



CUNNINGTON ROSSE
Town Planning & Consulting

Statement of Effect

SERVICED APARTMENTS AND DWELLINGS-MULTIPLE

LOTS 01287, 01288, 01295 AND 01296 TOWN OF DARWIN

June 2022

Contact

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1.0 Introduction

Cunnington Rosse Town Planning and Consulting have been engaged by Joondanna Investments Pty Ltd to prepare, lodge and manage an application for development permit for serviced apartments, dwellings-multiple and food premises – café / take away at 1-2 Montoro Court and 7-8 Packard Place, Larrakeyah, on the site of the old Asti Motel. The proposal comprises an evolution of the development proposals approved through a number of previous development permits for redevelopment of the site, the most recent being DP15/0400 issued in July 2015 for the purpose of 110 multiple dwellings and serviced apartments in 6, 8 and 13 storey buildings. DP15/0400 was a variation to DP14/0362 and primarily sought the replacement (rather than retention and upgrade) of the existing motel building adjacent Smith Street). DP14/0362 in turn was effectively a variation to DP13/0895 to increase the height of building 1 and provide additional dwellings. The Motel and all existing buildings within the subject land have subsequently been demolished. In 2019 the proponent lodged a development application (PA2019/0120) for the purpose of 70 serviced apartments and 70 multiple dwellings (comprising 55x1 bedroom dwellings, 73x2 bedroom dwellings and 12x3 bedroom dwellings) in 1x8 storey building, 1x12 storey building and 1x7 storey building, plus ground level restaurant, tenancy and 3 levels of basement car parking.

This application seeks a development permit for the purpose of 91 dwellings-multiple, consisting of 44 residential dwellings and 47 serviced apartments. Development is proposed in two 10-storey buildings, with a large communal open space and landscaping area across the majority of lot 1295, adjacent the corner of Smith Street and Packard Place. In addition to the communal gardens, the ground level includes a café / function space with associated deck area, communal gymnasium, reception, bicycle parking, plant and service areas and vehicle access (from both Packard Place and Montoro Courts) to the basement car parking levels. Three basement car parking levels are proposed, with a total of 184 car parking spaces and 19 motorcycle parking spaces. In addition to the disabled parking spaces, 5 accessible parking spaces and 6 motorcycle bays are provided at ground level. The site is located within Zone TC (Tourist Commercial), wherein dwellings-multiple, serviced apartments, and food premises - cafe requiring a development permit as either merit assessable (food premises - cafe) or impact assessable (dwellings-multiple and serviced apartments). This report details the nature of the subject land and locality, the proposed development, considers the proposal against the relevant provisions of the Northern Territory Planning Scheme, and the relevant components of Section 46(3) of the Planning Act. This report (and application) is to be read in conjunction with the following attachments:

Attachment A: Architectural Plans, Elevations, Perspectives and Landscaping

Attachment B: Development Permit DP15/0400, Notice of Consent and Endorsed Plans

Attachment C: Development Permit DP14/0362, Notice of Consent and Endorsed Plans

Attachment D: Development Permit DP13/0895

Attachment E: Title Documents

1.1 Section 46(3)(aa) – Interested Parties

| | |
|----------------------------------|---|
| <i>Applicant / Town Planning</i> | Brad Cunnington, Cunnington Rosse Town Planning and Consulting Pty Ltd (on behalf of the proponent) / brad@crtpc.com.au / 0427 796 140 |
| <i>Proponent</i> | Peter Lapira, Joondanna Investments Pty Ltd, 20 Bishop Street, Woolner NT 0820 / plp@joon.net.au |
| <i>Architecture</i> | Jo Best, Troppo Architecture, 15 Quarry Crescent, Stuart Park / 0405 141 428 / jo.best@troppo.com.au |

2.0 Site and Locality

2.1 Site

The site is identified and described in **Figure 1** and **Table 1** below.

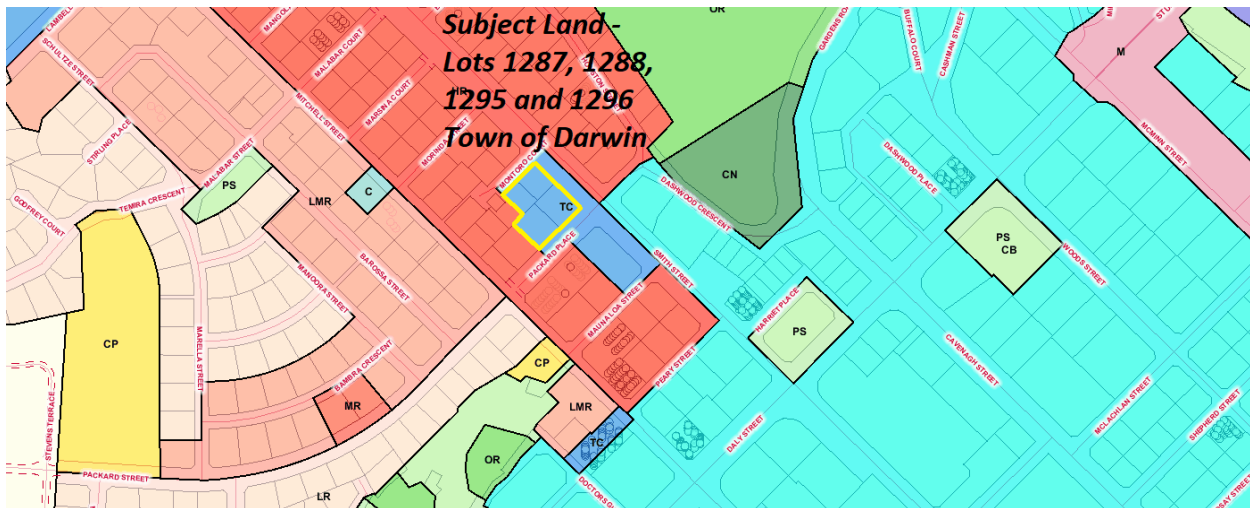


Figure 1: Site and Zoning Plan

| | |
|--|---|
| Parcels | <p>Lot 01287 Town of Darwin (1 Montoro Court, Larrakeyah)</p> <p>Lot 01288 Town of Darwin (2 Montoro Court, Larrakeyah)</p> <p>Lot 01295 Town of Darwin (8 Packard Place, Larrakeyah)</p> <p>Lot 01296 Town of Darwin (7 Packard Court, Larrakeyah)</p> |
| Title Reference and Land Tenure | <p>CUFT 790 981 (Montoro Court and 8 Packard Place) – Estate in Fee Simple</p> <p>CUFT 793 460 (7 Packard Place) – Estate in Fee Simple</p> |
| Landowner | Joondanna Investments Pty Ltd |
| Land Area | 3,985m ² (combined) |
| Easements | Lot 01296 – Sewerage and Electricity Supply easements to the Power and Water Corporation (written confirmation received from PWC that works to extinguish easement have been completed) |
| Zone | TC (Tourist Commercial) |

The subject land comprises 4 adjoining allotments on the south-western side of Smith Street, with a total site area of 3,985m². The site previously contained the Asti Motel, with a number of motel rooms and accommodation units in three buildings. Works on the previous development approvals (identified above) commenced some time ago through the demolition of the previous accommodation units and the motel, and the excavation of basement car park levels. With the exception of the construction fence, the site is void of built form and contains a large excavation towards the Smith Street and Montoro Court frontage. The subject land is identified in *images 1* and *2* below.



Image 1: Subject land from the Smith Street car parking area. Existing excavation is evident



Image 2: Subject land from the Smith Street car parking area towards Montoro Court.

2.2 Locality

Figure 1 in section 2 of this report demonstrates the zoning layout in immediate proximity of the site. The CB (Central Business) Zone is evident diagonally opposite on the north-eastern side of Smith Street. The site itself is surrounded on all sides by land in Zone HR (High Density Residential), with the exception of land to the south-east, which continues the TC Zone across the opposite side of Packard Place. Residential densities reduce further south, with land on the southern side of Mitchell Street (in the adjacent locality) zoned MD (Multiple Dwelling) and SD (Single Dwelling).

Further north of the site are OR (Organised Recreation) and PS (Public Open Space) Zones, with the OR Zone accommodating the Gardens Park Golf Links. The Darwin Central Business District commences at Daly Street, approximately 300 metres south-east of the site.

The Smith Street road reserve adjacent the front boundary of the subject land includes a large verge on the southern side, approximately 19 metres wide, which extends from Peary Street to Lambell Terrace, and consists of a combination of walking and cycle paths, lineal open space and car parking. The portion adjacent the subject land includes a public 19-bay car park. The public bus services runs along Mitchell Street, with routes 4, 6, 14 and 15 and bus stop 240 approximately 215 metres walking distance from the subject land.

Built form within the surrounding locality comprises a mix of predominantly residential development at varying heights and densities. Newer residential development, including the eight storey building directly opposite the site in Packard place, a nine storey building diagonally opposite the site and seven storey building directly opposite the site in Smith Street, align with the height provisions in both the HR and CB Zones. A number of other residential flat buildings within the immediate locality are constructed at heights, below the maximum height provisions within the Northern Territory Planning Scheme, and generally comprise building stock more than 10 years old.

3.0 Planning History

The following planning history is relevant to the proposed development:

- **DP13/0895** – (*Development Permit*) Refurbishment of existing motel plus 24 x 2 and 12 x 1 bedroom serviced apartments in a 7 storey building, 8 x 3, 36 x 2 and 4 x 1 bedroom multiple dwellings in a 13 storey building, ground level car parking plus 2 basement car park levels.
- **DP14/0362** – (*Development Permit*) To Use and develop the land for the purpose of changes to DP13/0895 to allow changes to the number of dwellings and an increased building height (building 1) resulting in refurbishment of existing motel plus 28 x 2 and 14 x 1 bedroom serviced apartments in an 8 storey building plus 8 x 3, 36 x 2 and 4 x 1 bedroom multiple dwellings in a 13 storey building, plus ground level and 3 basement levels of parking.

- **DP15/0400** – (*Development Permit*) To use and develop the land for the purpose of changes to DP14/0362 to replace an existing motel with 20 x 2 bedroom (dual key) serviced apartments in a 6 storey building, resulting in the development of 28 x 2 and 14 x 1 bedroom serviced apartments in an 8 storey building, 20 x 2 bedroom serviced apartments in a 6 storey building, plus 48 x 2 bedroom multiple dwellings in a 13 storey building, plus ground level and 3 basement levels of car parking.
- **PA2019/0120** – (*Application*) 70 serviced apartments and 70 multiple dwellings (comprising 55x1 bedroom dwellings, 73x2 bedroom dwellings and 12x3 bedroom dwellings) in 1x8 storey building, 1x12 storey building and 1x7 storey building, plus ground level restaurant, tenancy and 3 levels of basement car parking.

The previous development permits are provided in **Attachments B, C and D**.

4.0 Proposed Development

Full plans and details prepared by Troppo Architects are contained within **Attachment A**. The proposal differs from development approvals previously issued in that two 10-storey buildings are proposed, rather than three buildings between six and 13 storeys as previously approved. In addition to the built form changes, the proposal alters the intended land use outcomes and no longer includes motel accommodation, instead limited to serviced apartments and dwellings-multiple. Development details comprise:

- Construction of a mixed serviced apartment and dwelling-multiple development with two buildings of 10 storeys each. Building 1 is located nearest the Smith Street boundary, and includes:
 - 28 residential apartments consisting of:
 - 9 x 1-bedroom residential apartments;
 - 19 x 2-bedroom residential apartments;
 - 27 serviced apartments consisting of:
 - 9 x 1 bedroom serviced apartments;
 - 18 x 2-bedroom serviced apartments;

Building 2 situated to the rear of the site and towards the Packard Place frontage:

- 16 residential apartments consisting of:
 - 8 x 3-bedroom residential apartment;

- 8 x 2-bedroom residential apartments;
- 20 serviced apartments consisting of:
 - 10 x 2-bedroom serviced apartments;
 - 10 x 3-bedroom serviced apartments;
- Ground level comprising combined office and reception area, food premises-café with associated outdoor dining (deck) area, gymnasium with end-of-trip facilities, a single accessible two-bedroom apartment, communal open space including integrated deck and pavilion areas, swimming pool and outdoor shower, pedestrian access, accessible car parking, motorcycle parking, bicycle storage, mechanical plant, services and storage areas and driveway site and basement access. The driveway connection between Montoro Court and Packard Place is provided in order to negate the requirement for vehicle access from Smith Street, and provides access to 5 car parking spaces, bin storage and loading bay, along with the plant and service areas;
- Three basement car parking levels with 57, 63 and 64 car parking spaces, 19 motorcycle parking spaces, lift and stairwell access, vehicle ramps, plant areas / services risers and storage space. Including the 5 parking spaces at ground level, 189 car parking and 25 motorcycle parking spaces are provided within the proposed development;
- Each dwelling type (ie 1, 2 and 3-bedroom) has an identical floor layout, with each containing an entry porch / screening area, open plan living, dining and kitchen areas, bedroom/s and balconies. All apartments have been designed to enable disabled access, along with a high number of accessible car parking spaces in both the basement and ground levels; and
- Built form design is typical of that from Troppo Architects, with extensive openings and use of tropical building methods including raw cladding and timber / timber-look screening materials, natural colours, shading and feature panel projections. Ground and upper level landscaping emphasises screening and shading, and includes decking areas, lawn and groundcover, with Palms, Eucalypts and tropical feature and screen plants.

Key components of the building design and site layout approach include the large (1,510m²) communal gardens in the area of the site adjacent the Smith Street and Packard Place boundaries, the apartment buildings being limited in width equivalent to the length of one apartment only, ensuring all apartments have open air access from both ends (ensuring access to prevailing breezes and the provision of through-flow ventilation) and the use of shading projections, natural materials, colours and finishes. Landscaping focuses on the communal gardens and within the setback areas, including locally suitable landscape species (including Banyans, Eucalypts and Palms).

The proponent has advised that a portion of the residential component of previous iterations was intended for occupation as public, affordable and/or social housing in response to an Expression of Interest released by the (now) Northern Territory Department of Families, Housing and Communities. The ability to include such housing within the proposed development no longer exists, and the proponent has confirmed that there is no longer any intention to include public, affordable and/or social housing within the proposal.

Architectural design details including site and floor plans, apartment plans, elevations, sections, perspectives and landscaping details are provided in **Attachment A**.

5.0 Section 46(3)(a) - NT Planning Scheme

The relevant provisions within the Northern Territory Planning Scheme 2020 (the Planning Scheme) are referred to below.

5.1 Nature of Development

The proposed development consists of *dwelling-multiple* and *serviced apartments* (a form of *dwelling-multiple*) and *food premises - cafe* in accordance with the definitions in **Schedule 2** of the Planning Scheme:

***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;*

***food premises-café / take away** means small-scale premises (other than a **bar-small**) used for the preparation and sale of food and drinks that may be either taken away or consumed at seating on the premises;*

As detailed in response to **Clause 5.5.11**, the proposed food premises exceeds the area requirements for *food premises-café/take away* thus could be considered a *food premises-restaurant* in accordance with the definition in **Schedule 2**.

***food premises-restaurant** means premises (other than a **bar-public**, **bar-small**, **shop**, or part of a **hotel/motel**), used for the preparation, sale and service of food and drinks for consumption primarily on the premises where seating is provided, and may include the **ancillary** provision of take-away food;*

Both *food premises* uses are *merit assessable* in Zone TC and, despite the floor area limitation for *food premises-café/take away* (80m² per **Clause 5.5.11**), the statutory requirements are identical. The intended nature of operation (ie a day-time trade, range of coffee and food for dining and take-away) is more closely aligned to a *food premises-café/take away*.

The *dwelling-multiple* and *serviced apartments*, are encapsulated within two *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;

The above uses are located entirely within Zone TC, and are either *merit assessable (food premises - cafe)* or *impact assessable (dwelling-multiple and serviced apartments)*.

5.2 Part 2 - Strategic Framework

5.2.1 Darwin Regional Land Use Plan

The *Darwin Regional Land Use Plan* was prepared by the NT Planning Commission and incorporated into the Planning Scheme 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 *Urban / Peri-Urban*.

Page 16 of the Plan provides the *Key Urban and Peri-Urban Residential Objectives*:

- *Identify sufficient suitable opportunities for residential development to ensure an ongoing supply of lots to meet market demand.*
- *Encourage a diverse range of dwelling types and residential localities to cater for changing demographics (including single person households and an ageing population), to meet increasingly diverse community aspirations and minimise the impacts of development on established localities.*
- *Focus urban and peri-urban development close to established areas or collocated in localities suitable for such uses to enhance the economic viability of required infrastructure.*
- *Encourage detailed design that:*
 - *recognises the contribution natural and cultural sites make to urban character*
 - *provides for appropriate protection and maintenance of natural and conservation areas*
 - *is climatically appropriate and avoids the creation of heat islands.*

In response to the key objectives, the proposed development contributes residential development for both long and short-term occupation to ensure an ongoing supply of housing, provides a range of dwelling types on an unutilised site close to the major regional centre and accessible by public transport, maximising population within close proximity to services and infrastructure. Dwellings provide for a range of occupant types (including single person households) with a distinctive and climatically appropriate built form.

Through the innovative design relationship between built form and open space within the proposal area, and cognisant of the statutory requirements of the Planning Scheme considered later in this section, the development achieves an appropriate balance between maximising development opportunities within the site and minimising impacts on established localities. In relation to Infill Development, the plan goes further to state:

The land use plan supports ongoing infill residential development, particularly on underutilised land close to existing transport networks and community or commercial facilities, and where there is potential for mixed-use activity centres. The plan is predicated on the opportunities increased residential densities close to such centres create for improved public transport and for local employment and the associated reduced need for commuter travel. Infill development in areas readily accessible to public transport and local facilities and services will help minimise the impacts of increasing population growth in the region on the majority of existing residential areas.

Page 16 of the Plan identifies *Urban / Peri-Urban* to include:

- A variety of housing types;
- Retail and commercial;
- Community facilities and services;
- Sport, recreation and urban open space; and
- Natural and conservation areas.

Given the key objectives for Urban and Peri-Urban areas, commentary regarding infill development and the intended land use outcomes, the proposal is consistent with the range of uses anticipated within the Darwin Regional Land Use Plan, and will not compromise the outcomes of the Land Use Plan objectives.

5.2.2 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 identified as *Tourist Commercial* (reflective of the existing zoning) per the land use vision map on page 13, and is not located within a focus area per the index map on page 14.

No specific theme is provided for tourist commercial areas / tourism development, however given the nature of surrounding land and the proposed development, the residential theme on page 17 is considered the most applicable. The residential theme provides four objectives with corresponding acceptable responses.

| 1. Encourage appropriate housing options, neighbourhood and residential amenity to support the lifestyle of a diverse demographic | |
|--|---|
| Objectives | Acceptable Responses |
| 1.1 Encourage residential buildings that provide for a broad spectrum of demographic groups. | i. A variety of dwelling types are provided. |
| 1.2 Encourage development that contributes to the amenity of the public realm and reflects the character of the area. | i. Building design responds to adjacent buildings and environments or adjacent buildings and environments reasonably anticipated. ii. Development fronting existing and future public spaces responds to the role and function of the individual space and provides opportunities for passive surveillance. iii. Bulk and scale of wide buildings is addressed through architectural design including, but not limited to, the presentation of multiple frontage types to the streetscape, modulation of the facade, or changes in material. iv. Buildings provide interest and active frontages at street level. Large expanses of blank walls or inactive frontages are to be avoided. |
| 1.3 Encourage sustainable development. | i. Buildings and the urban environment demonstrate innovative responses to support cooling, heat mitigation, greening, water and energy efficiency, and waste reduction. |
| 1.4 Maintain residential areas in Larrakeyah and Cullen Bay. | i. Residential development accords with current zoning unless specifically identified as a Potential Area for Change on the Residential and Mixed Use Map. |

Consistent with the objectives and acceptable responses, the development provides a range of dwelling sizes to accommodate a range of demographic groups, adopts a building design responding to adjacent buildings and environments by ensuring compatible building heights, a high ratio of void space to built form and narrow building width. Bulk and scale is addressed through prolific use of projections, visual relief, material variations and landscaping, with a varied, interesting and active ground level frontage. Building design ensures tropical design principles of passive cooling and airflow are achieved, and is consistent with the current zoning.

In addition to the Residential Theme, the Movement and Transport Theme, commencing with the Movement and Transport Network Map on Page 28 of the Area Plan, identifies the portion of Smith Street directly adjacent the subject land as:

- Sub Arterial and Primary Transport Corridor;
- High Amenity Boulevard – Road Reserve Upgrade including Tree Planting and Pavement Enhancements; and
- City Recreation Loop.

The commentary around the Movement and Transport Theme notes the function of Smith Street as an important link between Cullen Bay and the Darwin Waterfront, and provides five objectives with corresponding acceptable responses.

| 6. Provide an Interconnected movement network that is safe and efficient for all users, balances the needs for vehicles with movement needs of pedestrians and cyclists, and does not impinge upon the aesthetics of the streetscape | |
|---|--|
| Objectives | Acceptable Responses |
| 6.1 Maintain a highly permeable grid street network within the city centre. | <ul style="list-style-type: none"> i. A fine-grained grid of local streets are retained or expanded upon which support a highly permeable, pedestrian and cycle friendly city centre. ii. A grid configuration of city streets and blocks are provided consistent with the existing street and block layout across Central Darwin. Blocks measure between 60m x 120m width and 120m x 240m length. Blocks incorporate mid-block laneways where possible. iii. Large developments of 3500sqm or larger within the city centre provide connections through the site and to the existing grid. |
| 6.2 Provide appropriate primary vehicle and service access that maintains high levels of pedestrian amenity and minimises disruptions to pedestrian movements. | <ul style="list-style-type: none"> i. Existing and proposed lots are serviced by laneways where possible. |

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| <p>6.3 Enhance pedestrian and cyclist amenity, safety and movement.</p> | <ul style="list-style-type: none"> i. Pedestrian and cyclist links are direct, connected, have clear sightlines, and are well lit. ii. Laneway pedestrian crossings connect arcades and are safe attractive and distinct. iii. Where there is reasonable capacity to do so, street and movement network enhancements include provision for pedestrians and cyclists. This may include, but is not limited to: <ul style="list-style-type: none"> a) Separated Cycleways b) Prioritised street crossings c) Bike Parking d) Map signs e) Directories f) signage identifying pedestrian and/or cyclist networks i.e. City Recreation Loop; and g) interpretive signage. iv. Street verges are landscaped to provide shading for pedestrians and cyclists, while also softening the appearance of hard surfaces and buildings. |
| <p>6.4 Areas identified as 'Green Links' are leafy, high amenity shared movement corridors.</p> | <ul style="list-style-type: none"> i. Areas identified as 'Green Links' make use of wide road reserve to accommodate multiple modes of transportation, bus stops, public art, and landscaping. ii. Streetscape and landscape enhancements are prioritised within 'Green Link' road reserves and provided in a coordinated manner. iii. In accordance with any relevant policies of road authorities, examine opportunities for improving the amenity of streets identified as 'Green Links'. This may include, but is not limited to: provision of landscaping, street trees, shared footpaths, separated cycleways, street furniture and/or drinking water stations. |
| <p>6.5 Facilitate transport network upgrades.</p> | <ul style="list-style-type: none"> i. Possible future additions to the transport network indicated on the Movement and Transport Maps, and including a potential rapid transit corridor, are not compromised. ii. Where the City of Darwin or the Northern Territory Government has established an infrastructure contribution plan to fund the construction of strategic transport connections, contributions are to be made in accordance with the contribution plan; OR The proponent demonstrates how a proposed development will be serviced to a standard that satisfies the requirements of the responsible service authority and how the required infrastructure will be paid for. iii. Land identified as part of the City Recreation Loop on the City Recreation Loop Map is developed as high amenity pedestrian and cyclist space, and integrates with neighbouring parts of the network. |

Consistent with the Movement and Transport Theme, the proposal relies on the existing street network with a high level of accessibility and permeability. Vehicle access relies on the secondary street frontages, ensuring the High Amenity Boulevard (Road Reserve Upgrade including Tree Planting and Pavement Enhancements) and City

Recreation Loop along Smith Street are not compromised, and the high proportion of open, landscaped and highly visible pedestrian connection to the Smith Street road reserve ensures a high amenity frontage to the public realm.

5.3 Part 3 - Overlays

No overlays are applicable to the proposed development within the subject land.

5.4 Part 4 – 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.***
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.*

The proposal includes 47 *serviced apartments* and 44 *dwelling-multiple*, with the provision of short-term (apartment) exceeding long-term (dwelling) uses. Together with the *food premises* component on the ground floor which primarily provides a function consistent with uses and development servicing tourism, the proposal adheres to the above objective, in that the *primary* purpose is for uses servicing tourism (as well as the resident population). The extent of residential use (per **subclause 2**), whilst well beyond *ancillary*, is compatible with the *serviced apartments* (per **subclause 1**), with the overall provision appropriate given the predominantly residential character of the surrounding locality.

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

The site and built form design differs from previous approvals in two key aspects – firstly the provision of two buildings only (rather than the retention of the previous motel building and two new buildings, or three new buildings), and the proposed development of two ten-storey buildings (rather than various iterations of 3, 7 and 13 storeys; 3, 8 and 13 and 6, 8 and 13). Whilst the Planning Scheme allows scant, if any, reliance on previous approvals, comparison to developments approved in 2013, 2014 and 2015 highlights the altered design intent, reducing the maximum height of residential development in a manner more compatible with existing development; and reducing the extent of built form such that less than 50% of the site area is covered by the residential building components, ensuring the provision of landscaping exceeds 51% (whereas the Planning Scheme minimum is 30%).

The context of the site's proximity to the CB (Central Business) Zone and the existence of several mid to high rise buildings (six to nine storeys) within close proximity of the land, along with the building design being "fairly open in nature and the articulation and interest provided by this design, through its varied heights and 'tropical' features, are seen as positive aspects"¹ support the height and extent of development proposed.

The aforementioned reasoning equally applies to the development, if not more so given the greater proportion of open space. The site's context has not measurably changed and the site remains heavily influenced by its proximity to the Darwin CBD and surrounding high-rise development. The building designs are consistent with those approved in DP15/0400 and the identified 'tropical' design features, visual building separations and narrow building form have all been retained. It is important to note that the wording of **Subclause 3(a)** clearly requires the *design, operation and layout of development* make a *positive* contribution to the locality through landscape and built form design. The extent of landscaping, quality of landscaping and built form design, including the locally unique elements, ensure the proposal will be a positive character addition to the surrounding area.

Both **Section 3** of the Northern Territory Planning Act and **Schedule 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

There are a number of elements of the locality that either make or contribute to the locality being *harmonious, pleasant or enjoyable*, including:

- The ability for higher level apartments to obtain ocean views;

¹ Refer Development Consent Authority DP14/0362 Notice of Consent, 15 May 2014

- The established and visually prominent nature of landscaping and vegetation within the locality, including landscaping in both the public and private realms;
- The number of modern, attractive (subjective) and relatively well-kept buildings; and
- The nature of land uses in the immediate locality being predominantly residential, reflecting the residential / CB fringe zoning of the surrounding area.

Whilst the development seeks to minimise amenity impacts to surrounding premises, any impact must be taken in the context of development *reasonably anticipated*, and in this context must not be *unreasonable*. It is acknowledged that the development of two ten-storey buildings on a currently vacant site will alter the nature of the locality, and in some respects may impact on amenity (for example restricting views to existing mid-rise development). However, given the design approach towards the site layout, the building and landscape design, and development that could be reasonably anticipated under the relevant policy, the proposed development suitably *minimises* any unreasonable amenity impacts.

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

The predominance of accommodation and residential land uses reflects the residential nature of the surrounding locality, and minimises the potential for land use conflict. The proposed food premises will function in a manner compatible with surrounding residential land uses, and is suitably sized and located to ensure land use conflicts are avoided.

d) avoids adverse impacts on the local road network;

The proponent has undertaken a number of traffic studies relating to previous iterations. The nature of vehicle movements within the surrounding road network since 2015 does not alter the outcome of those studies, which confirm the surrounding road network can accommodate an increase in traffic as a result of the (previously approved) development. The reduced scale and apartment yield of the current proposal confirms the existing road network is capable of accommodating the development.

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

The development provides clear and legible shared pedestrian and bicycle access points to all frontages, with a raised walkway leading to the lift and stair wells for each of the buildings. Secure bicycle storage and end of trip facilities are provided on the ground floor, and the Packard Place footpath provides direct access to bus routes along Mitchell Street, with the nearest bus stop approximately 215 metres walking distance from the subject land.

f) allows passive surveillance of public spaces.

The provision of building entry points to Smith Street, Packard Place and Montoro Court, along with the food premises and alfresco dining area to Smith Street and Montoro Court, and common garden area fronting Smith Street and Packard Place, will provide ample opportunity for passive surveillance of adjacent public space.

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

The subject land and development thereof are unlikely to impact on ecologically important areas given the urban nature of the site and locality.

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

Development is consistent with surrounding land use and development, and will rely on reticulated services in accordance with the requirements of the Power and Water Corporation.

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 proposed development will be connected to reticulated power, water, sewerage, drainage and telecommunications infrastructure in accordance with the requirements of relevant service authorities.

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.

5.5 Part 5 – General Development Requirements

5.5.1 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 per the following table.

| Use | Component | Area / Number | Car Parking Rate (C5.2.4.1) | Required Car Parking | Car parking provided |
|----------------------|---|-------------------|-----------------------------|----------------------|----------------------|
| Serviced Apartments | Apartments | 47 | 1/apartment | 47 | 189 |
| | Areas not within apartments (gym and reception) | 146m ² | 3/100m ² | 4.38 | |
| Dwellings-Multiple | Dwellings | 44 | 2/dwelling | 88 | |
| Food Premises - cafe | Indoor | 230m ² | 6/100m ² NFA | 13.8 | |
| | Alfresco | 100m ² | 6/100m ² | 6 | |
| Total | | | | 160 (159.18) | |

The proposed development provides a surplus of car parking relative to the requirements of **Clause 5.2.4.1**.

5.5.2 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 vehicle ramps and minor 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.

- b) *be sealed and well drained;*

All car parking areas will be fully sealed and drained.

- 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;*

Two vehicle access points are provided, avoiding the need for direct access to Smith Street, distributing vehicle traffic between two intersections, and providing easy access and avoiding the need for turning areas to accommodate service vehicles. In this case, the provision of two access points is appropriate.

- 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;*

Building setbacks and the low-speed nature of Packard Place and Montoro Court ensure site lines achieve the minimum requirements.

- 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;*

With the exception of the basement car parking areas, all car parking is situated more than 3 metres from the site boundaries. No car parking is visible from the public realm, and landscaping is included to all setbacks.

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

With the exception of small-car parking bays 35-38 in 3F, 36-39 in 2F and 30-33 in 1F, all car parking spaces meet or exceed the minimum dimension requirements of 2.5 by 5.5 metres. Small-car bays have a length of 5.1-5.5 metres and a width of 2.425-2.625 metres. Given the number of parking spaces provided, it is reasonable to assume a proportion of vehicles accommodated within the basement levels will be small cars and able to utilise the aforementioned bays. The provision of 12 small-car bays is well below the surplus of 29 bays, and thus the car parking layout will remain functional for the required range of vehicles. Accordingly the proposed variation is appropriate.

- 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.

5.5.3 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 000m² or less; and*
 - ii. *1 loading bay for every 5000m² of net floor area or part thereof in excess of 10 000m²; 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 2000m² of the total net floor area.*
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 proposed development does not include any of the land uses referred to in **Clause 5.2.5**, however a loading bay is provided for functional purposes and service vehicles, consistent with the dimension requirements in **Clause 5.2.5**.

5.5.4 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**;

Landscaping is provided in the building setback areas and communal open space.

- b) it maximises efficient use of water and is appropriate to the local climate;

Landscaping includes planting and built form landscape components, with an appropriate selection of species ensuring suitability to local climate conditions.

- c) it takes into account the existing streetscape, or any landscape strategy in relation to the area;

The landscape design seeks to improve the interaction of the site with the public realm, with the majority of the Smith Street boundary being landscaped and open, providing improved continuity of landscaping and open space together with surrounding land also fronting Smith Street.

- d) significant trees and vegetation that contribute to the character and **amenity** of the **site** and the streetscape are retained;

The site has previously been cleared of significant vegetation, however the planting schedule includes the retention of existing street vegetation and the provision of new feature trees.

- e) energy conservation of a building is assisted having regard to the need for shade and sunlight at varying times of the year;

New shade trees strategically located ensure an appropriate balance of shading and access to sunlight.

- f) *the layout and choice of plants permits surveillance of public and communal areas; and*

Planting along the Smith Street and Packard Place frontages largely consists of shade and feature trees, ensuring an attractive site presentation whilst enabling passive surveillance.

- g) *it facilitates on-site infiltration of stormwater run-off.*

The relatively low extent of site coverage and high proportion of landscaped areas facilitate on-site infiltration.

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.*

Total landscaped area (1,920m²) is equivalent to 51% of the site area, well above the minimum 30% required.

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.

5.5.5 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 directly abuts land in Zone HR to the south-west, however the proposed development consists of two residential buildings. Accordingly **Clause 5.2.7** is not applicable.

5.6 Specific Development Requirements

5.6.1 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 | 47 apartments | 15.66 + bicycle parking areas in apartments | <50 staff | 2 showers | 31 Spaces | 2 Showers |
| Dwellings-Multiple | 44 dwelling | 14.66 + bicycle parking areas in apartments | | | | |
| Ancillary (non-residential – Food Premises) | 330m ² | 1.1 | | | | |
| Total | | 31.42 | | | | |

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

- c) *where secure parking is provided, provide e-bike charging facilities, as necessary;*
- d) *not require access via steps;*
- e) *be protected from the weather;*
- f) *enable the wheels and frame of a bicycle to be locked to the device without damaging the bicycle;*
- g) *be located outside pedestrian movement paths;*
- h) *be easily accessible from the road;*
- i) *be arranged so that parking and manoeuvring motor vehicles will not damage adjacent bicycles;*
- j) *be protected from manoeuvring motor vehicles and opening car doors;*
- k) *be as close as possible the cyclist's ultimate destination;*
- l) *be well lit by appropriate existing or new lighting; and*
- m) *be sympathetic in design, material and colour to compliment the surrounding environment.*

Bicycle parking and storage is integrated into the ground floor layout of the proposal in a secure facility, with capacity for 31 bicycle. Additional bicycle storage is shown in the entry foyers of 2-bedroom apartments, for a total of 59 bicycle spaces. Bicycle storage is protected and easily accessible with appropriate security levels, includes storage racking, is separate from vehicle movement and parking areas and is integrated into the design of the 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.*

Storage will be provided in the EOT and bicycle storage areas in accordance with the above requirements.

- 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.*

A minimum of 2 showers will be provided in the EOT 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.*

EOT facilities are directly adjacent the bicycle storage, will provide separate male and female facilities and incorporate changing space.

5.6.2 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*
 - a) *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;*

- b) has a cumulative **floor area** of 15m² or less;
- c) is 2.5m or less in height;
- d) has no openings in walls that are less than 1.5m from a lot or unit title; and
- e) 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 | Building 1 Proposed Setback (Compliance / Non-Compliance) | Building 2 Proposed Setback (Compliance / Non-Compliance) |
|--|---|---|---|
| Primary Street (Smith Street) | 7.5m | 0m (-7.5m) | >20m (>12.5m) |
| Secondary Street (Montoro Court) | 2.5m | 5.3m (+2.8m) | NA |
| Secondary Street (Packard Place) | 2.5m | NA | 3.64m (+1.14m) |
| Side (Boundary running NE-SW adjacent lot 1289) | 3m (habitable rooms windows and balconies) / 1.5m (non-habitable) | NA | NA / 2.14m (+0.64m) |
| Rear (Adjacent lot 1289) | 3m (habitable rooms windows and balconies) / 1.5m (non-habitable) | NA / 7m (+5.5m) | NA |
| Rear (Adjacent lot 1297) | 3m (habitable rooms windows and balconies) / 1.5m (non-habitable) | NA | 10.3m (+6.7m) / 3.145m (+1.645m) |

Both building components exceed the setback requirements of **Clause 5.4.3** to all boundaries with the exception of the Building 1 boundary setback to Smith Street, ensuring the proposed structures are consistent with the purpose of **Clause 5.4.3** in that the development:

- 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.*

Building 1 seeks to retain the 0 metre setback to the Smith Street boundary approved previously.

Whilst below the required 7.5 metre setback, the significant distance (approximately 12 metres) between the Smith Street verge and the property boundary, are sufficient circumstances to warrant consideration of a setback reduction. Administration **subclause 1** provides guidance on variations to **Clause 5.4.3**:

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.*

The Zone Purpose is considered in **Section 6.4** above. With regard to the purpose of **Clause 5.4.3**, the setback variation will not cause or contribute to overlooking of adjoining properties, enables a narrow building width to Smith Street (and large setback to Building 2) thus minimising adverse effects of building massing, and is adjacent Smith Street and the open car parking area, providing ample opportunity for breeze penetration and circulation. A number of buildings fronting Smith Street in the locality adopt a reduced front setback, including lot 6667, 7573 diagonally opposite the subject land, 2432 and the Kim on Smith Building on the corner of Smith Street and Harriet Place. The existing variations in built form, including the nature of the locality influenced by buildings in Zone CB in immediate proximity to the subject site, ensures the reduced setback is not out character with the streetscape and surrounding development given the location and scale of the proposed buildings, and impact on nearby property.

5.6.3 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.

Whilst the proposed buildings are connected and may be considered a single building, given the purpose of **Clause 5.4.3.1** and the separation between solid elements of each building component, it is considered appropriate to consider the setback requirements under **Clause 5.4.3.1** as if they were separate buildings.

| Boundary | Required Setback | Building 1 Proposed Setback | Building 2 Proposed Setback | Compliance / Non-Compliance |
|--|---|-----------------------------|-----------------------------|---|
| Primary Street (Smith Street) – Building length to affected boundary = 19.7m | <ul style="list-style-type: none"> • GL-L3 – 8m • L4;L5;L6 – 9.5m; 10.5m; 10.5m • L7-L9 – 10.5m | 0m | NA | NA / GL-L9 does not comply |
| Secondary Street (Montoro Court) – Building 1 length to affected boundary = 40.5m | <ul style="list-style-type: none"> • GL-L3 – 5.5m • L4;L5;L6 - 7m; 8.5m; 10m • L7-L9 – 10.5m | 5.3m (minimum) | NA | NA / GL-L9 does not comply |
| Secondary Street (Packard Place) - Building 2 length to affected boundary = 18.3m (excludes walkway as “open to affected boundary”) | <ul style="list-style-type: none"> • GL-L3 – 3.0m • L4;L5;L6;L7;L8 – 4.5m; 6m; 7.5m; 9m; 10.5m • L9 – 10.5m | NA | 3.00m (minimum) | GL-L3 complies / L4-L9 does not comply |
| Side (Boundary running NE-SW adjacent lot 1289) – building length to affected boundary = less than 18m | <ul style="list-style-type: none"> • GL-L3 – 1.5m • L4;L5;L6;L7;L8 - 3m; 4.5m; 6m; 7.5m; 9m • L9 – 10.5m | NA | 2.14m | GL-L3 complies / L4-L9 does not comply |

| | | | | |
|--|---|----|-----------------------------|---|
| Rear (Adjacent lot 1289) – building length to affected boundary = 23m | <ul style="list-style-type: none"> • GL-L3 – 2.5m • L4;L5;L6;L7;L8 – 4m; 5.5m; 7m; 8.5m; 10m • L9 – 10.5m | 7m | NA | GL-L6 complies / L7-L9 does not comply |
| Rear (Adjacent lot 1297) – Building length to affected boundary = 32.4m | <ul style="list-style-type: none"> • GL-L3 - 5.5m (habitable rooms windows and balconies) / 4m (non-habitable) • L4;L5;L6 - 7m; 8.5m; 10m • L7-L9 – 10.5m | NA | GL – 3.145m UL’s – 10.3m | L1-L6 complies / GL; L7-L9 does not comply |

Clause 5.4.3.1 requires additional setbacks to “Ensure that **residential buildings** respond to the potential adverse effects of building massing and visual bulk when viewed from adjoining land and the street.” The level of compliance with **Clause 5.4.3.1** can be broken into three groups:

- **Complying / Exceeding** - The ground, first, second and first levels of building 2 to Packard Place and the NE-SW side boundary (adjacent lot 1289); Levels 1-6 of building 2 to the rear boundary (adjacent lot 1297); and the ground and levels 1-6 of building 1 to the rear boundary (adjacent lot 1289);
- **Minor Non-Compliance** – Ground level and levels 1, 2 and 3 of building 1 to Montoro Court. The length of the building requires a setback of 5.5 metres whereas 5.3 metres is proposed. The setback variation is negligible, and the varied building façade (considered in further detail below) ensures adverse impacts of building massing and visual bulk are mitigated.

Ground level and levels 7, 8 and 9 of building 2 to the rear boundary (adjacent lot 1297). The length of the ground level (a solid wall housing the air conditioning plant and basement car parking ramps) requires a 4 metre setback, whereas 3.145 metres is proposed. This elevation includes feature screening to the adjacent lot (evident in PR17), with a single pitch roof sloping down towards the outer edge of the building, with landscaping between the subject land and the adjacent boundary. The design, single storey nature and provision of landscaping ensure the adequately mitigates the adverse effects of building massing and visual bulk, and the variation is considered appropriate.

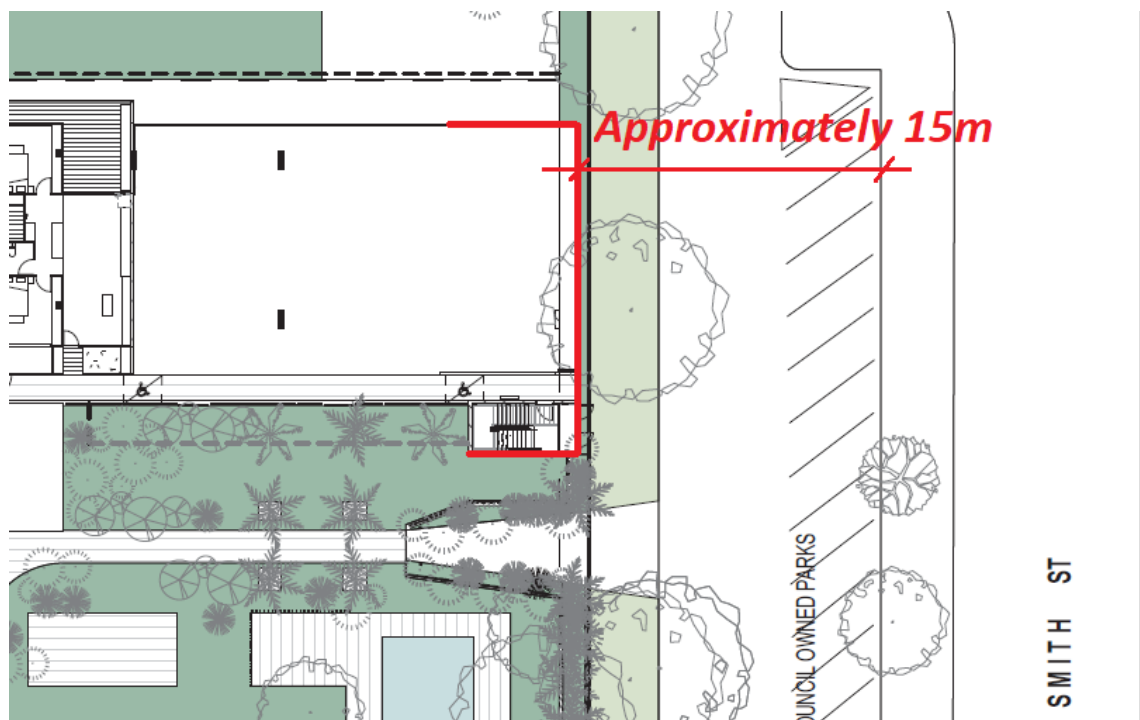
The upper levels of building 2 are setback 10.3 metres at the nearest point, whereas the required setbacks range between 5.5 metres and 10.5 metres (for levels 7, 8 and 9). The variation is considered minor, and the articulation and variations of the façade ensure the intent of the clause is met; and

- **Non-Complying** – All levels of building 1 to both the Smith Street and Montoro Court frontages; levels 4-9 of building 2 to Packard Place; levels 7, 8 and 9 of building 1 to the boundary shared with lot 1289, and levels 4-9 of building 2 to the boundary shared with lot 1289.

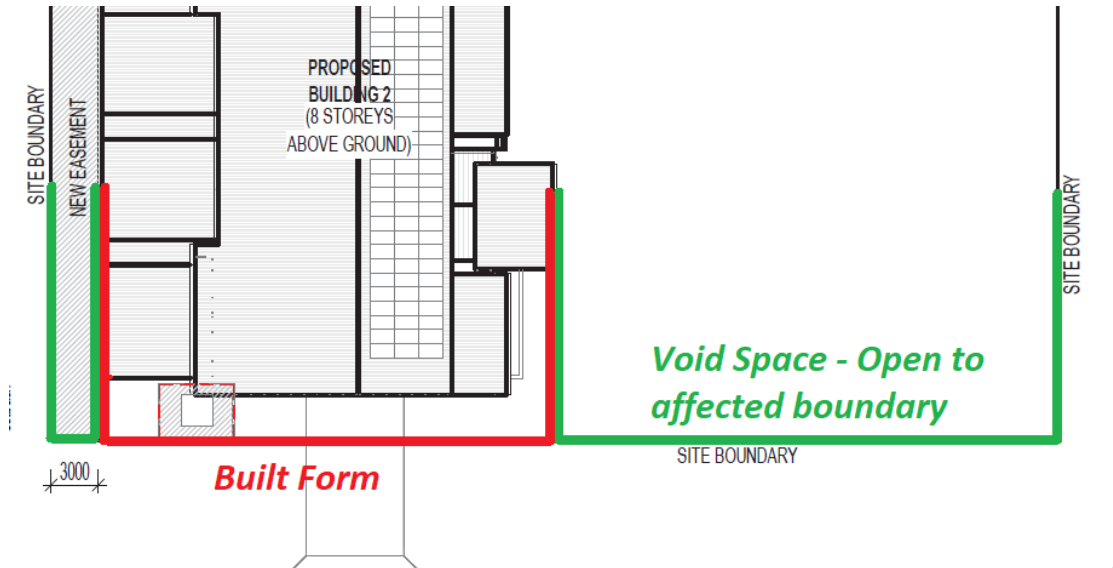
As distinct from **Clause 5.4.3**, which imposes setback requirements in order to achieve a range of intended outcomes, **Clause 5.4.3.1** is solely focussed on building massing and visual bulk, and ensuring any visual bulk or massing impacts caused by longer or taller buildings are offset through the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

Notwithstanding the proposal seeks variations to the additional setback requirements per **Clause 5.4.3.1** to all boundaries, the avoidance of adverse massing or bulk impacts relies on siting and design measures consisting of:

- The separation of building 1 to the Smith Street road corridor due to the provision of public car parking within the Smith Street road reserve;

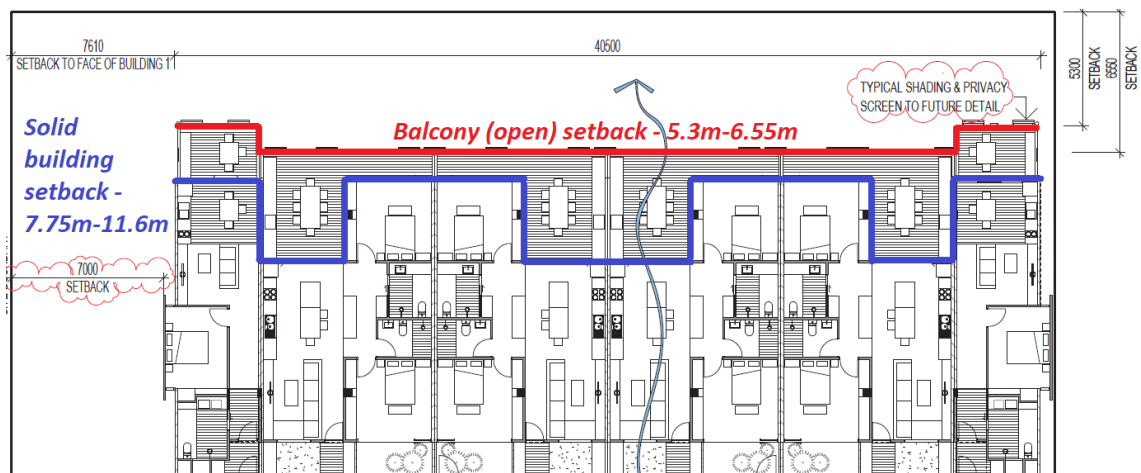


- The relatively narrow tower component and high proportion of void space to built form presenting to the Packard Place frontage, ensuring the design mitigates the adverse effects of building massing and visual bulk due to non-compliance with **clause 5.4.3.1**;



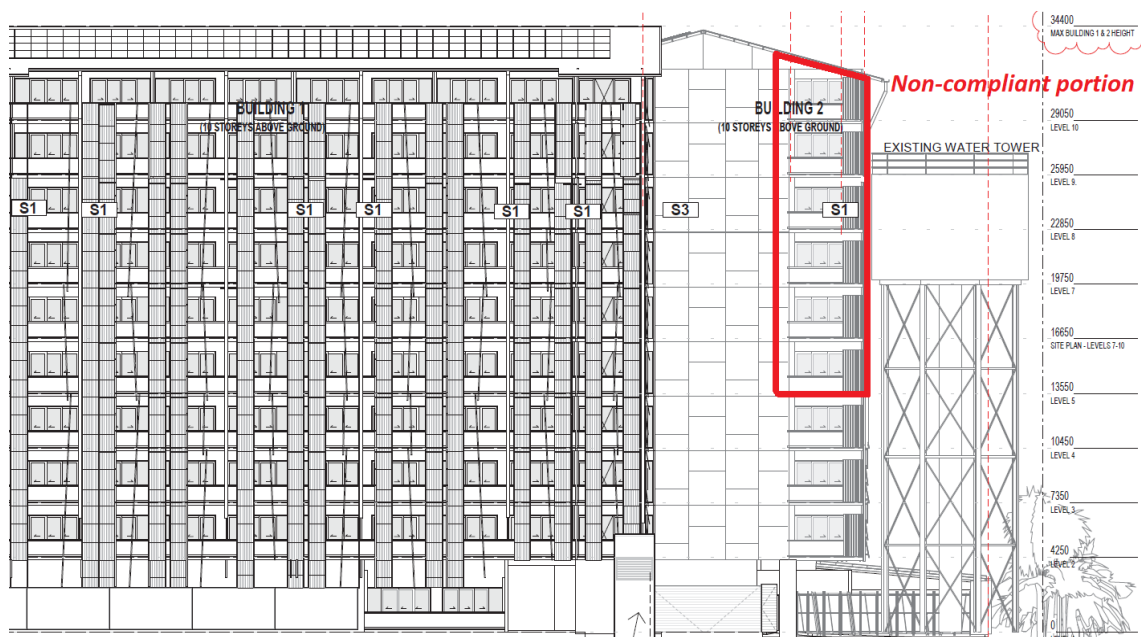
PACKARD PI

- With respect to the building 1 setback to Montoro Court, extensive variations, projections and insets to the solid element setbacks within all facades evident in the image to the right, mitigating continuous walls and setbacks. Significant variations in building elevation design, again evident from the images below (taken from **Attachment A**). The use of projections, 'lightweight' building materials, varied colours and finishes, voids and fenestration all serve to minimise adverse impacts of visual bulk and building massing;





- The setback variation from building 1 to the side / rear boundary (adjacent lot 1289) is limited to levels 7, 8 and 9 only, with ground level and levels 1-5 providing a greater setback than required (either by **Clause 5.4.3** or **5.4.3.1**) by between 1.5 and 4.5 metres, and level 6 complying with the setback requirements. The additional setback provided to lower levels offsets the larger setback to the upper three levels, and ensures adverse massing and bulk impacts as a result of the variation are mitigated; and
- The nature of the setback encroachment from building 2 to the side / rear boundary (adjacent lot 1289) is such that building 2 overlaps and is adjacent the boundary for a distance of approximately 5 metres. At eye line from the adjacent 2-storey units (within 1289), the first four storeys comply with the setback requirements. Above level 3, the setback variation is between 0.86m and 8.36m, however the nature of the overlap and the provision of open (albeit screened) balconies within the setback area ensures that the adverse effects of building massing and visual bulk that may arise from non-conformity are mitigated.



Administration **subclause 1** of **Clause 5.4.3.1** provides that *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.* The purpose of **Clause 5.4.3.1** seeks to ensure that **residential buildings** respond to the potential adverse effects of building massing and visual bulk when viewed from adjoining land and the street.

It is necessary to consider the background relating to the evolution of the current wording in **Clause 5.4.3.1**. Prior to December 2015, the wording (in what was **Clause 7.3.1** of the Northern Territory Planning Scheme 2007) differed from the current Scheme (emphasis added):

*The purpose of this clause is to ensure that residential buildings **are located** so as to minimise any adverse effects of building massing and visual bulk when viewed from adjoining land and the street.*

A setback reduction to **Clause 7.3.1** of the Scheme was tested in the Northern Territory Civil and Administrative Tribunal in September 2015 (White & Ors V Development Consent Authority & Tomazos Property Pty Ltd ATF Tomazos Property Discretionary Trust, NTCAT 010[2015]).

The Tribunal found that due to the sole function of **Clause 7.3.1** being on the *location* of buildings, design measures were insufficient to justify variation.

In December 2015, Planning Scheme Amendment 424 was issued by the Planning Minister, including a change to remove the reference to *location*, and instead require a *response*. The amended wording of **Clause 7.3.1** provided (emphasis added):

*The purpose of this clause is to ensure that residential buildings **respond** to the potential adverse effects of building massing and visual bulk when viewed from adjoining land and the street.*

(and)

*The consent authority may consent to a development that is not in accordance with sub-clause 2 if it is satisfied that the **design of the development** adequately mitigates the adverse effects of building massing and visual bulk that may arise from nonconformity with sub-clause 2.*

The Minister's decision in issuing Amendment 424 provides:

*I have amended the NT Planning Scheme by Revising **Clause 7.3.1** to allow for design responses and to give the consent authority direction as to when consent can be granted.*

*The revision to **Clause 7.3.1** is necessary to afford the consent authority the discretion to vary the prescriptive requirements of these clauses when a design method is shown to successfully reflect the purpose statement given for each clause.*

Whilst the above clearly relates to the NT Planning Scheme 2007, it is notable that the 2007 Scheme wording of the clause (as amended in accordance with Amendment 424) has been carried over to the Planning Scheme 2020. Clearly, the intention of the clause in its revised (ie post 2015) form, is to enable a design response notwithstanding the location of the building.

All of the aforementioned design measures *respond* to adverse effects of building massing and visual bulk:

The DP15/0400 Notice of Consent (**Attachment B**) provided the following in relation to (at the time) **Clause 7.3.1**:

"As considered in the previous reasons, the design maintains a lightweight architectural appearance with sufficient visual interest provided through the use of balconies, feature cladding and screening materials. The combination of the building heights varying between 6 and 13 storeys also provides interest. The overall design is considered to achieve the purpose of the clause in preventing any adverse effects of building massing and visual bulk when viewed from adjoining land and the street."

Whilst some of the specific components referred to above have been altered (for example the building heights are now 10 storeys and 2 buildings are proposed, rather than the 3 approved), the fundamental design components are retained. Buildings 1 and 2 retain a significant separation between their respective solid walls, the Smith Street and Packard Place setbacks are significantly varied between buildings 1 and 2, and there is significant void space and landscaping at ground level.

The overall design continues to rely on 'tropical' architecture, with extensive use of wall openings, balconies, lightweight cladding, awnings and shade structures to 'minimise' the visual impact of the proposed buildings. Accordingly, and consistent with the previous approvals, the revised proposal employs layout and design measures to minimise adverse effects of building massing.

5.6.4 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.*

Clause 5.4.3.2 requires separation between residential buildings provided on the same site. For the purpose of **Clause 5.4.3.2** the Planning Scheme is likely to consider the combined reliance on a single lift shaft and interconnecting walkways between buildings 1 and 2 at all levels contributing to a single residential building with two distinct components. The definition of *residential building* in **Schedule 2** of the Planning Scheme, along with the findings of Dr John Allan Lowndes, Northern Territory Lands, Planning and Mining Tribunal in *Jan Salmon Consulting and DCA*, 31 October 2011, reinforce the proposed development as connected *residential building* for the purpose of **Clause 5.4.3.2**.

5.6.5 Clause 5.4.6 – Private Open Space

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.

Private open space for all dwellings (other than the single ground level accessible dwelling in Building 1) is provided in the form of balconies as an extension of the primary internal living areas within each apartment. The ground level 2-bedroom dwelling is provided with an external courtyard of 53.055m² (6.55 by 8.1 metres), in addition to the undercover verandah area. The ground level apartment includes open space areas with sufficient permeability and access to sunlight, as well as space for landscaping and tree planting. Balconies are appropriately sized to provide for domestic purposes and provide a direct outlook for internal dwelling areas.

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 **dwellings-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 as follows:

- for all apartments – minimum 12m² with no dimension less than 2.8 metres; and
- for the ground level accessible dwelling:
 - 45m² directly open to the sky, with no dimension less than 1.5 metres; and
 - 24m² all or partially covered, with no dimension less than 4 metres.

The proposal includes the following private open space areas:

- 1-bedroom dwellings – 10m² with dimensions of 2.55 by 3.92 metres;
- 2-bedroom dwellings – 19.44m² with dimensions of 3.85 by 5.05 metres and an additional 1.2 metre wide area for a total of 23m²;
- 3-bedroom dwellings – 16m² with dimensions of 3.8 by 4.25 metres; and
- Ground level 2-bedroom dwelling – Area A of 45.36m² with dimensions 5.6 by 8.1 metres; Area B of 76m² with minimum dimension of 7.75 metres.

With the exception of the 1-bedroom dwellings, all dwellings comply with the required private open space. 1-bedroom dwellings are provided with 10m² balconies (rather than 12m² required), with a minimum dimension of 2.55 metres (rather than 2.8 metres required). Of the 18 1-bedroom dwellings proposed, 9 will be *serviced apartments*, for which a reduced area of private open space is appropriate under administrative **subclause 3**, given the over-provision of communal open space relative to the requirements of **Clause 5.4.7**. A reduced area for the 9 1-bedroom residential apartments is appropriate in the context of administrative **subclause 1**. Single bedroom dwellings are likely to have a lower number of occupants and thus reduced demand for 12m² of private open space. The over-provision of communal open space ensures:

- Open space of adequate size to provide for domestic purposes, appropriately sited to provide an outlook for the dwelling;
- Private open space appropriate to the site given the extent of communal open space available, and the proposed features and facilities therein; and
- An appropriate building appearance consistent with the additional (wider) balconies provided in 2 and 3-bedroom apartments.

Accordingly, the proposed private open space areas are appropriate.

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

All balconies and private open space areas are directly accessible from the main living areas within the respective dwellings.

- 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 face road frontages and / or are consistent with the setback requirements of **Clause 5.4.3**, which seeks to (among other objectives) “avoid undue overlooking of adjoining properties.”

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

The ground level apartment includes at least 53m² private open space as permeable space.

- e) *include at least one area of at least 5m², with no dimension less than 1.5m, for the deep soil planting of trees and vegetation for shade or screening; and*

The ground level apartment includes at least 42m² private open space unencumbered by built form above or the basement below and thus available for deep soil planting.

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

The ground level apartment includes private open space fronting Montoro Court, providing visual interest and variation in the sites’ boundary frontage.

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.*

Ground level private open space will be fenced and screened with suitable landscape species.

5.6.6 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.

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 communal garden covers 1,510m², equivalent to 38% of the site area.

- 4. The design of the communal open space should address*
 - a) the overall dwelling density proposed for the site;*
 - b) the proximity and quality of alternative private or public open space;*
 - 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;*
 - d) the type of activities to be provided for;*
 - e) the projected needs of children for outdoor play;*
 - f) the provision of landscaping and shade;*
 - g) safety issues including lighting and informal surveillance;*
 - h) on-site traffic circulation; and*
 - i) future maintenance and management requirements*

The communal gardens include landscaping, shaded pavilions, swimming pool, BBQ facilities, walkways and a children's play area.

The gardens more than double the minimum area provision for communal open space, providing a design offset to the residential buildings and ensuring an attractive and high quality site and landscape design. The gardens are suitably separated from private balconies on the upper levels, provide for a range of activities for a range of occupants, including landscaping and shade, facilitate informal surveillance and user security, facilitate on-site pedestrian circulation and are separated from vehicle movements, and provide for future maintenance and management requirements.

5.6.7 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;*

Residential elevations minimise the extent of openings subject to direct western sunlight, and ensure appropriate shading is provided to openings.

4. *minimise expanses of walls by varying building heights, building setbacks and façades;*

Distinct building components, streetscape activation, fenestration, use of building projections and varying façade designs avoid any expanse of blank walls.

5. *locate air conditioners where they are accessible for servicing;*

Air conditioning plant is located at ground level easily accessible in dedicated enclosures.

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

Service and air conditioning equipment will be appropriately screened.

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

The proposal ensures living room windows adhere to setback requirements and places the primary living areas of balconies further than 6 metres from adjoining site boundaries.

- 8. locate bedrooms and private open spaces away from noise sources;*

Bedrooms are located away from potential noise sources, with the residential levels suitably separated from street-level noise sources and buffered from car parking levels.

- 9. control its own noise sources and minimise the transmission of noise between dwellings;*

Noise transmission between dwellings will be suitably controlled, primarily through construction requirements (fire rating) to enable unit titling.

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

The separation of residential development provides sufficient buffering between traffic and street-level noise. The subject land is not likely to be overly sensitive to noise from airport flight paths.

- 11. balance the achievement of visual and acoustic privacy with passive climate control features;*

Shade awnings, large openings and balconies and access to prevailing breezes will aid passive climate control.

- 12. allow breeze penetration and circulation;*

The inclusion of openings facing prevailing breezes from the north-west and south-east allows access to flow-through ventilation.

- 13. minimise use of reflective surfaces; and*

No reflective surfaces are proposed.

- 14. provide internal drainage of balconies and coving on the edge of balconies.*

Balconies will be internally drained and coving provided where required.

5.6.8 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 total floor area enclosed floor area for both buildings is 6,899m², equivalent to 173% of the total site area, thus a plot ratio of 1.73:1, well below the maximum plot ratio of 3. Whilst plot ratio excludes areas set aside for car parking, the provision of all (bar 5 accessible spaces) parking spaces in three basement levels ensures car parking levels do not further contribute to building massing. The plot ratio well below the required maximum ensures a development, in terms of building massing, compatible with adjacent and nearby development.

5.6.9 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.*

Requirements

2. *Preserve vistas along streets to buildings and places of architectural, landscape or cultural significance.*
3. *Be sympathetic to the character of buildings in the immediate vicinity.*
4. *Minimise expanses of blank walls.*
5. *Add variety and interest at street level and low passive surveillance of public spaces.*
6. *Maximise energy efficiency through passive climate control measures.*
7. *Control on-site noise sources and minimise noise intrusion.*
8. *Conceal service ducts, pipes, air conditioners, air conditioning plants etc.*
9. *Minimise use of reflective surfaces.*
10. *Provide safe and convenient movement of vehicles and pedestrians to and from the site.*
11. *Provide convenient pedestrian links (incorporating access for the disabled) to other buildings and public spaces.*
12. *Provide protection for pedestrians from sun and rain.*
13. *Provide for loading and unloading of delivery vehicles and for refuse collection.*
14. *Provide landscaping to reduce the visual impact and provide shade and screening of open expanses of pavement and car parking.*
15. *Provide facilities, including public toilets, child minding facilities, parenting rooms and the like where the size of the development warrants such facilities.*
16. *Provide bicycle access, storage facilities and shower facilities.*

The extent of commercial development within the subject land is limited to the proposed *food premises*. In relation to the requirements of **Clause 5.5.3**, the proposed *food premises* will not unreasonably compromise amenity or vistas, is sympathetic to the character of the surrounding locality, minimises blank walls, adds variety and interest at street level, controls on site noise sources, does not compromise pedestrian access and appropriately integrates with site facilities such as landscaping and bicycle parking.

The *Community Safety Design Guide* seeks to ensure development considers the principles of *Community Protection through Environmental Design* (CPTED). In relation to the guide, the proposed development provides opportunities for passive surveillance through ground level active frontages (alfresco dining areas) and glazing to internal areas. The proposal limits opportunities for entrapment and lighting will ensure the avoidance of dark zones. Residential car parking areas are protected and pedestrian access is within view of the communal areas, office and reception.

5.6.10 Clause 5.5.11 – Food Premises

Purpose

Ensure that the operation of a **food premises**:

- a) provides an active interface to the public domain and contributes to the interest and diversity of the locality;
- b) minimises adverse impacts on the **amenity** of the locality; and
- c) is designed for the safety of patrons.

Administration

1. This clause applies to **food premises-café/take away, food premises-fast food outlet, and food premises-restaurant.**
2. The consent authority may **consent** to a **food premises** that is not in accordance with sub-clauses 3-10, 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 surrounding **amenity**.

Requirements

3. Incorporate appropriate building and landscape design to ensure that there is no unreasonable loss of **amenity** for adjoining and nearby property.

The proposed *food premises* is a relatively minor, complimentary addition to the *residential building*, providing additional amenity and recreational opportunities to the subject land and surrounding locality. The premises is appropriately incorporated into the overall building and landscape design, and together with the use will ensure no unreasonable impact on amenity.

4. 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 *food premises* is not adjacent a boundary shared with a residential zone.

5. *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.*

Lighting will be internal / low level lighting only, and will not be intrusive to surrounding land or the public realm.

6. *Manage noise emissions so that they will not have an unreasonable impact on the **amenity** of the locality.*

The proposed food premises includes both indoor and outdoor areas, allowing adaptability to ensure noise emissions can be controlled, and is suitably sized and located to ensure noise emissions will not impact on the amenity of the locality.

7. *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 alfresco area fronts Montoro Court, ensuring physical separation to the nearest surrounding dwellings, with landscaping further ensuring noise and privacy impacts will be negligible.

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

Dedicated waste storage and collection areas are provided at ground level.

9. *The maximum **net floor area** of a **café/take away** should be 80m².*

The proposed café/take-away has a net floor area of 230m², with an additional 100m² alfresco deck area. Whilst above the floor area per **subclause 9**, the proposed café is intended to function as a dine-in café with take-away options (eg coffee and lunch options). As such, the use is consistent with both *café/take-away* and *restaurant* uses, noting no such area restrictions exist for *food premises-restaurant*, which is similarly *merit assessable* in Zone TC. Given the size of the subject land, existing TC zoning, nature of the intended use and location in the context of the surrounding locality, the proposed food premises:

- a) provides an active interface to the public domain (Montoro Court) and contributes to the interest and diversity of the locality;
- b) minimises adverse impacts on the **amenity** of the locality through siting adjacent street frontages at the Smith Street end of the site; and
- c) Ensures an appropriate level of safety for patrons and surrounding residents.

The proposed *food premises* is therefore considered appropriate.

10. *If a **fast food outlet** is adjacent to land in Zones LR, LMR, MR or HR, the development is to be set back 5m from all side and rear boundaries and landscaped to a minimum depth of 3m to provide a visual screen.*

No fast food outlet is proposed.

6.0 Section 46(3)(b) – Interim Development Control Order

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

7.0 Section 46(3)(c) – Referral to the NT EPA

Section 48 of the *Environmental Protection Act 2019* (EPA Act) requires a project be referred to the NT Environmental Protection Authority (NT EPA) for a standard assessment if it has the potential to have a significant impact on the environment or meets a referral trigger. Formal consideration under the EPA Act is not required, and the proponent is aware of their obligations under the Waste Management and Pollution Control Act.

8.0 Section 46(3)(d) – Merits of Proposed Development

The proposed development will increase the provision and range of short-term and residential accommodation available within immediate proximity of the Darwin CBD. The redevelopment of the site will enable the reuse of vacant land, and will appropriately integrate with the surrounding locality.

9.0 Section 46(3)(e) – Physical Characteristics and Suitability of the Land

A detailed description of the subject land and locality are contained within **Sections 3** and **4** of this report. The site is suitably accessible and serviced, with any necessary upgrades able to be carried out without major infrastructure works. The land is zoned in anticipation of such development, and the unique and ‘tropical’ design ensures the development is suitable in the context of the locality.

10.0 Section 46(3)(f) – Public Facilities and Open Space

The proposal includes communal areas and facilities available to residents and guests. Extensive public facilities are provided in the Darwin CBD, located a short distance south-west of the site, with a number of public open space areas including Bicentennial Park and Harriet Park located a short walking distance from the subject site.

11.0 Section 46(3)(g) – Public Utilities and Infrastructure

The site is currently serviced by mains power, water and sewer, and access provided through the surrounding road network. Any upgrades to service capacity to accommodate the proposed development can occur as part of the construction process, in accordance with the requirements of the service providers.

12.0 Section 46(3)(h) – Impact on Amenity

The suitability of built form in the context of existing and reasonably anticipated amenity is considered in **Section 6** of this report. The varied built form design and dimensions, location of buildings, significant proportion of landscaping and open space, and the varied nature of built form within the locality, mean that the proposed development will occur without an unreasonable impact on the amenity of the subject land, adjoining land, and land within the immediate and greater locality.

13.0 Section 46(3)(j) – Benefit/Detriment to Public Interest

The proposal will increase the range of accommodation available within immediate proximity to the Darwin CBD, and enable an increase in employment through the operation of the serviced apartments. There is unlikely to be any detriment to public interest.

14.0 Section 46(3)(k) – Compliance with the Building Act

The application does not comprise any form of subdivision. Accordingly, **Section 46(3)(k)** is not applicable.

15.0 Section 46(3)(l) – Development of Scheme Land

The application does not comprise the subdivision of land under a unit titles scheme. Accordingly, **Section 46(3)(l)** is not applicable.

16.0 Conclusion

This application seeks a development permit for the construction of an integrated residential and serviced apartment development, with a small, complimentary food premises, in two ten-storey buildings with three levels of basement car parking. The proposed development largely is an evolution of development outcomes previously approved, albeit at a reduced scale and extent, and considers the requirements of the Northern Territory Planning Scheme 2020. The development seeks to retain a number of Planning Scheme variations previously considered and approved, however this report considers the proposed variations against the requirements of the current Planning Scheme, and concludes that the proposed development is appropriate.



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