets, servicing Mitchell Street, Cavenagh Street, Gilruth Avenue and Gardens Road on Thursday market days between 3:58 and 9:22pm.

The frequency and coverage provided by routes servicing Gilruth Avenue are such that they provide a viable and immediately accessible alternative for travellers to private motor vehicles (such as hire cars). Accordingly, a reduction in actual parking requirements is warranted pursuant to **Clause 5.2.4.2 subclauses a) and c)**, and the provision of 251 spaces on site, rather than the 275 required (for all components other than the foreshore villas).

### **6.5.3. Clause 5.2.4.4 – Parking Layout**

#### Purpose

*Ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose.*

#### Administration

1. *The consent authority may consent to a car parking area that is not in accordance with sub-clause 4 if it is satisfied that the non-compliance will not:
  - a) *result in adverse impacts on the local road network or internal functionality of the car parking area;*  
*and*
  - b) *unreasonably impact on the amenity of the surrounding locality.**
2. *This clause does not apply to a car parking area where the car parking is required in association with a dwelling-single, dwelling-independent or a home based business.*

#### Requirements

3. *A car parking area is to be established, used and maintained for the purpose of vehicle parking only.*
4. *A car parking area is to:
  - a) *be of a suitable gradient for safe and convenient parking;**

With the exception of mild falls required for drainage, the car parking areas are flat to ensure safe and convenient parking. Ramps and gradients will comply with Australian Standards per the Traffic Impact Assessment (**section 4.3**).

- b) *be sealed and well drained;*

All car parking areas will be fully sealed and drained per the Stormwater Management Plan.

- c) *be functional and provide separate access to every car parking space;*

Car parking spaces are easily identifiable, accessible and located close to building entry / access points. Separate access is provided to each car parking space.

- d) *limit the number of access points to the road;*

A single access point is proposed to Gilruth Avenue, in accordance with the architectural plans and Traffic Impact Assessment, with the retention of the existing access to lot 5772.

- e) allow a vehicle to enter from and exit to a road in a forward gear;*

Forward entry and exit is provided for consistent with the minimum width requirements for two-way traffic (6 metres).

- f) maximise sight lines for drivers entering or exiting the car parking area;*

The Traffic Impact Assessment confirms sight lines exceed minimum requirements (**section 6.3**).

- g) be not less than 3m from a road, and the area between the car parking area and the road is to be landscaped with species designed to lessen the visual impact of the car parking area;*

The car parking areas are well in excess of the required 3 metres from the Gilruth Avenue road reserve, with the site frontage landscaped in accordance with the Landscape Concept.

- h) be in accordance with the dimensions set out in the diagram to this clause;*

All car parking spaces meet or exceed the minimum dimension requirements of 2.5 by 5.5 metres, with the majority of car parking spaces having a minimum width of 2.6 metres.

- i) have driveways with a minimum width of 6m for two-way traffic flow or 3.5m for one-way traffic flow; and*

All driveways exceed the minimum dimension requirements.

- j) be designed so that parking spaces at the end of and perpendicular to a driveway be 3.5m wide or so that the driveway projects 1m beyond the last parking space.*

End-of-row driveways provide additional reversing space.

5. *Despite sub-clause 4, dust suppression may be an acceptable alternative to sealed surfaces in non-urban areas.*

Not applicable.

#### **6.5.4. Clause 5.2.5 – Loading Bays**

##### Purpose

*Provide for the loading and unloading of vehicles associated with the use of land.*

##### Administration

1. *The consent authority may consent to a use or development that is not in accordance with sub-clauses 2 and 3 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes,*

*and that the non-compliance will not result in adverse impacts on the local road network nor the number or availability of car parking spaces.*

### Requirements

2. *Bar-public, club, emergency services facility, exhibition centre, food premises (fast food outlet and restaurant), hospital, hotel/motel, industry-general, industry-light, nightclub entertainment venue, office, place of assembly, shop, shopping centre, showroom sales, transport terminal or warehouse use or development on a site must provide areas wholly within the site for loading and unloading of vehicles at the ratio of:*
  - a) *if for a bar-public, club, emergency services facility, hospital, hotel/motel, industry-general, industry-light, nightclub entertainment venue, showroom sales, transport terminal or warehouse development:*
    - i. *1 loading bay for a single occupation of a net floor area of 10 000m<sup>2</sup> or less; and*
    - ii. *1 loading bay for every 5000m<sup>2</sup> of net floor area or part thereof in excess of 10 000m<sup>2</sup>; or*
  - b) *if for an exhibition centre, food premises (fast food outlet and restaurant) office, place of assembly, shop or shopping centre development, 1 loading bay for every 2000m<sup>2</sup> of the total net floor area.*

The architectural area analysis identifies a total *net floor area* for the hotel, garden and lagoon villas equivalent to 18,823m<sup>2</sup>. With the additional 105m<sup>2</sup> *bar-public*, a total of 18,973m<sup>2</sup> requires a total of 3 loading bays. The bar will be operated as part of the hotel, and will share back-of-house, storage and refuse areas, and as such is not considered a separate occupation.

Two loading bays are provided in the garden villa undercroft service area, with an additional refuse and loading dock within the adjacent internal service area, with a total of 3 loading bays provided for the facility.

3. *A loading bay is to:*
  - c) *be at least 7.5m by 3.5m;*
  - d) *have a clearance of at least 4m; and*
  - e) *have access that is adequate for its purpose.*

The external loading bays are 3.5 metres wide by 7.5 metres long, with the internal refuse and loading dock far in excess of the required dimensions. The vertical clearance for all loading bays is approximately 3.5 metres. Given the nature of loading vehicles anticipated (primarily the delivery of perishable products including food, beverage products and general maintenance and cleaning, along with the collection of waste and recycling) the loading areas will provide sufficient space for small-medium delivery and waste collection vehicles.

Waste collection will be undertaken by an independent contractor in accordance with the City of Darwin's Waste Management Policy, and any resultant development is expected to include a condition precedent requiring a Waste Management Plan (detailing intended bin and vehicle sizes) be approved by the City of Darwin. Accordingly, the loading / unloading areas provide for the loading and unloading of vehicles associated with the use of the land, the proposal is consistent with the zone purpose and outcomes, and the non-compliance will not affect the local road network or on-site car parking.

#### **6.5.5. Clause 5.2.6 – Landscaping**

##### Purpose

*Ensure appropriate landscaping that is attractive, water efficient and contributes to a safe environment, is provided to development to enhance the streetscape and overall **amenity** of the locality.*

##### Administration

1. *Landscaping may include provision of paved areas and areas for entertainment and recreational activities.*
2. *The consent authority may **consent** to landscaping that is not in accordance with sub-clauses 4 and 5, only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and is appropriate to the **site** having regard to the **amenity** of the streetscape, and the potential impact on the **amenity** of the locality and adjoining property.*

##### Requirements

3. *Where landscaping is required by this Scheme it should be designed so that:*
  - a) *planting is focused on the area within the street frontage setbacks side setbacks, communal open space areas and uncovered **car parking areas**;*
  - b) *it maximises efficient use of water and is appropriate to the local climate;*
  - c) *it takes into account the existing streetscape, or any landscape strategy in relation to the area;*
  - d) *significant trees and vegetation that contribute to the character and **amenity** of the **site** and the streetscape are retained;*
  - e) *energy conservation of a building is assisted having regard to the need for shade and sunlight at varying times of the year;*
  - f) *the layout and choice of plants permits surveillance of public and communal areas; and*
  - g) *it facilitates on-site infiltration of stormwater run-off.*

The biophilic architectural approach integrates nature into the urban environment, aimed at decreasing stormwater impacts and costs, aiding energy conservation and decreasing the impact of built form when viewed from surrounding perspectives. The landscaping approach detailed in the Landscape Concept confirms the provision of shade trees to cool the environment within the hotel gardens, the retention and protection of important vegetation habitats within the creek and along the escarpment, and enabling open views and high visibility through the provision of palms, shade trees, lawns and mass plantings in public areas. Species are specifically selected to ensure suitability for the Top End environment, and responds directly to the site and locality context.

4. *Other than in Zones CB, C and TC, not less than 30% (which may include communal open space) of a **site that is used for rooming accommodation, dwellings-group, dwellings-multiple and residential care facility** is to be landscaped.*

The landscape concept provides the following areas:

- 26% of the developable area (excluding Zone PS) comprising ground floor garden and grass areas, excluding roads and pavements;
- 8% of the developable area (excluding zone PS) comprising the villa lagoon; and
- 42% of the equivalent developable area (excluding zone PS) comprising the roof gardens.

The above figures do not include retained vegetation in the Little Mindil Creek and escarpment covenant areas. Based on the above, and whilst the 30% requirement is not applicable to the proposed development, the design outcome ensures landscaped areas significantly exceed 30% of the development area, in addition to retained vegetation within the escarpment and Little Mindil Creek.

5. *In Zones LI, GI and DV all street frontages, except **access driveways or footpaths**, are to be landscaped to a minimum depth of 3m.*

Not applicable.

6. *The quality and extent of the landscaping consented to must be maintained for the life of the development*

Landscaping is a major feature of the design approach and the site use and development. As such the quality and extent of the landscaping will be maintained in accordance with conditions and endorsed plans as part of any resulting development permit.

#### **6.5.6. Clause 5.2.7 – Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR**

##### Purpose

*Protect the visual and acoustic amenity of residential buildings where they are adjacent to non-residential development.*

### Administration

1. *The consent authority must not consent to a development that is not in accordance with sub-clause 3, except where:*
  - a) *the development is covered by an area plan listed in Part 2 (Major Remote Towns) of the Planning Scheme, in which case the consent authority may consent to a development that is not in accordance with sub-clause 3 if the service authority responsible for distribution of electricity, water and sewerage services points to compliance being impractical or prohibited; or*
  - b) *the development is for the purpose of a child care centre.*

### Requirements

2. *A use or development or a proposed use or development that is:*
  - a) *not a residential building;*
  - b) *on land that is in a zone other than Zones LR, LMR, MR or HR; and*
  - c) *abuts land in any of those zones;*

*must provide a setback to the boundary that abuts any of those zones of not less than 5m.*
3. *The setback described in sub-clause 2 is to be landscaped to provide a visual screen to the adjacent land Zoned LR, LMR, MR or HR for a minimum depth of 3m.*
4. *The development should provide a solid screen fence of a minimum height of 1.8m at the boundary with land in Zones LR, LMR, MR or HR.*

The subject land is in Zone TC (i.e. in a zone other than Zones LR, LMR, MR or HR) and is adjacent land in Zone LMR (lot 2422 located at 1 Burnett Place, Larrakeyah atop the escarpment overlooking the subject land). With the exception of the ancillary *bar-public* and *market*, the development in its entirety comprises *residential buildings* in accordance with the definition in **Schedule 2** of the Planning Scheme. Notwithstanding, the proposed development is setback over 25 metres (in a horizontal plane) from the boundary of lot 2422 at the closest point (refer *Overall Plan – Ground Level* of the Architectural Plans), with this setback landscaped in its entirety. The *bar-public* and *market* are over 99 metres from the boundary of lot 2422, and are obscured by the serviced apartment and hotel components of the buildings. In addition to the escarpment vegetation, the setback between lot 2422 and the *bar-public / market* uses is landscaped (by at least the width of the Lagoon Villas, 12.885 metres) via the roof garden of the Lagoon Villas.

## **6.6. Specific Development Requirements**

### **6.6.1. Clause 5.3.7 – End of Trip Facilities**

#### Purpose

*Ensure that new commercial and high density residential buildings provide sufficient safe, quality and convenient end of trip facilities to enable active travel choices by residents, visitors, workers and customers for the proposed use of the site.*

#### Administration

1. *The consent authority may consent to a use or development with fewer bicycle parking spaces, lockers and/or showers and changing facilities than required by sub-clauses 2-6 if satisfied that either:
  - a) *there are alternative end of trip facilities (on or off the site), where:
    - i. *the same function is provided which can accommodate the same number of bicycles and/or users required by the clause;*
    - ii. *access to the alternative end of trip facilities is safe and convenient for users;*
    - iii. *the alternative end of trip facilities are sheltered and secure; and*
    - iv. *the size and layout of alternative storage areas allows for safe and comfortable storage and access to bicycles and/or personal items; or**
  - b) *it would be unreasonable to provide the end of trip facilities as required by this clause with regard to, but not limited to, the location of the development and likely commute distances; or*
  - c) *it would be unreasonable to provide shower and changing facilities for a small development, where the development becomes unfeasible should such facilities be required.**

#### Requirements

2. *All new buildings in Zones HR, CB, C, SC and TC should provide bicycle parking facilities with a number of bicycle parking spaces calculated at the rate specified in the table to this clause (rounded up to the nearest whole number).*

The table to **Clause 5.3.7** requires bicycle parking and end of trip facilities in accordance with the following table.

Use	Area / Number	Bicycle Parking Required	Staff	EOT Facilities Required	Bike Parking Provided	EOT Facilities Provided
Serviced Apartments	53 apartments	17.66	<200 staff	4 showers	80 Spaces	4 Showers
Hotel / motel	168 rooms	56				
Ancillary (non-residential – Market and Bar-Public)	318m <sup>2</sup>	1.06				
<b>Total</b>		<b>74.72</b>				

3. All bicycle parking facilities and associated bicycle parking devices should be designed in accordance with Australian Standard AS2890.3 – Bicycle Parking and must:

a) be located in a convenient and safe location with adequate security for the storage of bicycles;

The proposal provides bicycle parking for 80 bikes, including 74 parking spaces within a secure enclosure. Bicycle parking will comply with the relevant Australian Standards.

b) have an appropriate mix of long and short term, wall and floor mounted bicycle parking;

Bicycle parking will provide for short and long-term use.

c) where secure parking is provided, provide e-bike charging facilities, as necessary;

E-bike charging facilities will be provided.

d) not require access via steps;

Access to bike parking is via the main driveway and pedestrian pathways, without stair access.

e) be protected from the weather;

Bicycle storage is within the Garden Villa undercroft.

- f) enable the wheels and frame of a bicycle to be locked to the device without damaging the bicycle;*

Lockable facilities will be provided.

- g) be located outside pedestrian movement paths;*

Pedestrian pathways are not affected by bicycle parking.

- h) be easily accessible from the road;*

The storage areas are directly accessible from driveway and pedestrian pathways.

- i) be arranged so that parking and manoeuvring motor vehicles will not damage adjacent bicycles;*

Bicycle parking is entirely separate from vehicle manoeuvring and parking areas.

- j) be protected from manoeuvring motor vehicles and opening car doors;*

Bicycle parking is entirely separate from vehicle manoeuvring and parking areas.

- k) be as close as possible the cyclist's ultimate destination;*

Bicycle parking facilities are within the site and enable direct connection to the ultimate destination via the site pedestrian areas.

- l) be well lit by appropriate existing or new lighting; and*

Lighting will be provided to ensure visibility and security.

- m) be sympathetic in design, material and colour to compliment the surrounding environment.*

Bicycle storage areas are incorporated into the Garden Villa building.

4. A locker should accompany every secure bicycle parking space provided, and should be:

- a) of suitable volume and dimensions to allow storage of clothing, cycling helmets and other personal items;*
- b) well ventilated, secure and lockable; and*
- c) located close to shower and changing facilities.*

74 lockers are provided within the basement end of trip facilities, ensuring a locker for every secure parking space. Lockers will be consistent with the relevant Australian Standards.

5. *All new non-residential buildings, hotels/motels, and serviced apartments in Zones HR, CB, C, SC and TC should provide sufficient and accessible shower and changing facilities for staff with the number of showers calculated at the rate specified in the table to this clause.*

End of trip facilities are provided in accordance with the **Clause 5.3.7** requirements within the staff basement area, immediately below the bicycle parking facilities.

6. *Shower and changing facilities must be secure facilities capable of being locked, and should:*
  - a) *be located as close as practical to the associated bicycle parking facilities;*
  - b) *provide one change space per shower; and*
  - c) *Provide for separate male and female facilities where more than one shower is provided.*

End of trip facilities are directly accessible below the bicycle parking areas, provide a change space within each shower cubicle, and provide separate male and female showers.

#### **6.6.2. Clause 5.4.3 – Building Setbacks of Residential Buildings and Ancillary Structures**

##### Purpose

Ensure that **residential buildings** and **ancillary** structures are located in a manner that:

- a) *is compatible with the streetscape and surrounding development including **residential buildings** on the same **site**;*
- b) *minimises adverse effects of building massing when viewed from adjoining land and the street;*
- c) *avoids undue overlooking of adjoining properties; and*
- d) *facilitates breeze penetration through and between buildings.*

##### Administration

1. *The consent authority may **consent** to a development that is not in accordance with sub-clause 5 only if it is satisfied that the reduced setback is consistent with the purpose of this clause and the zone purpose and outcomes, and it is appropriate to the **site** having regard to such matters as its location, scale and impact on adjoining and nearby property.*
2. *In this clause:*
  - a) *an **ancillary** structure includes an **outbuilding**, verandah, balcony, shade sail and the like, which may or may not include external walls; and*

- b) where a lot has a boundary with a public street from which vehicular **access** to the lot is restricted by the controlling Agency or local authority, this boundary shall be considered a side or rear lot boundary for the purpose of calculation of the **building setback**.
3. This clause does not apply in Zones CB, C, LI, GI and DV.
4. Despite subclause 5 a shed in Zones other than H, A, RR, RL and R may have a nil setback to the side and rear boundaries provided it is
- 6m or more from the **primary street** and 2.5m or more from a **secondary street** when measured to the wall of the shed or where there is no wall, the outer face of any column;
  - has a cumulative **floor area** of 15m<sup>2</sup> or less;
  - is 2.5m or less in height;
  - has no openings in walls that are less than 1.5m from a lot or unit title; and
  - does not discharge rainwater on an adjacent lot or unit title.

Requirements

5. Subject to clause 5.2.7, **residential buildings** and **ancillary** structures are to be setback from lot boundaries in accordance with table A or B (as the case requires) to this clause noting that no part of the roof structure, including gutters and eaves, is to encroach more than 0.9m into the minimum **building setbacks** (subject to the Building Code of Australia) from the lot boundaries.

Boundary	Required Setback	Proposed Setback (roof overhang)	Compliance / Variation
<b>Primary Street</b> (Gilruth Avenue – Garden Villa Building)	6m	0m	-6m
<b>Rear</b> (foreshore boundary – Serviced Apartment Building)	2.5m	8.2m (5m)	+5.7 (+2.5m)
<b>Side</b> (North, adjacent Mindil Beach Casino Resort – Garden Villa / Hotel Building)	1.5m / 3m	30.1m / 34.045m	+28.6m / +31.045m
<b>Side</b> (South, escarpment – Lagoon Villa Building)	1.5m	18.775m	+17.275m

The proposed development complies with (significantly exceeds in most cases) the setback requirements for the northern and southern side boundaries, adjacent the Mindil Beach Casino Resort site and southern escarpment respectively, and the rear boundary adjacent the Little Mindil Beach foreshore.

Given the nature of the site, with the eastern portion of the Garden Villa building extending into the Gilruth Avenue road reserve (which widens significantly adjacent the site), the front boundary setback is effectively 0 metres, with the Lagoon Villa building setback 1.14 metres from the Gilruth Avenue boundary at its closest point. In relation to the variation, the below points are critical to consider the suitability of the proposed siting:

- The front development area currently within the road reserve effectively forms part of the site, meaning the actual impact of the reduced setback is generally perceived from the roadway and shared paths along Gilruth Avenue. To this end, the sloping green roof structure of both the Garden and Lagoon Villa buildings, being the closest component of the buildings to the road reserve, reduces the visual impact of these buildings when viewed from the public realm (refer *image 11* below); and
- The design rationale within the Landscape Concept for the Gilruth Entry and Street confirms the design approach to *“enhance the Gilruth Avenue Road Reserve with landscaping to provide a spectacular and inviting welcome for visitors and guests.”* Consistent with the purpose to *minimise adverse effects of building massing when viewed from adjoining land and the street*, the design approach prioritises landscape design over built form outcomes in terms of outward appearance to Gilruth Avenue.

Given the guidance provided in **subclause 1**, the proposal:

- a) is compatible with the streetscape and surrounding development given the boundary layout between the subject land and the Gilruth Avenue road reserve, and the end-on design of the Garden and Lagoon Villa buildings and green roofs;
- b) Ensures a landscape-led design approach to the Gilruth Avenue frontage, with the cascading green roofs descending to ground level at the closest point to the road and pedestrian corridor, with all multi-storey components set well back from the road frontage (well behind the Garden and Lagoon Villa buildings);
- c) Provides significant setbacks to side boundaries and of accommodation components to the front boundary, and multi-storey components to all boundaries, ensuring suitable privacy levels are maintained; and
- d) Large setbacks to all multi-level components ensure breeze penetration through and between buildings relative to buildings with compliant setbacks.

**Section 6.3.1** of this report confirms the proposal is consistent with the Zone purpose and objectives for development in Zone TC. Accordingly, and given the guidance provided by **subclause 1** of **Clause 5.4.3**, the proposed front setback variation is appropriate.



**Image 11:** View of proposed development from Gilruth Avenue. Note Lagoon and Garden Villa green roofs cascading down towards Gilruth Avenue.

### **6.6.3. Clause 5.4.3.1 – Additional Setback Requirements for Residential Buildings longer than 18 metres and for Residential Buildings over 4 storeys in Height**

#### Purpose

Ensure that **residential buildings** respond to the potential adverse effects of building massing and visual bulk when viewed from adjoining land and the street.

#### Administration

1. The consent authority may **consent** to a development that is not in accordance with sub-clause 3 if it is satisfied it is consistent with the purpose of this clause and that the design of the development adequately mitigates the adverse effects of building massing and visual bulk that may arise from non-conformity with sub-clause 3.
2. The length of the building excludes verandahs, balconies, carports and porticos integrated into the **residential building** design and fully open to affected boundaries.

#### Requirements

3. For **residential buildings**, except **dwelling-single**, that are longer than 18m or taller than 4 **storeys**, additional setback requirements apply to those outlined in the tables to clause 5.4.3 as follows:
  - a) for each additional 3m or part thereof in building length over 18m, an additional **building setback** to the affected boundary of 0.5m; and
  - b) for each additional **storey** over four **storeys** above **ground level**, an additional **building setback** to that **storey** of 1.5m from all boundaries.

4. No part of a **residential building** is required to exceed a **building setback** of 10.5m from any boundary.

Boundary	Required Setback	Proposed Setback	Compliance / Variation
<b>Primary Street</b> (Gilruth Avenue – Garden Villa Building)	No Additional Setback Requirement	NA	NA
<b>Rear – Ground Level</b> (foreshore boundary – Serviced Apartment Building)	10.5m	8.2m	-2.3m
<b>Rear – Upper Levels</b> (foreshore boundary – Serviced Apartment Building)	10.5m	>10.5m	+
<b>Side</b> (North, adjacent Mindil Beach Casino Resort – Garden Villa / Hotel Buildings)	10.5m	>10.5m	+
<b>Side</b> (South, Lot 7656 PWC station – Serviced Apartment Building)	10.5m	7.31m to 11.245m	-3.19 to +0.745m
<b>Side</b> (South, escarpment – Lagoon Villa Building)	10.5m	>10.5m	+

As distinct from **Clause 5.4.3**, which imposes setback requirements in order to achieve a range of intended outcomes, **Clause 5.4.3.1** is solely focussed on building massing and visual bulk, and ensuring any visual bulk or massing impacts caused by longer or taller buildings are offset through the provision of additional setbacks *or* (per the administration components) building design measures. The proposal seeks variations to the additional setback requirements per **Clause 5.4.3.1** as follows:

- The length of the serviced apartment building (in excess of 100 metres) facing the foreshore (north-western) boundary requires application of the maximum setback per **subclause 4** (10.5 metres). The ground level foreshore apartments are setback 8.2 metres to the rear walls, with the roof overhang extending to 5 metres from the boundary; and
- The combined length and height of the serviced apartment building requires the application of the maximum setback (10.5 metres) to the adjoining boundary with lot 7656 adjacent the south-western

portion of the site. Lot 7656 contains secure PWC electrical infrastructure. The proposed serviced apartment building has a variable setback, increasing as the height of the building rises, between 7.31 and 11.245 metres to the affected boundary.

With regard to *ensuring development adequately mitigates the adverse effects of building massing and visual bulk that may arise from non-conformity with sub-clause 3*, the proposed development:

- In relation to the foreshore boundary, the serviced apartment frontage (ground level foreshore villas) is extensively varied between 8.2 metres at the closes point (the rear wall of the internal living area), further stepping in where the pool and rear wall of the master bedroom are located, to being completely open along each side of each apartment (at least back to the car park area more than 30 metres back from the boundary). Accordingly, *adverse effects of building massing and visual bulk* are adequately mitigated when compared to conformance with **subclause 3** (i.e. a continual façade setback 10.5 metres from the foreshore boundary); and
- In relation to the lot 7656 adjoining boundary, the building is angled to this boundary, with the above setbacks taken from the corner of lot 7656 only. Furthermore, the building design includes setback variations between levels, ensuring building articulation to minimise massing and visual bulk. Finally, the purpose of **Clause 5.4.3.1** relates to the (emphasis mine) *effects of building massing and visual bulk when viewed from adjoining land and the street*.

Given the nature of lot 7656 occupied entirely by electrical infrastructure, no susceptible views are likely to occur therefrom, and the proposed buildings are well over 10.5 metres to nearby residential development to the south.

Accordingly, the proposed development gives sufficient consideration to the mitigation of adverse impacts of building massing and visual bulk in the context of **Clause 5.4.3.1**.

#### **6.6.4. Clause 5.4.3.2 - Distance Between Residential Buildings on one Site**

##### Purpose

*Ensure residential buildings provide a sympathetic interface with the streetscape and surrounding development, minimise adverse effects of building massing, and avoid undue overlooking of adjoining residential buildings and private open space.*

##### Administration

1. *The consent authority may consent to a development that is not in accordance with sub-clauses 2 and 3 only if it is satisfied it is consistent with the purpose of this clause and that the design of the development adequately mitigates the adverse effects of building massing and privacy and overlooking impacts that may arise from non-conformity with sub-clauses 2 and 3.*

Requirements

2. *Where more than one building comprising one or two storey residential buildings is located on a site the distance between the buildings is to be calculated in accordance with Table A to Clause 5.4.3 as if there was a lot boundary between the buildings.*
3. *Where more than one building comprising residential buildings that exceeds two storeys in height is located on a site, the distance between buildings is to be a minimum of:*
  - a) *3m for walls to non-habitable rooms and habitable rooms without windows or doors; and*
  - b) *4.5m for walls with windows or doors to habitable rooms or to a verandah or balcony.*
4. *For each storey over four storeys, the distance between buildings referred to in sub-clause 3 is measured from a straight line that is half the average distance between the walls of the buildings.*

Based on the above, the following building separations are considered to apply, followed by the actual separations:

- Lagoon Villas to Garden Villas – 3 metres. **Actual separation exceeds 10 metres**
- Lagoon Villas to Serviced Apartments – 4.5 metres. **Actual separation exceeds 10 metres.**
- Garden Villas to Hotel – 4.5 metres. **Actual separation is less than 0 metre – ground floor hotel building awning overlaps garden villas.**
- Hotel to Serviced Apartment:
  - Ground floor required – 3 metres. **Ground floor provided – 4.5 metres (approximately – scaled)**
  - First floor required – 4.5 metres. **First floor provided – 7 metres (approximately – scaled)**
  - Second floor required – 3 metres. **Second floor provided – 7 metres (approximately – scaled)**
  - Third-fifth floors required (as basement is technically a sub-basement, the basement is considered a storey, thus **subclause 4** applies to the third, fourth and fifth storeys) – 3 metres to centreline between buildings. **Third-fifth floor provided – 3.5 metres (approximately – scaled) to centreline between buildings / 7 metre separation.**

Accordingly, the proposed building separations with the exception of the hotel / garden villa buildings, comply with the requirements of **Clause 5.4.3.2. Subclause 1** provides for variations to the required separations subject to *consistency with the purpose of the clause and that the design of the development adequately mitigates the adverse effects of building massing and privacy and overlooking impacts that may arise from non-conformity with sub-clauses 2 and 3.* The clause purpose seeks to *ensure residential buildings provide a sympathetic interface with the streetscape and surrounding development, minimise adverse effects of building massing, and avoid undue overlooking of adjoining residential buildings and private open space.*

The separation between the hotel and garden villa buildings comprises the ground floor green roof of the hotel overhanging the landscaped roof mound (rising to form the green roof of the single storey garden villas). The undercroft open air space of the hotel building ground floor is set back behind the overhanging roof awning, and the garden villas are well beyond 10 metres from the hotel building, including the hotel rooms from level 1 upwards. This ensures there are no privacy implications due to the reduced setback. The single storey garden villa building, 'tucked-in' nature of the separation, and green roof mound consisting of the portion of the garden villa building within the required setback distance ensures there are no adverse effects of building massing as a result of the variation.

#### **6.6.5. Clause 5.4.6 – Private Open Space**

Private open space requirements apply to the serviced apartments, including the foreshore villas.

##### Purpose

*Extend the function of a **dwelling** and enhance the residential environment by ensuring that each **dwelling** has private open space that is:*

- a) of an adequate size to provide for domestic purposes;*
- b) appropriately sited to provide outlook for the **dwelling**;*
- c) open to the sky and sufficiently permeable to allow stormwater infiltration and lessen runoff from the **site**; and*
- d) inclusive of areas for landscaping and tree planting.*

##### Administration

- 1. The consent authority may **consent** to private open space that is not in accordance with sub-clauses 4 and 5 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and it is appropriate to the **site** having regard to such matters as its location, scale and impact on adjoining and nearby property.*
- 2. If a **dwelling** within a **dwelling-multiple** development has no direct **access at ground level** to private open space, and where on-site communal open space is provided, compliance with purpose provisions (c) and (d), and sub-clauses 4(d), (e) and (f) is not required.*
- 3. The consent authority may **consent** to **dwelling-multiple** comprising **serviced apartments** in Zone TC that is not in accordance with sub-clauses 4 and 5 only if it is satisfied that the communal open space and communal facilities will adequately meet the activity needs of residents.*

### Requirements

4. *Private open space for a **dwelling-single, dwelling-group, dwelling-multiple** or **dwelling-independent** should:*

*a) satisfy the minimum area, dimensions and open to the sky requirements contained in the table to this clause;*

The table to **Clause 5.4.6** requires private open space for all serviced apartments excluding the foreshore villas (i.e. all serviced apartments without direct ground level access) be at least 12m<sup>2</sup>, with a minimum dimension of 2.8 metres. All upper level apartments are provided with balconies between 14m<sup>2</sup> and 26m<sup>2</sup>, with a typical depth (minimum dimension) of 2.85 metres.

The foreshore villas require the following private open space areas:

- 45m<sup>2</sup>, open vertically to the sky, with no dimension less than 1.5 metres; and
- 24m<sup>2</sup>, all or partially covered, with no dimension less than 4 metres; and

The foreshore villas are provided with an outdoor terrace area, swimming pool and rear garden area, with 49m<sup>2</sup> of private space open to the sky (with a minimum width of 3.5 metres), along with the terrace area, partially covered and with a width of 12.51 metres. The terrace to the right of the swimming pool alone has a width of 4.315 metres, depth of 8.6 metres and area of 37.1m<sup>2</sup>, thus all foreshore villas exceed the minimum private open space requirements.

*b) be directly accessible from the **dwelling** and enable an extension of the function of the **dwelling**;  
and*

All balconies and terraces forming the compliant private open space components of the dwellings are accessible from the main living areas of the serviced apartments.

*c) be located to provide views from the **dwelling** to open space and natural features of the **site** or locality, and to reduce overlooking from neighbouring open space and **dwellings**;*

Balconies and terraces are designed to overlook Mindil Beach and Fannie Bay, taking advantage of the natural assets of the site and locality. The angled north-western façade of the building and the partially covered terraces ensure overlooking from other dwellings is minimised.

*d) ensure that at least half of the private open space is permeable to allow stormwater infiltration and lessen stormwater runoff from the **site**;*

Whilst the majority of the terrace private open space areas are impermeable, given the extent of landscaping, permeable surfaces and green roofs across the site, well in excess of 30% of the site area along with a plot ratio less than a third of the allowable maximum, stormwater infiltration has been suitably maximised and runoff reduced.

As such, the overall site development is considered to achieve the purpose of the clause (to *allow stormwater infiltration and lessen runoff from the site*) and is appropriate to the site given the context of the foreshore villas within the overall site development.

- e) *include at least one area of at least 5m<sup>2</sup>, with no dimension less than 1.5m, for the deep soil planting of trees and vegetation for shade or screening; and*

The foreshore villas include a vegetation strip 1.5 metres wide along the left side of each villa, open to the sky for a length of 3.5 metres (5.25m<sup>2</sup>). In addition, a 1 metre vegetated strip along the rear boundary is also provided.

- f) *allow for landscaping at the property frontage to complement the visual **amenity** of the streetscape.*

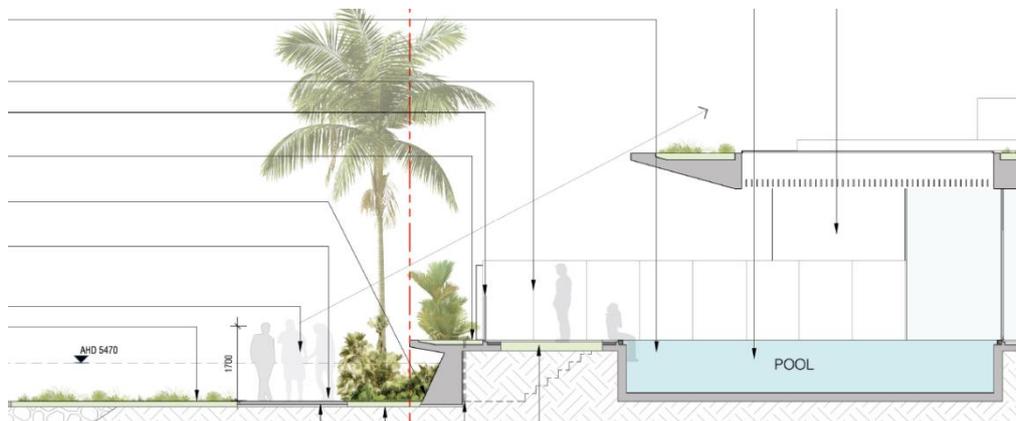
Planting in accordance with the Landscape Concept includes emphasis on landscaping and vegetation to all property frontages and boundaries, complementing visual amenity to surrounding land and the public realm.

- 5. *Where the private open space is at **ground level** and other than for a **dwelling-single**, or a **dwelling-single** and associated **dwelling-independent** it should be:*

- a) *screen fenced to a height of at least 1.8m providing a visual barrier to adjoining residences and public areas; or*
- b) *fenced to a height of at least 1.8m and planted with dense vegetation which will provide a visual barrier within two years of planting.*

The foreshore villas include 1.8 metre high privacy fencing to adjacent villas (i.e. side boundaries), however include wire balustrades to the foreshore frontage rather than privacy fencing.

Given the level difference between the foreshore (public) pathway and the villa ground level (refer **image 10** below), and the provision of low-level planting to assist privacy, the interface treatment appropriately balances occupant privacy with the need to preserve outlook from the apartments, and avoid the creation of a visual barrier when viewed from the public realm. Accordingly, the proposed edge treatment is considered appropriate.



**Image 10:** *Level difference between foreshore villas and public foreshore pathway (image source: Architectural Plan – Foreshore Interface)*

### **6.6.6. Clause 5.4.7 – Communal Open Space**

#### Purpose

*Ensure that suitable areas for communal open space are provided for dwellings-group, dwellings-multiple, residential care facilities and rooming accommodation.*

Communal open space requirements apply to the serviced apartments, excluding the foreshore villas.

#### Administration

- 1. This clause does not apply to dwelling-group or dwelling-multiple where each dwelling has direct and independent access to private open space at ground level.*
- 2. The consent authority may consent to a dwelling-multiple comprising serviced apartments in Zone TC that is not in accordance with sub-clause 3 only if it is satisfied it is consistent with the purpose of this clause and that the private open space associated with each dwelling provides appropriate opportunities for outdoor activities.*

#### Requirements

- 3. A minimum of 15% of the site, being not less than 6m wide at any point, is to be communal open space.*

The landscape concept provides the following areas:

- 26% of the developable area (excluding Zone PS) comprising ground floor garden and grass areas, excluding roads and pavements; and
- 8% of the developable area (excluding zone PS) comprising the villa lagoon.

The above figures do not include retained vegetation in the Little Mindil Creek and escarpment covenant areas.

Publicly accessible open space areas in excess of 6 metres that can be reasonably considered to constitute open space are also shown in the Landscape Concept, and are equivalent to 4,800m<sup>2</sup>, equivalent to 9.36% of the total site area. The addition of the pool and pool area within the serviced apartment building (334m<sup>2</sup>) increases this to 10%. Whilst below the required 15% identified above, the following should be noted:

- **Clause 5.4.7** applies to the upper level serviced apartments only, and is not applicable to the hotel building, lagoon villas or garden villas. As such, whilst applicable as a proportion of the overall site area, the provision of communal open space is only applicable to one component of the development;
- The roof gardens, particularly of the lagoon and garden villa buildings, provide additional landscaping cognisant of the need for communal open space to address *the provision of landscaping and shade*, and thus provide additional space that, whilst not accessible, contributes significantly to the overall amenity and enjoyment of the site;

- Whilst the site area includes all land within lot 7651, a significant portion of the site is within covenant areas 731711 and 731712, specifically benefitting *The Territory and* (in the case of 731711) *members of the general public*. Thus the actual development areas is a far more relevant guide as to the proportional requirement for communal open space (in which case communal open space is 15% of the development area). Further, the area within 731711 provides an additional communal / public open space function within the site area; and
- In accordance with **subclause 2**, the subject land is located in Zone TC, and all serviced apartments exceed the private open space requirements per **Clause 5.4.6**, ensuring appropriate areas for outdoor activities commensurate with the function of the apartments for short-term serviced tourist accommodation. The communal open space provided within the site is extensive, of high quality and offering a high level of amenity, and complements significant public open space and recreation facilities immediately adjacent the site and in the broader locality, including Mindil Beach, the Mindil Beach recreation area, Gardens Park Golf Links, the Old Hospital Site (Kahlin Avenue) and Gardens Oval.

4. *The design of the communal open space should address*

- a) *the overall dwelling density proposed for the site;*

Open space and circulation areas effectively integrate with the extent and type of accommodation proposed.

- b) *the proximity and quality of alternative private or public open space;*

Communal areas within the site connect to public open space areas within the site and in the locality.

- c) *the need to clearly distinguish communal open space from private and public open space and the need to maintain the reasonable privacy of nearby dwellings;*

Specific interface treatments are provided between the public and private realms, and the landscape concept demonstrates specific design treatments for public, communal and private areas within the site.

- d) *the type of activities to be provided for;*

A range of areas and facilities are provided, ensuring recreation, relaxation and amenity considerations are covered.

- e) *the projected needs of children for outdoor play;*

Active recreation areas including the swimming pool and grassed areas address the projected play needs of children, noting the nature of accommodation provided, and nearby public playgrounds at Mindil Beach and the Old Hospital Site, Kahlin Avenue.

- f) *the provision of landscaping and shade;*

The Landscape Concept details the provision of suitable species to ensure shade and landscape amenity.

*g) safety issues including lighting and informal surveillance;*

Communal open space areas consider CPTED matters in accordance with **Section 6.7.9** of this report.

*h) on-site traffic circulation; and*

On-site vehicle movements occur along easily identifiable routes ensuring a high level of visibility and identification without the use of unnecessary barriers.

*i) future maintenance and management requirements*

The overall Landscape Concept ensures a serviceable long-term development outcome, with access for service vehicles and personnel.

#### **6.6.7. Clause 5.4.8 – Building Design for Dwelling-group, Dwelling-multiple, Rooming Accommodation and Residential Care Facility**

##### Purpose

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

##### Administration

- 1. This clause does not apply when only two dwellings form the dwellings-group.*
- 2. The consent authority should take into account how the building design has addressed sub-clauses 3-14.*

##### Requirements

- 3. Locate development on the site for correct solar orientation.*

The development has been orientated to respond to and take advantage of the natural assets of the site and surrounding land, respond to existing buildings on adjacent and surrounding land, take advantage of prevailing breezes and ensure acceptable solar performance. The orientation of the garden villas, lagoon villas and hotel buildings with a long axis generally within 30 degrees north-south minimises heat loading from eastern and western sunlight. The orientation of the serviced apartment building achieves a suitable balance between maximising outlook, maximising access to prevailing wet-season breezes from the north-west, and avoiding apartments being subject to direct western sunlight.

- 4. Minimise expanses of walls by varying building heights, building setbacks and façades.*

Building heights are varied between the serviced apartment and hotel buildings, and the lagoon and garden villa buildings.

On the serviced apartment and hotel buildings, curved roof overhangs and setback variations across different floor levels, along with the roof overhangs and green roofs, ensure any adverse visual impact resulting from blank walls is suitably minimised.

*5. Locate air conditioners where they are accessible for servicing.*

Air conditioning equipment will be located within the dedicated plant areas within serviced apartment floor level and on the roof plant enclosures. Individual systems will be provided for the garden and lagoon villas, accessible within the ground level buildings.

*6. Conceal service ducts, pipes, air conditioners, air conditioning plants etc.*

Dedicated plant areas are provided in the basement, in dedicated enclosures at ground level, and within the roof plant enclosures. Individual air conditioning systems will be within screened enclosures, with services contained within internal risers or integrated into the architectural design of the building.

*7. Avoid overlooking of private open spaces and habitable rooms of adjacent residences on the same and adjacent sites.*

Private open space areas ensure appropriate screening with green roofs extended between levels to avoid overlooking across different floor levels.

*8. Locate bedrooms and private open spaces away from noise sources.*

Bedrooms and private open space areas are suitably separated from the foreshore pathway (noting separation must be taken in context with the desire to integrate and connect the site with these components). Suitable buffering in the form of boundary walls / building edge treatments are provided between the serviced apartments and the bar / dining areas.

*9. Control its own noise sources and minimise the transmission of noise between dwellings.*

Bedroom areas and sensitive receptors are suitably separated from possible noise sources. The noise impact assessment included with the application documents confirms that, subject to the implementation of the noise management and mitigation recommendations in the report, no detrimental impact to the amenity of existing surrounding residential receptors or general amenity of the surrounding area would be expected as a result of the proposed hotel development.

*10. Where close to high noise sources (such as busy roads and airport flight paths), be of appropriate acoustic design and construction.*

The subject land is not located adjacent a high noise source to the extent that would adversely impact the proposed accommodation use. The site is suitably separated from, and the proposed use suitably consistent with, the existing entertainment and recreational function of Mindil Beach and the Mindil Beach Casino Resort.

*11. Balance the achievement of visual and acoustic privacy with passive climate control features.*

The development is considered to achieve a suitable balance between solar orientation, orientation and design for outlook from the site, access to prevailing breezes and maximising setback, particularly of the larger hotel and serviced apartment buildings, to potentially sensitive existing development (residential and heritage) atop the escarpment to the south.

*12. Allow breeze penetration and circulation.*

The development has been orientated to respond to and take advantage of the natural assets of the site and surrounding land, respond to existing buildings on adjacent and surrounding land, take advantage of prevailing breezes and ensure acceptable solar performance. The orientation of the serviced apartment building achieves a suitable balance between maximising outlook, maximising access to prevailing wet-season breezes from the north-west, and avoiding apartments being subject to direct western sunlight. Building separation between the various elements on site ensures enables breeze penetration between the various elements and through the site.

*13. Minimise use of reflective surfaces.*

The materials palette does not include extensive reflective surfaces.

*14. Provide internal drainage of balconies and coping on the edge of balconies.*

Balconies will be internally drained with coping where required.

**6.6.8. Clause 5.5.2 – Plot Ratios in Commercial Zones**

Purpose

*Provide for development that will, in terms of building massing, be compatible with adjacent and nearby development.*

Administration

- 1. The consent authority may consent to a use or development that is not in accordance with sub-clauses 3 and 4 only if it is satisfied the development is appropriate to the site having regard to the purpose of this clause, the amenity of the streetscape, and the potential impact on the amenity of the locality and adjoining property.*
- 2. Sub-clause 3 does not apply to a residential building development other than rooming accommodation.*

Requirements

- 3. Development of sites within:
  - a) Zone TC other than in the Municipality of Darwin; or**

- b) Zone C; or
- c) Zone SC; should not exceed a plot ratio of 1.

4. Development of sites within Zone TC in the Municipality of Darwin should not exceed a plot ratio of 3.

The architectural plans identify a total floor area of 44,516m<sup>2</sup>, well below the 5.13 hectare site area, and equating to an actual plot ratio of 0.87.

The plot ratio, and accordingly the floor area and extent of development within the site, is less than 30% of the maximum permissible under **Clause 5.3.7**. The extent to which the plot ratio in the proposed development is below the maximum allowable is significant in demonstrating the achievement of the **Clause 5.5.2** purpose, namely (emphasis added) *provide for development that will, in terms of building massing, be compatible with adjacent and nearby development.*

#### **6.6.9. Clause 5.5.3 – Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T**

##### Purpose

*Promote site-responsive designs of commercial, civic, community, recreational, tourist and mixed use developments which are attractive and pleasant and contribute to a safe environment.*

##### Administration

1. A development application must, in addition to the matters described in sub-clauses 2-16, demonstrate consideration of and the consent authority is to have regard to the *Community Safety Design Guide (as amended from time to time)* produced by the Department of Lands and Planning.

The *Community Safety Design Guide* seeks to ensure development considers the principles of *Community Protection through Environmental Design* (CPTED). The design guide encourages urban developments in the Northern Territory that are both safe and feel safe, and includes:

- Safe design context and objectives for application to all developments;
- Design guidelines providing recommended solutions on methods for compliance to the key principles;
- Positive and negative design outcome examples; and
- Safety audit / application checklists.

The specific components of the design guide as they relate to the proposed development are considered below, including the *context, objective* and *specific design guidelines*.

### ***Surveillance***

Page 3 of the design guide seeks to *ensure that development contributes to the safety of areas by optimising the opportunities to provide passive surveillance of public spaces, communal areas, streets and car parks.*

The proposed development, consisting of three distinct building elements, ensures significant exposure to the public realm, in the form of interaction with and passive surveillance of the foreshore and beach, Gilruth Avenue and Mindil Creek, along with elevated views of the internalised common areas. The car parking areas are secure and / or obtain passive surveillance from the serviced apartments, foreshore villas and lagoon villas. The combination of accommodation / dwelling balconies, windows, function and gathering space all overlooking public and communal areas ensures a high level of passive surveillance is obtained throughout the site.

### ***Sightlines***

Page 4 of the design guide recommends the provision of clear sight lines to provide uninterrupted views of paths, public spaces and entrances to enable people to see the route ahead and identify possible risks. The views of passing motorists, cyclists and pedestrians is also considered. The design guidelines seek *to ensure that built forms and landscaping do not obscure sightlines and allow a clear view of public spaces.* In this context the centralised public access and circulation area provides a clear, legible and distinct site access point for both vehicles and pedestrians, and ensures a high level of visual permeability from the public realm through the site.

At the opposite end, the interface with the foreshore ensures a clearly visible public walkway enabling sightlines along Mindil Beach and back to the escarpment.

### ***Mixed Use Areas and Activity Generators***

Page 5 of the design guide seeks to *increase the level of activity within areas to enhance passive surveillance opportunities; and to extend the hours of activity in an area to include after business hours.* The combination of short and long term accommodation, recreation and entertainment facilities and public use and access areas extends activity periods to include after-hours use.

### ***Building Design, Lighting Signage, Wayfinding and movement Predictors***

Building design emphasises multiple elements focussing on both outward and inward features of the site, including multiple surveillance sources, centred around a feature access corridor between the building components. The primary access is clearly legible from Gilruth Avenue for motor driven vehicles, pedestrians and cyclists.

Signage will be clear and legible and will ensure pedestrians can clearly navigate the public realm. The varied use of pavement and landscape treatments, clear and separated pedestrian areas will delineate boundaries, activity use and direction.

In relation to the design guidelines on page 9, Movement predictors are difficult to avoid, particularly when other components of the design guidelines require clear and legible pedestrian pathways, however the proposal ensures that predictable routes are open and clearly visible to increase actual and perceived safety.

### ***Car Parks***

The provision of clear and legible building access points from car parking areas, provision of lighting to car parks, the provision of landscaping and ensuring clear sightlines through car parks ensures car parking areas are consistent with the guide. The proposed basement car park is secure and will utilise light-coloured painting and active lighting to avoid dark corners, provide clear pedestrian movement areas to the lifts and stairwells, and reduces opportunities for loitering in the basement car park. Support pillars in the basement car park are appropriate both in size and number, and active security measures (including CCTV and regular security patrols) will ensure ongoing observation.

### ***Active Security***

Active security measures will include a 24 hour staffed control room with CCTV, along with intermittent foot patrols of site areas. There will be a staff and security presence onsite 24 hours a day every day of the year including all Public Holidays.

### ***Safety Audit***

A safety audit per **Section 5.0** of the design guide is recommended as part of a development application.

- *Is there adequate lighting available in areas and along routes which are meant to be accessed after dark?*
- *Are the lighting fittings vandal resistant?*
- *Is there ever lighting with limited contrasts and no dark spots?*

Lighting will be provided in accordance with the relevant Australian Standards and will ensure the achievement of necessary lighting levels, along with the durability and efficiency of fittings.

- *Are there sharp corners, grades, fences, or plants that reduce the ability to see what is coming?*

Sightline obstructions are minimised to ensure sightlines are maintained.

- *Can people on the site be seen by others from outside the site?*

The central access area ensures some level of visibility from people outside the site.

- *Are other people likely to be in the immediate area at different times of day and night?*

Varied use times will extend the presence of visitors and guests during both the day and night time periods.

- *Are there other surveillance or emergency measures in place such as cameras or phones?*

Active surveillance patrols and CCTV will be utilised.

- *Do land uses in the immediate area generate activity at different times of day and night?*

Varied use times will extend the presence of visitors during both the day and night time periods, including adjacent public space areas and the nearby casino.

- *Who are the users of land uses in the area and will they cause conflicts or perceived conflicts with proposed users of the development?*

Some conflict potential exists between public and private areas as a result of anti-social behaviour. Design consistency with the guide ensures the potential or severity of actual or perceived conflicts are minimised.

- *Is it clear what areas are publicly accessible and which areas should not be publicly accessible?*

Publicly accessible areas are clearly delineated from back-of-house and service areas.

- *Does the land and its surrounds appear owned and cared for and is there evidence of graffiti and vandalism?*

The proposed development will be maintained by the operator.

- *Are there routes involving stairs, tunnels, bridges or other features which lead to predictable movements?*

Clear and predictable movements are essential as part of an integrated tourism facility, however are located and designed to ensure sightlines are maintained.

- *Are there corners or recessed areas that enable people to hide?*

Entrapment locations are minimised, particularly in and around the main pedestrian areas.

- *Is there clear signage and is it easy to navigate through an area on safe routes?*

Clear and legible routes are provided, and signage will ensure, where necessary, visitors have a clear understanding of such routes.

- *Are there any land uses and facilities in the area which require special consideration?*

There are no specific land uses that require special consideration over and above that referred to in this section.

### Requirements

- 2. Preserve vistas along streets to buildings and places of architectural, landscape or cultural significance.*

The proposed buildings ensure an eventual height equivalent to (approximately) 2 storeys above the relative height of the top of the adjacent escarpment. The alignment of the buildings and design response to the existing creek ensures views along the creek are maintained, both directly from Gilruth Avenue and Mindil Beach. The proposed buildings ensure excessive height relative to the Myilly Point Heritage precinct is avoided, and the architectural value, including access to prevailing breezes, of the Burnett Houses is preserved.

- 3. Be sympathetic to the character of buildings in the immediate vicinity.*

The proposed buildings ensure an eventual height equivalent to (approximately) 2 storeys above the relative height of the top of the adjacent escarpment, ensuring the relative height is consistent with the lower residential zones along Kahlin Avenue and Myilly Terrace.

- 4. Minimise expanses of blank walls.*

Extensive projections, building design and accommodation balconies ensure expansive blank walls are avoided.

- 5. Add variety and interest at street level and low passive surveillance of public spaces.*

The site entrance ensures a feature access point from Gilruth Avenue, maintaining the primary pedestrian corridor along this route and integrating it with a clear and dedicated pedestrian / cyclist access to the site itself. Passive surveillance opportunities are extensive and addressed in detail in the response to the *Community Safety Design Guide*.

- 6. Maximise energy efficiency through passive climate control measures.*

Extensive landscaping, including within the building fabric itself, as well as openings enabling access to prevailing breezes (particularly wet-season breezes from the north-west) ensure passive climate control measures are suitably incorporated.

- 7. Control on-site noise sources and minimise noise intrusion.*

The noise impact assessment included with the application documents confirms that, subject to the implementation of the noise management and mitigation recommendations in the report, no detrimental impact to the amenity of existing surrounding residential receptors or general amenity of the surrounding area would be expected as a result of the proposed hotel development.

*8. Conceal service ducts, pipes, air conditioners, air conditioning plants etc.*

Services are primarily hidden in the structures under the green rooftops with minimal visual intrusion. Services required elsewhere will be appropriately concealed.

*9. Minimise use of reflective surfaces.*

Reflective surfaces are limited to external glazing areas, providing a low-level reflectivity consistent with nearby residential buildings.

*10. Provide safe and convenient movement of vehicles and pedestrians to and from the site.*

The Traffic Impact Assessment included with the application confirms safe and convenient vehicle access to, from and within the site. Pedestrian areas are clearly identifiable and suitably separated from vehicle movements where required, integrating with public areas and the existing pedestrian network.

*11. Provide convenient pedestrian links (incorporating access for the disabled) to other buildings and public spaces.*

The pedestrian connection integrates with the site access from Gilruth Avenue and the foreshore promenade and adjacent land.

*12. Provide protection for pedestrians from sun and rain.*

Clear access routes to building areas ensure direct access for pedestrians to shelter during rain. Landscaping and built form shading will provide sun protection.

*13. Provide for loading and unloading of delivery vehicles and for refuse collection.*

Loading, unloading and refuse areas are provided, including access therefore.

*14. Provide landscaping to reduce the visual impact and provide shade and screening of open expanses of pavement and car parking.*

The landscape concept presentation included as part of the application documents presents extensive ground level, vertical and roof-top landscaping to ensure the development is visually compatible with the surrounding locality.

*15. Provide facilities, including public toilets, child minding facilities, parenting rooms and the like where the size of the development warrants such facilities.*

Public facilities for guests and visitors are provided consistent with the nature of the use.

16. *Provide bicycle access, storage facilities and shower facilities.*

Bicycle access, storage and end of trip facilities are provided in accordance with the requirements of the Planning Scheme.

**6.6.10. Clause 5.5.10 Nightclub Entertainment Venue, Bar-Public and Bar-Small**

Purpose

*Ensure that the establishment and operation of a nightclub entertainment venue, bar-public and bar-small:*

- a) Provides an active interface to the public domain and contributes to the interest and diversity of the locality;*
- b) minimises unreasonable amenity impacts to surrounding properties, recognising that a reasonable level of ambient noise is associated with the convenience of proximity to central business, entertainment or mixed use precincts; and*
- c) is designed for the safety of patrons.*

Administration

- 1. An application for a nightclub entertainment venue or bar-public must include an acoustic report by a suitably qualified consultant to demonstrate how amenity impacts will be addressed, including an assessment of noise generation, the ability to comply with noise standards, and whether noise attenuation measures are required.*

The noise impact assessment included with the application documents includes a detailed noise management plan. The report confirms that, subject to the implementation of the noise management and mitigation recommendations in the report, no detrimental impact to the amenity of existing surrounding residential receptors or general amenity of the surrounding area would be expected as a result of the proposed hotel development.

- 2. An application for a nightclub entertainment venue, bar-public or bar-small must include a Management Plan addressing:*

A Plan of Management addressing the below requirements is to be included as part of the application.

- a) operational hours, details of estimated patronage, how amenity impacts on any residential or accommodation within 400m of the venue would be addressed, including the potential for cumulative impacts where there are existing late night venues in the locality;*
- b) details of the management of waste collection, storage and disposal;*
- c) proximity of or access to public transport and taxis; and*

- d) *if incorporating outdoor courtyards or areas, how these areas will be managed to limit late night noise generation.*

The Noise Impact Assessment includes an assessment of the outdoor entertaining areas, along with a noise management plan detailing management measures relating to late night noise generation.

3. *The consent authority must not consent to a bar-small that does not comply with sub-clause 5.*

The application does not propose a *bar-small*.

4. *The consent authority may consent to a development that is not in accordance with sub-clauses 6-13 only if satisfied that it is consistent with the purpose of this clause and the zone purpose and outcomes, and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.*

#### Requirements

5. *A bar-small must not exceed a maximum capacity of 100 patrons.*

The application does not propose a *bar-small*.

6. *Incorporate appropriate building and landscape design to minimise the unreasonable loss of amenity for adjoining and nearby properties.*

The location of the bar along with the orientation of the buildings enables physical separation to potentially sensitive adjoining and nearby properties, and the extensive landscaping at ground and rooftop levels, together with the management measures in the SLR report, ensure amenity impacts are appropriately minimised.

7. *A minimum 1.8m high solid acoustic screen fence is erected along the full length of all site boundaries adjoining land in Zones LR, LMR, MR or HR.*

The adjoining LMR site (lot 2422 Town of Darwin) is situated at the top of the escarpment, with the serviced apartment building between it and the bar area. Given the height difference and additional buildings, such screening is not required and would serve no acoustic or visual function.

8. *The design of an alfresco dining area or outdoor entertainment space located adjacent to a dwelling is to take account of and reasonably mitigate noise and privacy impacts.*

The bar area adjoins the swimming pool area within the serviced apartment building, ensuring suitable separation.

9. *Floodlights, spotlights and all other forms of lighting shall be constructed, oriented and controlled so as not to adversely impact on the amenity of any adjacent residents or cause a traffic hazard in the adjacent road network.*

The location of the entertainment areas enables the proposed buildings, along with existing and proposed landscaping, to function as effective barriers to both existing residential development and the public realm (including the adjacent road network).

10. *Adequate provision is made for the on-site collection, storage and disposal of waste, positioned to avoid nuisance to neighbours.*

Waste areas are located towards the northern extent of the site, away from nearby residential properties, within internalised storage and loading areas.

11. *Service areas including loading, delivery and storage areas, are located away from public spaces and avoid adverse impacts on adjoining premises.*

Service, loading, unloading and back of house areas are separated from licensed areas and public access routes.

12. *Hours of operation are consistent with reasonable community expectations for the use and do not impact on the amenity of nearby residential uses, especially where these are located outside of Zone CB areas.*

Operating hours per the SLR report ensure consistency with noise guidelines and the avoidance of unreasonable amenity impacts.

13. *Development must provide clear connections to public transport and/or taxi services.*

Clear connections to public transport routes along Gilruth Avenue are provided via the internal pedestrian network, with access for taxi's / car sharing services within the site.

#### **6.6.11. Clause 5.8.1 - Market**

##### Purpose

*Ensure a market is appropriately located and operated to:*

- a) *meet the infrastructure and service needs of stallholders and customers;*
- b) *be safely accessible by vehicles, cyclists, pedestrians and public transport users; and*
- c) *minimise adverse impacts on the amenity of adjoining and surrounding residential development.*

##### Administration

1. *A market must have in place at all times a Management Plan that identifies the area in which the market operates and the maximum number of stalls, and demonstrates the requirements of sub-clauses 3-7.*

A management plan will be developed in accordance with the requirements of **Clause 5.8.1**, specifically addressing **subclauses 3-7**. It is anticipated the management plan would developed in accordance with a condition of any resultant development permit.

2. *The consent authority may consent to a market that is not in accordance with sub-clauses 3, 4, 6 and 7 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and appropriate to the site having regard to the scale of the market, frequency of operation and potential impact on adjoining and nearby property.*

Requirements

3. *A market must provide and/or demonstrate adequate access to all of the following on or within 400m walking distance of the market area and commensurate with the estimated maximum patronage and stallholders:*
  - a) *patron seating;*
  - b) *public toilets;*
  - c) *on and off street car parking spaces, including parking for equipment and vehicles associated with the operation of the market;*
  - d) *bicycle parking facilities;*
  - e) *waste disposal facilities; and*
  - f) *public transport or active transport networks.*

The proposed market area, situated in the open-air ground floor level of the hotel building, includes access to toilets, access to parking and service areas, back of house service areas, and provides space for seating. Market operators and attendees have access to public parking areas, bicycle parking and end of trip facilities, with the pedestrian network connecting into the wider public pedestrian and public transport routes.

4. *The layout of the market must provide:*
  - a) *measures for the safety of pedestrians, stall holders and vehicles, particularly in shared traffic zones; and*

The market area is quite separate from vehicle areas, with the separate pedestrian network providing clear and safe accessibility.

- b) dedicated access for emergency service vehicles to the requirements of the relevant agencies.*

Emergency vehicle access, particularly fire and ambulance vehicles, is provided in the adjacent porte-cochere, with specific access requirements considered as part of the building consent process.

- 5. Where a market is located on a road reserve or is likely to increase on-street parking during its operation, the market must meet the requirements of the agency responsible for the road.*

The market is not located on a road reserve and given its limited size and ancillary nature is unlikely to increase on-street car parking.

- 6. The layout and operation of the market should encourage access by public transport and active transport modes by ensuring that the market:
  - a) does not block existing pedestrian and cycle routes; and*
  - b) provides clear connections to the market from bus stops and surrounding active transport networks.**

The market suitably integrates with the pedestrian and cycle routes to and within the site, and enables a clear and high amenity connection to the nearby public transport network.

- 7. Wherever possible, the layout of the market should minimise adverse impacts to the amenity of adjoining and nearby residential development by:
  - a) locating waste disposal and any loading and unloading facilities away from residential properties; and*
  - b) limiting hours of operation (including setup and pack up) to 6am to 9pm.**

The location of the market, including access to the waste storage, loading and unloading areas, ensures adequate separation and buffering from adjacent residential areas at the top of the escarpment. Market hours of operation are 9:00am to 6:00pm.

## **7. SECTION 46(3)(B) – INTERIM DEVELOPMENT CONTROL ORDER**

There are no Interim Development Control Orders currently applicable to the subject land.

## **8. SECTION 46(3)(C) – ENVIRONMENT PROTECTION ACT**

The proposal has been referred to the Northern Territory Environment Protection Authority under **Part 4 Division 3** of the *Northern Territory Environment Protection Act*, and a determination by the NTEPA as to whether the proposal requires formal assessment is expected forthwith.

#### **9. SECTION 46(3)(D) – MERITS OF PROPOSED DEVELOPMENT**

The proposed development will provide a dedicated tourist accommodation facility designed to take advantage of the natural and positional assets of the subject land, in a manner consistent with the surrounding land, locality and the existing zoning.

#### **10. SECTION 46(3)(E) – SUBJECT LAND, SUITABILITY OF DEVELOPMENT AND EFFECT ON OTHER LAND**

**Sections 3** and **4** of this report describe the subject land and surrounding locality. **Section 6** considers the potential impact on surrounding land. The subject land is suitably zoned, able to accommodate the proposed development, with development able to occur in a manner that does not unreasonably impact amenity of surrounding land.

#### **11. SECTION 46(3)(F) –PUBLIC FACILITIES AND OPEN SPACE**

The subject land and proposed development incorporates and connects to public facilities and open space, including the retention of public access routes through the development, the incorporation of public access areas within the development, and connections to the Gilruth Avenue shared path and Little Mindil / Mindil Beach foreshore path. Little Mindil and Mindil Beach provide high amenity public open space, in addition to the Mindil Beach reserve area. To the south of the site, active public recreation includes the playground and park within the Old Hospital Site on the corner of Kahlin Avenue and Lambell Terrace. Other opportunities for active recreation within the immediate locality include the Gardens Park Golf Links, Gardens Tennis Centre and Gardens Oval, and in the broader locality the George Brown Darwin Botanic Gardens.

#### **12. SECTION 46(3)(G) – PUBLIC UTILITIES AND INFRASTRUCTURE**

In accordance with the Engineering Services Report, Hydraulic Assessment, Stormwater Management Plan and the Traffic Impact Assessment referred in **Section 1** of this report:

- The development will be connected to reticulated water, sewerage, stormwater drainage, NBN and electrical infrastructure, with a contribution required to be paid by the developer to permit connection to the existing sewer pump station. The existing sewer rising main in Gilruth Avenue will need to be upgraded to facilitate the proposed development;
- The existing overhead 66kV electrical transmission line within the subject site will be relocated underground as part of the proposed development;
- The site will be filled to 5.80m AHD to protect against inundation during a primary storm surge event (5.47m AHD), with no anticipated impact on peak storm surge levels to surrounding areas;
- The development will result in an increase in the total impervious area across the site increasing the total volume and peak flow rate of stormwater runoff from the catchment. Notwithstanding, due to the sites immediate proximity to an open water body, no detention measures are required.

The quality assessment within the stormwater management plan has identified that the development should include best practice measures for stormwater quality management standards and guidelines. All relevant standards and guidelines are addressed in the stormwater management plan including criteria from the City of Darwin Subdivision and Development Guidelines, QUDM and Water by Design Guidelines as well as the requirement of Australian Standard AS 3500.3; and

- The Traffic Impact Assessment finds:
  - The on-site car parking spaces have been designed in accordance with the Northern Territory Planning Scheme and the relevant clauses of Australian Standard AS 2890.1:2004;
  - The proposed access point location will have sufficient sightlines, in excess of standard requirements;
  - Implementing a left in, left out restriction at the intersection (with Gilruth Avenue) will require a full length Auxiliary left turn lane;
  - Allowing full movements at the site access point will require a short Auxiliary left turn lane and a channelised right turn lane;
  - As such it is recommended to implement a left-in, left-out restrictions at the site access point; and
  - The additional traffic generated by the development is not likely to result in adverse impacts in the surrounding road network.

Accordingly the application demonstrates how the proposed development will integrate with public utilities and infrastructure.

### **13. SECTION 46(3)(H) – IMPACT ON AMENITY**

An assessment on the potential amenity impact is provided in **Section 6.3.1** of this report. In summary, the proposed development will alter factors that make the site and locality enjoyable, harmonious and pleasant, however such alterations will not be unreasonable given the planning framework applicable to the site and the built form and landscape design outcomes.

### **14. SECTION 46(3)(J) – BENEFIT/DETRIMENT TO PUBLIC INTEREST**

Public interest matters primarily relate to the retention of important natural areas (escarpment and vegetation), natural and culturally important areas (Little Mindil Creek and sacred site), pedestrian routes around and through the site, public foreshore access and impacts on the use of the open grass area within lot 7651. The proposal ensure public foreshore access is retained, protects identified pedestrian routes through the site, and ensures the escarpment and Little Mindil Creek areas are retained outside of development areas. The development of the open grassed area will affect public use of the site, however given the tenure of the land, existing zoning and design outcomes ensuring public access areas are retained, is appropriate.

#### **15. SECTION 46(3)(K) – COMPLIANCE WITH THE BUILDING ACT**

No subdivision is proposed, thus **Section 46(3)(k)** is not relevant.

#### **16. SECTION 46(3)(L) – DEVELOPMENT OF SCHEME LAND**

The application does not comprise alterations to or the further subdivision of land under a unit titles scheme. Accordingly **Section 46(3)(l)** is not relevant.

#### **17. CONCLUSION**

The proposed development comprises biophilic integrated tourism accommodation facility, consisting of beachfront and lagoon villas, a hotel, serviced apartments and complementary dining facilities, market, function facilities, bar and recreation facilities. Built form and landscape design consists of four integrated components – the hotel, foreshore villas and serviced apartments, lagoon villas and garden villas, emphasising the natural assets and outlook available to the site from Little Mindil Beach, Little Mindil Creek and the southern escarpment. A central access driveway will provide vehicle and service access to all four components.

The proposal seeks to respond to the existing landforms and features within and adjacent the site by avoiding disturbance or encroachment into Little Mindil Creek, reducing building heights in close proximity to the escarpment and maintaining public access and public space along Little Mindil Creek, along the foreshore and throughout the site.

The development area is zoned TC (Tourist Commercial), and the proposal is consistent with the range of land uses, built form outcomes, siting and servicing arrangements anticipated in Zone TC. Whilst generally consistent with the quantitative provisions of the Planning Scheme, where variations are proposed they are a direct result of the site, development and design objectives of the Scheme, and are considered appropriate.



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