

29/03/2026

To **The Chairman** Darwin Division, Development Consent Authority GPO Box 1680
Darwin NT 0801

Attention: Development Assessment Services (DAS) **Email:** das.dipl@nt.gov.au

Application Number: PA2025/0161

Location: Lot 4806 (133) Bagot Road, Ludmilla

Proposal: To rezone from Zone CL (Community Living) to Zone C (Commercial)

PLan submission: 133 Bagot Road Proposal (Lot 4806)

1. Project Overview

Proponent: June D'Rozario & Associates on behalf of Bagot Community Inc.

Location: Part of Lot 4806 (approx. 5.0 ha), 133 Bagot Road, Ludmilla.

Proposed Amendment: Rezone from Zone CL (Community Living) to Zone C (Commercial) to facilitate a 10,650 m² commercial hub including a supermarket, service station, and medical clinic.

2. Review of Key Subjects

2.1 The "Need" Argument

Proponent's Claim: Argues a "catchment gap" exists for supermarket services between Darwin City and Nightcliff.

Strategic Alignment: Claims the site is identified as a potential "secondary activity centre" in the Darwin Mid Suburbs Area Plan.

The proponent uses the signing of a "national operator" as evidence of commercial demand.

"The proponent's logic relies on a circular paradox. By simultaneously seeking to amend the Strategic Framework (DMSAP) and then claiming the rezoning is 'not contrary' to that framework because the framework is being changed, the proponent is effectively bypassing the statutory protections of the Planning Act.

Furthermore, relying on the 2015 Regional Land Use Plan - a high-level document now 11 years old - while ignoring the specific, contemporary protections of the Darwin Mid Suburbs Area Plan is a retrograde step that ignores a decade of urban planning evolution in Darwin."

2.2 The "Threat of Loss" Argument

The proponent claims the community is under "threat of losing its land" due to debt.

PLan believes the lease is held by Bagot Community Incorporated, an Aboriginal-owned corporation that manages the land and the community's affairs. Further that the lease is a Crown Lease in Perpetuity (granted for Aboriginal communal purposes).

If the land is held under a specific title (like the Aboriginal Land Rights Act or a specific Community Living Area lease), the "threat of losing it" to a debt collector is often legally complex or impossible in the way they are implying.

The proponent has not provided any proof of this "threat." If they cannot produce a legal notice of foreclosure or a specific statutory threat, then the entire premise of the "economic necessity" argument could be considered a manufactured crisis.

2.3 Economic Impact Assessment (EIA) Status

The applicant explicitly states that an EIA is not required for this application.

The proponent contends that because the land is already strategically identified for potential retail, the "need" has been pre-established by the government.

This avoids detailed economic modelling that would account for more recent local developments.

2.4 Conflict with the Kulaluk Approval

The approved Kulaluk (Lot 5182) development is less than 1km away and used identical justifications regarding the "void" in services.

2.5 The "Historical Guilt" Diversion

The mention of the Kahlin Reserve, the military hospital, and the reduction from 280 ha to 23 ha is historically accurate, but could be considered legally irrelevant to a 2026 rezoning application.

This is known as an appeal to pity. The proponent is suggesting that because the government "eroded" the land in the past, the government must now "grant" a commercial rezone as compensation.

It is Plan's understanding that planning law is prospective (future-looking), not restorative (righting historical wrongs). The DCA's mandate is to ensure the orderly and

proper planning of the Darwin Mid Suburbs now. Past land excisions do not change the fact that putting two supermarkets 500m apart may cause commercial blight.

2.6 The "Minimal Adverse Effect" Fallacy

The claim that the quality of life for those outside the community "will not be affected" is an extraordinary assertion with zero data to back it up.

- The Traffic Contradiction: You cannot add a 10,650 m² commercial hub and "sizeable parking" adjacent to what may become one of Darwin's most congested intersections (Bagot/Fitzer) and claim there is "minimal effect" on the thousands of commuters who use that road daily.
- By adding lights at the Bagot Community entrance, the proponent is effectively undoing the 40-year-old strategic intent of the Bagot Road flyover, which was to keep this road as a dedicated, high-flow transit corridor.
- The Retail Contradiction: If the "local community" (Ludmilla/Coconut Grove) already has a supermarket approved at Kulaluk, adding a second one nearby doesn't "improve quality of life" - it creates a risk of two half-empty, failing centres.

2.7 Cumulative Traffic Impact

Baseline Data: The proponent relies on 2024 traffic data and a Traffic Impact Assessment (TIA) that focuses on the site in isolation.

Technical Gap: The current TIA does not appear to model the combined traffic load of both 133 Bagot Road and the approved Kulaluk development at the Fitzer Drive/Bagot Road "Black Spot" intersections.

Without accounting for the Kulaluk baseline, the modelling for future grid saturation may be considered flawed.

The most critical part of this text is the admission that the development will lead to ***"an increased risk of intersection crashes."***

It is Plan's belief that in planning law, a development that knowingly increases the risk of crashes is almost impossible to justify.

The Median Width Issue: The report admits the median isn't wide enough to "safely store" turning cars. This is a physical constraint that cannot be fixed by just "painting lines" on the road.

The proponent relies heavily on 2024 traffic data. For a rezone that will not be fully operational for several years, using data that does not account for the Kulaluk "baseline" or 2026/27 growth projections is an unresolved issue.

2.8 Hydrology and Water Management

Infrastructure Constraints: Existing water and sewer piping on-site is "undersized" and requires substantial upgrades.

Stormwater Strategy: Proponents argue minimal impact due to the site's "disturbed nature," but there is no cumulative assessment for the Ludmilla Creek catchment.

There is a lack of detailed modelling showing how 5.0 ha of new impervious surfaces (car parks) will affect local flooding or storm surge vulnerability for the wider Bagot Community.

Engineering Reports: There is a reference to "Engineering Plans and reports". We are unable to locate these.

2.9 "Darwin's Last Living Creek" (The Ludmilla Status)

Recent PPlan reports and Landcare NT data identify Ludmilla Creek (the direct recipient of runoff from 133 Bagot Road) as the last natural, non-channelised tidal creek system in Darwin's mid-suburbs.

Habitat Mosaic: Content from the Environmental Significance of the Kulaluk–Minmarama Lands report identifies this area as a "habitat mosaic." Even if 133 Bagot Road has weeds, it is functionally connected to mangroves, seasonal wetlands, and eucalypt woodlands.

Species Record: Existing records for the immediate Ludmilla/Kulaluk corridor (which includes your site) show over 160 bird species, including:

Predators: Black Kites, Brown Goshawks, and Blue-winged Kookaburras.

Specialists: Paperbark Flycatchers and migratory shorebirds that rely on the intertidal zones just 500m away.

Larrakia Rangers: Work currently being done by the Larrakia Rangers and Landcare NT (backed by the \$3.82M Darwin Harbour Catchment Waterways Project) treats this entire area as a high-priority restoration zone, not a "disturbed" waste site.

2.10. Spatial Relationship

The Lot's Location: The proposed commercial site is on the "high ground" of the community land, immediately adjacent to the Bagot Road / Fitzner Drive corner.

The Creek's Location: Ludmilla Creek sits approximately 600–800 metres to the West/Northwest. The western boundary of the total 23-hectare Bagot Community land actually borders the tidal mangroves and drainage lines that feed directly into the creek system.

The Connection: It is reasonable to assume all stormwater and surface runoff from the 5-hectare commercial development (which will be largely asphalt and rooftops) will

flow westward across the remaining Bagot Community land and discharge directly into the Ludmilla Creek mangroves.

2.11 The "Invisible" Overlays

While the proponent asserts the land is clear, the Northern Territory Planning Scheme 2020 overlays reveal:

Primary Storm Surge Area (PSSA): Large portions of the adjacent Kulaluk lands (Lot 5182)—separated only by the width of Fitzer Drive—are officially mapped within the 100-year PSSA. It is hydrologically improbable that the 133 Bagot site is entirely immune to the same regional surge risks during a major event (e.g., a Cyclone Carlos-scale storm).

Land Subject to Flooding (LSSS): Official Darwin flood mitigation reports identify a "low point" on Bagot Road near this intersection. In major rainfall, runoff from the airport and the Narrows converges here before flowing west toward Ludmilla Creek.

A common developer strategy is to propose filling the 5.0-hectare site to raise it above the flood level. However, this creates a new set of problems:

Displacement: Raising 5 hectares of land creates a "hydrological dam." Water that previously soaked into or moved across that land will be displaced onto the remaining 23 hectares of the Bagot Community or downstream toward Ludmilla residents.

Impervious Surface: Converting 5 hectares of bush/soil into a commercial asphalt carpark will exponentially increase the velocity and volume of stormwater runoff, potentially overwhelming the "undersized piping" the proponent already admitted exists on the site.

2.12 Urban Heat and Canopy Loss Data

A look at the Greening Darwin Strategy (2021) and the CSIRO Darwin Living Lab data reveal:

33% Canopy Loss: Darwin lost roughly 1,300 hectares of canopy between 2016 and 2021.

The "Green Spine": 133 Bagot Road is part of what scientists call the "Green Spine" of the mid-suburbs. The removal of even "weedy" vegetation on 5 hectares of land will contribute to the measurable "Urban Heat Island" effect in Ludmilla, where temperatures are already rising faster than the regional average.

2.13 Noise

Australian Noise Exposure Forecast (ANEF) restrictions.

The proponent is essentially trying to argue that they can use the parking lots as a "noise shield" to squeeze sensitive buildings into the quietest corner of the lot. For a project of this scale (10,650 m² GFA plus required parking), this is technically and spatially highly questionable.

Given its location at the Bagot Road / Fitzer Drive corner (directly under the airport's primary approach/departure paths), the 25 ANEF contour likely covers a significant portion, if not the majority, of the site.

Here is the breakdown issues:

The ANEF 25 "Red Line"

Under AS 2021 (the standard they cited), ANEF 25 is a critical threshold.

The Issue: This version of the standard is 26 years old. The current version is AS 2021:2015.

PLan requests the proponent use the 2015 (or latest) standard, which is what the Darwin International Airport 2023 Master Plan uses for its own noise modelling.

Childcare Centres: In zones above ANEF 25, childcare centres and schools are classified as "Unacceptable." The proponent claims they can move the buildings to a <25 ANEF area. However, for a childcare centre, the planning authority must also consider the outdoor play areas. If the playground is in the >25 ANEF zone, the development is often refused regardless of where the building sits.

3. Conclusion

PLan requests that the Authority refuse this application until the mentioned issues are resolved and outstanding information be provided.

The primary technical weakness in the 133 Bagot Road proposal is the absence of a fresh EIA and cumulative traffic study that accounts for the Kulaluk approval.

Further use of an outdated Australian Standard for Aircraft Noise modelling is of concern:

1. **AS2021:2015 (Acoustics - Aircraft Noise Intrusion):** This Australian Standard is a referenced document under the NT Planning Scheme (Schedule 5) used to determine the acceptability of building sites based on noise exposure forecasts (NEF).
2. **Clause 2.8 (Reference to Guidelines):** This clause states that any guideline listed in Schedule 5 is a relevant consideration for the consent authority.
3. **Overlay 3.1 (Airport Environs):** This is the primary mechanism that applies aircraft noise constraints to specific parcels of land. It requires that development

within an ANEF (Australian Noise Exposure Forecast) contour must be consistent with the building site acceptability standards.

Finally, by relying on older strategic frameworks, the proponent avoids addressing whether the local market and infrastructure can sustain two major centres in such close proximity without significant commercial failure or traffic congestion.

"Please provide a formal acknowledgement of receipt of this submission and confirm that it will be included in the reporting pack for the Darwin Division of the Development Consent Authority."

Yours sincerely,

Nick Kirlew

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