


## NOTICE OF DECISION AND STATEMENT OF REASONS

Section 55 of the *Environment Protection Act 2019* (EP Act)

Regulations 57(2)(a) and 63 of the *Environment Protection Regulations 2020* (EP Regulations)

<b>Name of proposed action</b>	North One Hotel and Apartments
<b>Proponent</b>	KTT Investment Pty Ltd (ACN 634 253 197)
<b>NT EPA reference</b>	EP2021/010
<b>Description of proposed action</b>	To develop Lot 07651, Town of Darwin (25 Gilruth Avenue, The Gardens) into accommodation for tourism, consisting of beachfront and lagoon villas, a hotel, serviced apartments, dining facilities, a market, function centre, bar and recreational facilities.
<b>Nature of proposed action</b>	Tourism infrastructure
<b>Decision</b>	<p>The proposed action does not have the potential to have a significant impact on the environment (section 55 of the EP Act).</p> <p><b>Environmental impact assessment is not required</b> in accordance with regulation 57(2)(a) of the EP Regulations.</p>
<b>Person authorised to make decision</b>	Northern Territory Environment Protection Authority (NT EPA)
<b>Signature</b>	
<b>Date of decision</b>	7 December 2021
<b>Matters considered under EP Regulation 56</b>	<p>The NT EPA has considered the following:</p> <ul style="list-style-type: none"> <li>the <a href="#">accepted referral</a> (including the referral form, referral report and appendices)</li> <li>submissions received in relation to accepted referral</li> </ul>

## Consultation

Submission period 6 October 2021 to 2 November 2021

Submissions received:

- government authority submissions received: 8
- public submissions: 27

Submissions are available on the NT EPA website.

Submissions indicate that the proposal has the potential to have a significant impact on:

- Aboriginal heritage
- heritage values associated with Myilly Point Heritage Precinct
- community values including access to and/or loss of highly valued green space
- sensitive receptors, from noise and light impacts associated with operation of the facility
- sensitive receptors, from mobilisation of contaminants during construction.

Submissions also raised concern about reduction in available public car parking and traffic impacts of a new entry to Lot 07651 from Gilruth Avenue. There was also concern about lack of effective community consultation by the proponent.

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## Statement of Reasons

### Overview

The NT EPA considers that the proposed action has the potential to impact environmental values associated with three environmental factors<sup>1</sup>. The NT EPA is of the view the potential impacts can be adequately avoided and/or managed through the proponent's obligations and duties under other statutory requirements, such that impacts on the environment would not be significant.

#### People

#### Culture and heritage

'Culture' is defined in the Macquarie dictionary as the "sum total of way of living built up by a group of human beings, which is transmitted from one generation to another ...".

- *Aboriginal burial sites*. The referral acknowledges the proposal site (Lot 7651) is of high cultural importance to Larrakia and other Aboriginal peoples. The Heritage Branch of Department of Territory Families Housing and Communities (DTFHC), has advised there is a high probability that Aboriginal traditional burials are present within Lot 7651 and that under the *Heritage Act 2011*, all Aboriginal places and objects associated with past occupation, including skeletal remains, are automatically protected. Further detailed investigations are required (in accordance with a scope of work prepared by the Heritage Branch) to assess the presence or absence of burial sites and for the proponent to meet their obligations under the *Heritage Act 2011*. The NT EPA considers that potential significant impacts to Aboriginal heritage can be appropriately avoided through statutory provisions under the *Heritage Act 2011* and the *Planning Act 1999*.

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<sup>1</sup> [NT EPA Environmental factors and objectives](#)

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- Sacred sites. The Aboriginal Areas Protection Authority has advised that there are two registered sacred sites in the vicinity of the proposal that are related to Aboriginal burials. There is potential for the proposal to have a significant impact on sacred sites due to proximity, construction methods and land disturbing activities. The proponent is required by law to undertake the proposed activity in accordance with the *Northern Territory Aboriginal Sacred Sites Act 1989*. The NT EPA considers that the Act provides strong protections to Aboriginal sacred sites. Taking into account that the Northern Land Council (NLC), Tiwi Land Council (TLC) and Aboriginal Areas Protection Authority (AAPA) are aware of the proposal, and that AAPA is mandated to protect sacred sites and the land councils provide advocacy for Traditional owners to protect sacred sites, the NT EPA considers that potential significant impacts to culture can be appropriately avoided.
- Myilly Point Heritage Precinct. The Myilly Point Heritage Precinct is located on the escarpment immediately to the south of Lot 7651. The boundary of Lot 7651 is at the top of the escarpment, along the edge of Burnett Place (road). The Myilly Point Heritage Precinct is listed on the NT Heritage Register for historic (architectural) value.

The Heritage Branch of DTFHC has advised that the cultural significance of a place includes its setting. The setting means “the immediate and extended environment of a place that is part of or contributes to its cultural significance and distinctive character”. The setting of a place includes views to and from the place (Australia ICOMOS Burra Charter, 2013<sup>2</sup>). The heritage significance of a place or object includes its aesthetic, historical, scientific and social significance (section 10, *Heritage Act 2011*). The existing views from the Myilly Point Heritage Precinct are important because the houses within it were built for high-ranking public servants in the 1930s, and the location of the houses was quite deliberate, intended to provide good view of the Harbour and Mindil Beach, as well as providing access to cooling breezes. The design height of the proposed hotel and apartment buildings is 27 m Australian Height Datum, which is about eight metres above the escarpment level.

The National Trust of Australia provided a submission that the proposed action has potential to significantly impact the heritage aesthetic values of the Myilly Point Heritage Precinct, including views, air flow and ambience (noise).

The proponent has provided a noise impact assessment, however, the use of commercial and industrial noise guidelines is not appropriate for the sensitive receptors which include residential and the heritage precinct. The proponent has not yet demonstrated effective mitigation measures to avoid or reduce noise and vibration at sensitive receptors during construction of the project and ongoing operation. The NT EPA is of the view that by complying with advice from the Department of Environment, Parks and Water Security including the NT EPA Noise Management Framework, regulation under the *Planning Act 1999* and the *Waste Management and Pollution Control Act 1998*, the NT EPA considers that significant impacts can be avoided.

The proposal has potential to impact on the ‘setting’ of the Myilly Point Heritage Precinct by permanently blocking existing views to Darwin Harbour, blocking cooling sea breezes and introducing noise that is inconsistent with the values of the heritage precinct. The NT EPA considers that potential significant impacts to heritage values can be appropriately avoided by reflecting advice from the Heritage Branch through statutory provisions under the *Planning Act 1999*.

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<sup>2</sup> <https://australia.icomos.org/publications/burra-charter-practice-notes/>

People

Community and economy

- Community value of accessible green space. A recurring theme in the public submissions was that the development would restrict access to areas that the community value including Little Mindil Beach, Little Mindil Creek and to the Nurses Walk connecting the escarpment to Little Mindil Beach on the western side of the premises. There is also a general perception that the area is a publicly accessible green space and should be maintained as such. Many public submissions raised concerns that the proponent has not consulted sufficiently with the community. The proponent has a general duty to provide the community with accurate information and opportunities for consultation. The NT EPA considers that addressing these matters under the *Planning Act 1999* will prevent significant impacts to community values.
- Car parking and traffic congestion. The proposal will result in additional traffic that has the potential to cause traffic congestion and need for additional car parking. The site is currently used as overflow car parking for the Mindil Beach Casino and events that are held at Mindil Beach and The Gardens. Government agency and public submissions raised concerns that parking offset and widening of Gilruth Avenue would be required. The NT EPA considers that addressing these matters under the *Planning Act 1999* will prevent significant impacts to community values.

Land

Terrestrial environmental quality

- Contaminated land. A Preliminary Site Investigation has identified the potential presence of a number of contaminants of concern, including asbestos, imported fill of unknown origin, hydrocarbons that may include polychlorinated biphenyls (PCBs). Acid sulfate soils may also be present. The proponent has been informed of the requirement to undertake a detailed site investigation and remediation action plan if indicated. By complying with advice from the Department of Environment, Parks and Water Security, and regulation under the *Planning Act 1999* and the *Waste Management and Pollution Control Act 1998*, the NT EPA considers that significant impacts can be avoided.

The NT EPA considered other environmental factors during its consideration of the referral; however, potentially significant impacts on those factors were not identified.

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**Justification**

Environmental impact assessment is not required because potentially significant impacts can be avoided by complying with advice from NT Government authorities and appropriate regulation under the *Northern Territory Aboriginal Sacred Sites Act 1989*, *Heritage Act 2011*, *Planning Act 1999* and *Waste Management and Pollution Control Act 1998*.

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**Conclusion**

The NT EPA considers that with implementation of standard controls and mitigation measures consistent with the duties and obligations under other legislation, the proposed action does not have the potential to have a significant impact on the environment.

In making its decision under EP Regulation 57(2)(a) the NT EPA has considered:

- the objects of the Act in section 3 of the EP Act
- the purpose of the environmental impact assessment process in section 42 of the EP Act

the matters under regulation 56 of the EP Regulations.