

2 November 2021

Northern Territory Environment Protection Authority
GPO Box 3675
Darwin NT 0801
ntepa@nt.gov.au

Dear EPA

RE: North One Hotel and Apartments

I wish to make comment on the KTT Investment Pty Ltd proposal to develop the 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 recreation facilities.

NON-DISCLOSURE AND LACK OF TRANSPARENCY

The Proponent has made a lawful binding declaration that the attached environmental impact assessment documents (including attachments) are true and do not provide false or misleading information. The public relies on the integrity of agencies to uphold processes and contractual agreements in the public interest.

The public depends on full transparency and accurate disclosure of a Proponent's plan to understand the impact of the proposed development in exercising their rights to contribute to the processes of development assessment and environmental impact assessment. This Referral Plan does not disclose the relationship or basis of the contractual agreement between the Landowner, Skycity Australia Pty Ltd and the Proponent, KTT Investments Pty Ltd. It also does not provide transparency for the agreement of transfer of compliance with the prior development permits for Lot 07651 between Skycity and Darwin City Council as well as the NT Government, including the covenants and easements related to the title of Lot 07651 such as, the maintenance of 3m paths for public access and requirement for additional parking to be including in a development of Lot 07651.

DEVELOPMENT BEYOND Lot 07651

The Referral Plan (after page iii) shows the "Project Location" ⁱas the location of Lot 07651, Town of Darwin (25 Gilruth Avenue, The Gardens). Part B of the proponent's referral form states "The proposed development is intended to be a permanent fixture on the Mindil Beach foreshore."ⁱⁱ This is supported by Figure ES-2: *Illustrative Impression of the North One Complex* in the Referral Plan that shows the proposed development fully occupying the foreshore including Mindil beach. Figure ES-3 clearly shows the development is proposed and designed outside Lot 07651 to include land zoned as public space, including Mindil Beach as well as public land including the public road and land adjacent to Gilruth Avenue.

This claim and development of additional land demonstrates the significant adverse impact to the public through loss of public land, public space and public amenity.

HUMAN SENSITIVE RECEPTORS

The Referral Form omits The Myilly Point Heritage Precinct including Burnett House and The National Trust; The "Spanish Terraces" at 1 Burnett Place being 5 townhouse residences; Myilly Terrace, 4 Myilly Terrace, a residence of 38 apartments; Larrakeyah Point, 188 Smith Street, a

residence of 12 apartments; and the Gardens Park Golf Links, a public golf course as close receptors.

As a property owner at Larrakeyah Point, 188 Smith Street I will be directly impacted by the loss of the existing environment and by the impact of the design and construction of the proposed development such as, loss of amenity, increased noise pollution, reduction in existing natural environment, loss of water views, reduced sea breezes, increased traffic, reduced recreational amenity and reduced cultural amenity. The Referral Plan fails to identify or address any of these direct impacts as a consequence of the design or construction of the development.

PROJECT OVERVIEW

It is not possible to determine assessment of the project given key components of the project are inconsistently defined. The Referral Plan includes many conflicting and contradictory details of the key components of the project. Just one example is, the Executive Summary details that there are "150 Hotel rooms (including 16 lagoon villas and 3 garden villas)".ⁱⁱⁱ In contrast 168 hotel rooms are detailed in the Table ES-1: Key Components of the Proposal as "149 x single Hotel Rooms (hotel/motel); 16 x two (2) Bedroom Lagoon Villas (hotel/motel); Three (3) x two (2) Bedroom Garden Villas (hotel/motel)".^{iv} That's a 12% variance in hotel rooms alone. This also brings into question the integrity of reports given they rely on consistent details and assumptions rather than inconsistent, ambiguous details of the key components of the project.

PROTECTION OF LANDFORMS, TERRESTRIAL ECOSYSTEMS, AQUATIC ECOSYSTEMS

The plan fails to identify and address NT EPA Objectives for environmental protection of landforms, terrestrial and aquatic ecosystems. The plan does not identify or address obligations under Covenant for the site Lot 07651. The subject development site Lot 07651 has a Covenant with obligation "to preserve and maintain the Tidal Creek and Escapement", to meet the NT EPA Objective to conserve the variety and integrity of distinctive physical landforms. The Covenant further details obligations to environmental protection of landforms and terrestrial ecosystems as:

provide continuing care of the vegetation on the Escarpment (including the top and the base of the Escarpment) and the Tidal Creek including:

- (1) removal of noxious weeds and subsequent control of noxious weeds using chemical or physical means or a combination of them;
- (2) removal of litter, rubbish and foreign objects; and
- (3) revegetation with naturally occurring plant species,

based on best practice bush regeneration techniques;

as required from time to time:

- (1) mulch and replant/reseed vegetation; and
- (2) repair and replace fencing along the top of the Escarpment to a standard to match the existing fencing.

From the Referral Plan it is impossible to determine what is true and accurate in terms of environmental impact. Regarding aquatic ecosystems the plan provides conflicting and contradictory statements including "...there are no aquatic ecosystems within the Development area and no direct impacts proposed." and "Any increased runoff will be directed to Little Mindil Creek."^{vi}

The NT EPA Objective is to conserve the variety and integrity of distinctive physical landforms. This development permanently alters the landform of the foreshore. Firstly, through earthworks that import fill to raise the site to 5.80m Australian Height Datum to be above the storm surge level. This level is above the natural level and environment of the site. Plus, the plan states "Most excavation required for the site will be undertaken within the fill layer. A small portion of the semi-basement carpark may require excavation into the existing soil profile." The logic of this is that the development is designed for some excavation and construction below the storm surge level.

Further, the development will reach a building height much higher than the escarpment (3 storeys higher) and protruding out of the green belt of the foreshore and dominating the tree canopy and setting a precedent for high-rise on the foreshore. The building height is inconsistent with the natural environment and landscape of the area. The height of the development forever adversely changes the landform and ecology of the Darwin foreshore from a natural environment to a built environment. This creates permanent negative environmental, ecological, cultural, social and health impacts for Darwin and the public. The proposed development at this scale and height on a primary and secondary storm surge area is also non-compliant with the relevant Area Plan and NT Planning Scheme. The Area Plan planning objective for storm surge states that "Residential development and other sensitive uses are discouraged in the Storm Surge Area." The subject land is affected by both Primary and Secondary Storm Surge Areas (PSSA and SSSA), effectively covering the entire area of the site to the base of the escarpment.

The factors raised above are significant changes in landform and terrestrial ecosystems of the site. Yet the Proponent identifies these as non-key environmental factors failing to address the impacts or provide mitigations in the Referral Plan.

In addition, the Proponent provides false and misleading illustrations. The Proponent provides Figure 2-9: North One Hotel and Apartment Development – Bird's Eye View^{vii} that misrepresents the scale and height of the development in relation to the escarpment and without considering the raised height of the site.

COMMUNITY AND ECONOMY

The EPA Objective is to enhance communities and the economy for the welfare, amenity, and benefit of current and future generation of Territorians. The Referral Plan demonstrates no awareness or knowledge of the community in which this development is proposed to exist. This is demonstrated by the fact that the plan excludes public, adjacent residents and users of the existing site from consultation and totally disregarded this community in terms of environmental impacts. The Referral Plan and its Stakeholder Engagement Plan does not identify nor engage with the community and therefore makes no provision to enhance the communities and the economy.

The nominated site is currently a public recreation park with an off-leash dog park area and provides direct visual amenity, access and throughfare between the escarpment and the foreshore. The proposed development will adversely impact the community and economy and reduce amenity and benefit to current and future generations of Territorians. The public will lose access to public recreation open space that has been part of the fabric of the Darwin community. Adjacent businesses, especially businesses at Mindil markets will be impacted by three years of construction. This will impact the NT tourism sector as Mindil markets is an iconic destination and tourism experience in Darwin. The value of adjacent property will be devalued by the loss of sea breezes, visual amenity of water and natural environment surrounds and due to three years of construction. This has further repercussion for the volatile Darwin property market with finance institutions already imposing a Darwin apartment restriction on lending. Lower property values lead to lower rates and

impacts the revenue and operations of Darwin City Council. The public receive no benefit from the private capitalisation of this site. The result is net loss of public value.

The Referral Plan fails to adequately explore alternative options such as, the existing vacant hotel site at the waterfront, and other vacant sites that are not currently recreational parks and would have lower adverse impact to the community and economy during construction and operation and provide the same amenity for the development for private benefit of the Proponent.

The proposed development of the proposal serves to benefit the Proponent who is not a Territorian. This development is not in the public interest. The Referral Plan provides no design or plans to enhance communities and the economy for the welfare, amenity, and benefit of current and future generations of Territorians.

TRAFFIC

The traffic during site preparation and construction will increase and provide increased risks for traffic on a road that is a major road and public transport route. Additionally, it is an existing high-volume thoroughfare for cyclists, scooters, runners and pedestrians. The traffic disruption during construction would adversely affect a large proportion of Darwin residents especially local residents as well as tourists for three years. Tourism business of Mindil market can ill-afford further business disruption in addition to the impact of COVID-19. The impact of residences in over 200 apartment/hotel rooms and tourists to the area will cause increased traffic and noise that is not addressed in the proposal and provided for by Council or the Northern Territory Government.

CAR SPACES

This development proposal does not comply with required carparking requirements. The Traffic Impact Assessment identifies "The development incurs a parking requirement of 473 car parking spaces. A total of 277 parking spaces are currently proposed. Therefore, there is a parking shortfall of 196 carparking spaces."^{viii}

In real terms the development creates a shortfall of more than 426 carparks. It is a significant oversight that the Traffic Impact Assessment fails to consider the impact of the loss of the existing 230 carparks on the site.

The Referral Plan states, "At present the site comprises a grassed area, a 230-car capacity open-air bitumen carpark...". In addition, in the acquisition of Lot 07651 by Starcity Pty Ltd there is an encumbrance that any development on Lot 07651 add additional car spaces that were lost as a concession. This means the development creates a shortfall of more than 426 carparks. The proposed development would create non-compliance with development standards not only for the proposed new development but also the existing Casino.

The provision for carparking is not compliant. No concession or relief should be given to such development of this density that claims its public value in tourism, residential and local amenity for restaurants and retail. In fact, it is incumbent on the Proponent to provide additional parking that was lost in a previous development permit awarded to Star City^{ix}.

A deficit of 426 car spaces creates a significant adverse impact on the area and on neighbouring properties, public space, public amenity, pedestrian, and traffic safety. This proposal also does not provide for public parking to facilitate public access to the foreshore.

VISUAL IMPACT

The proposed development destroys the existing natural environmental visual amenity of neighbouring properties, residents and for the public. The proposal takes away water views, sea breezes and the connectivity of the green tree canopy that are the habitats for native birds and animals across the foreshore.

The Referral Plan does not identify or address the impacts on visual amenity from neighbouring properties. The Visual Impact Study states it has been limited to viewpoints from two historic buildings within the Myilly Point Heritage Precinct. This demonstrates the Proponent has failed to undertake relevant and adequate studies to assess the visual impact from neighbouring properties. The Visual Impact Study states that it is based on the hotel and apartments at 4 levels high^x. The Referral Plan states the hotel and apartment buildings to be 7 levels i.e. carpark plus 6 levels. The visual impact study is also not based on the proposed increased level of site as a result of raising the site with fill to 5.80m Australian Height Datum to be above the storm surge level.

The Visual Impact Study is limited in scale and based on lower height levels, rates the impact as moderate. Under this report's own methodology at the Referral Plans proposed levels of height, the development impact would be high.

In the Referral Plan the Proponent has listed the outcomes of the Visual Impact Study yet deliberately failed to reference that the study was based on a 4-level development not at the raised level with landfill for storm surge. This is yet another example of the Proponent presenting inaccurate, false and misleading information to deceive the development process and undermine the integrity of NT EPA.

ECONOMIC IMPACT

The Referral Plan does not include an Economic Impact Study. Instead the Proponent's contact - Urbanscope (Australia) Pty Ltd as listed on the Referral Form has included an "Economic Benefits Snapshot"^{xi} as an appendix. Urbanscope's website list their expertise and services as architects, interior designers, and urban planners. Perhaps that is why the statement of economic benefits demonstrates no methodology, evidence or references as the basis for the stated economic benefits. The statement at best is unverified ambit claims by consultants without economic expertise and cannot be taken seriously. Yet again another example of false and misleading information.

NOISE

Potential noise sources are excavation, construction heavy vehicles, cars, bus movements including car park activities, deliveries and the associated loading activities, mechanical plant, patron and entertainment noise. The development and reports do not consider the impact of noise adjacent to water that acts as conduit and amplifier to noise.

As the Proponents Noise Impact Assessment states, "Non-compliance is predicted during the day, evening and night-time periods for patron and amplified noise emissions from the Ground Level Food and Beverage Bar and the Level 1 Poolside Bar at the following noise sensitive receptors within the development:

- Hotel Building – Levels 2 to 5.
- Foreshore Villas.
- Serviced Apartment Building - Levels 2 to 5.

For the external NSRs, the Level 1 Poolside Bar predicted patron levels are expected to exceed the night-time limit at Mindil Beach Casino Resort. The Level 1 Poolside Bar amplified music noise levels are predicted to exceed the recommended project specific assigned noise levels at the Hotel Building (Level 2 – Level 5) for the day, The Ground Level Food and Beverage Bar patron noise levels are expected to exceed the recommended project specific noise criteria for indoor entertainment venues during both the day and evening periods."^{xii}

The proposed development designed and planned to create ongoing, consistent, and permanent noise impact for neighbouring residents that reduces the ability of property owners to quiet enjoyment.

OPEN SPACE

The current site is open space and used by the public as open recreational space for the public and dogs off leash. The development results in the loss of current parkland and foreshore space for cultural, social and environmental purposes. The development makes little to no provision for open space for public use and recreation. The proposal's provision for open space is made on the roof top of the development inaccessible to the public.

Figure ES-2: Illustrative Impression of the North One Complex in the referral report clearly shows the loss of public open space and encroachment and impact of the development on the foreshore and beach that is public space for use by private guests of the development.

The development proposal does not address retention or protection of public access to foreshore spaces and established park spaces associated with the foreshore. The proposal demonstrates a loss of usage of current parkland and foreshore space for cultural and social purposes and creates a net loss of current usage of public open space. The proposal makes no response or provision for additional public open space within this large development.

STAKEHOLDER ENGAGEMENT AND CONSULTATION

The EP Act requires a proponent to consult with communities, take account of their views, document their knowledge and address Aboriginal values and rights (sections 43(a) to 43(d)).

The Proponent has provided a Stakeholder Engagement Strategy^{xiii} that they state is consistent with the International Association for Public Participation Core Values. However, the Proponent's own Stakeholder Engagement Strategy proves this to be false. Section 3 of the Stakeholder Engagement Strategy identifies key stakeholders and fails to identify the public as a stakeholder and demonstrates there are no plans for engagement or consultation of the public during any phase of the development. Even public users of the existing site have not been identified as stakeholders and have also not been consulted.

Additionally, the Stakeholder Engagement Strategy does not identify neighbouring residents as a stakeholder and makes no plan for consultation during any phase of the development. I can attest to the fact the proponents plan is the extent of consultation. I am a resident and property owner at 188 Smith Street that is directly impacted by the proposed development. The Stakeholder Plan does not identify or include plans to consult me. Consequently, the proponent has made no attempt to contact or consult with me or my fellow residents.

The Stakeholder Engagement Strategy and the proponent's own evidence of consultations so far demonstrate the complete inadequacy of their intention, plan and actions to consult with communities, including the Aboriginal community, residents, the public and to take account of their views and document their knowledge.

CULTURE AND HERITAGE

The NT EPA's culture and heritage objective is to protect sacred sites, culture, and heritage. The Referral Plan and this development seeks to irreversibly destroy and disrupt two highly important culture and heritage areas of the local community and to all Territorians. Firstly, the foreshore lands of Larrakia people that includes ceremony and burial sites of Larrakia peoples and likely Tiwi peoples. Secondly, Darwin's own Heritage Precinct with NT Heritage Listed properties that are highly important to the foundations of settlement and governance of the Territory.

It is noted that the Referral Plan does not include any cultural heritage reports nor Aboriginal culture or Aboriginal cultural heritage reports and the Proponent demonstrates no knowledge or expertise has been employed in the design and planning of this development in relation to culture and heritage. The proposal fails to both identify and plan for all risks and impacts to protect culture and heritage.

The Proponent engaged an archaeologist with specialisation in maritime archaeology to undertake a "one-day surface archaeological survey" and a "heritage desktop assessment of the Myilly Point Heritage Precinct and 25 Gilruth Avenue"^{xiv}. The Heritage report states that the assessment is based "on a six-storey hotel site and single storey villas, would have on the heritage precinct...". The desktop assessment does not take into account the raised landfill of the site to 5.80m Australian Height Datum to be above the storm surge level. The Heritage Assessment Report adopts and references the Visual Impact Assessment by Clouston Associates (2021) that is based on a 4 level development without taking into account the raised landfill. The conclusions of the Heritage Assessment Report cannot be upheld as they are based on false facts about the height of the proposed building and make an assessment using data and reports that account for the building at a lower height. The conclusions made by the archaeologist are beyond the consultant's professional expertise.

ABORIGINAL CULTURE

The Proponents own Archaeological Assessment states that "Little Mindil Beach and the Development site are of high cultural importance to the Larrakia people...". "And Whilst the Development site is highly disturbed, additional reports including from Larrakia Elder Kathy Mills, suggest that other burial sites still exist in and around the Sacred Site at Little Mindil Beach. In addition to the cultural importance of the burial sites of Larrakia ancestors, Little Mindil Beach is an integral and sacred part of Darwin's Indigenous culture and the Larrakia people continue to use Little Mindil Beach as a food resource."

The Proponents own report^{xv} states that it is was a one-day surface archaeological survey. This is a totally inadequate survey to determine the extent of cultural heritage and Aboriginal Sacred Sites. Registered records of sites form only a very small percentage of Aboriginal sacred sites, given extensive archaeological and cultural heritage works have not been undertaken. The author of the Proponent's reports gives evidence that indicates that the entire length of Mindil Beach has been used for burial purposes. The relationship of sacred sites and cultural practices along the now Cullen Bay, Myilli Point, Little Mindil and Mindil Beach are well known. It is noted that the survey does not report on any engagement or consultation with relevant Aboriginal people and cultural heritage experts.

In Chapter 5. *Past Rites, Present Rights* of the report *Town camp or homeland? A history of the Kulaluk Aboriginal community. Darwin: Report to the Australian Heritage Commission*, Wells, S, 1995 writes extensively about Mindil Beach as "a widely recognised Aboriginal burial ground"^{xvi}. She details the findings of human remains over a 14 year period during excavation, development and maintenance of facilities of the casino and facilities and references the findings of David Ritchie of the Aboriginal Areas Protection Authority (AAPA). The remains that were found were sent to Adelaide where the Director of Forensic Pathology, Colin Mancock determined that the remains were not Caucasian but 'native peoples' but did not believe they were traditional Aborigines. Mancock maintained that the remains represent a group of Indonesian fisherman. "Many Aboriginal people from Darwin and the region challenged this interpretation. Margaret Rivers, a senior Wadjigan woman, sent a letter to the Federal Member for the Northern Territory, Grant Tambling, stating that she knew of many burials of Aborigines in this area and requested that the area be identified "so that future development does not impinge on the area and cause embarrassment to local Aboriginal people. ... Eventually, a full Coronial Inquiry was

instigated.... There was strong evidence that the beach area between Myilly Point and Bullocky Point had been regularly used as a burial ground by Aboriginal groups in the Darwin area up until the mid-thirties. ... The Coroner's Court finally found that three of the skeletons were 'fully Aboriginal' while the other five were of mixed descent involving Aboriginality."



Plaque marking the Mindil Beach Burial Ground monument

Darwin City Council relied on the forensic pathology report to allow the development of the Casino to proceed.

It would be a travesty if the Northern Territory Government repeats the horrific indignity and unjust unearthing of remains as happened in the development of the Casino. As a community member, I would find any disturbance or destruction of Aboriginal remains as abhorrent. Just as the community would be horrified if a private hotel and apartment development was built over a general cemetery.

The Proponents mitigations such as, allowing a Larrakia representative to be present on site for excavation and witness the disturbance of burial sites and the provision of interpretive signage underscores the lack of respect and appropriate plan to protect Aboriginal cultural value and the heritage value for the community. The public is highly attuned to acts of disrespect to Aboriginal sites thanks to the outcry of the Juukun Gorge disaster and Kakadu National Park.

HERITAGE PRECINCT

The Burnett Place heritage precinct and the National Trust are a vitally important and integral part of Darwin's history and heritage. The location of the precinct was originally chosen for its location on the escapement with sea breezes and views. The proposed development will irreversibly impact the heritage integrity of Burnett Place. The whole rationale for the siting and preservation of this heritage precinct is the social, cultural and architectural heritage of the community of Darwin and the Territory. Placing a multi-storey hotel and apartment complex on the foreshore rising 3 stories higher than the escarpment in front of this heritage precinct that will block sea breezes and views takes away the context of cultural, social and architectural heritage.

The Referral Report fails to identify the blockage of sea-breezes to the listed buildings on the heritage site. The orientation, design, construction, and preservation of these buildings has been as examples of tropical housing design and built for the climate and environment. Critical and integral to this is sea breezes which will be blocked by this development.

Skycity's lack of compliance with the covenant to maintain the escapement has resulted in the heritage precinct losing some of its views. It is perverse that the Proponents use the current state of vegetation to negate impact on the heritage site.

Far from responding to the historic context of the adjoining declared heritage precinct, this Referral Plan development proposal destroys the historic context and destroys the integrity of the social and cultural heritage of Darwin and Northern Territory.

PUBLIC INTEREST

The Proponents Referral Plan provides evidence that this development is not in the public interest as its impacts cause permanent and irreversible impact to the green belt of the foreshore, ongoing adverse impacts for community and the economy with increased noise, reduced parking, reduced recreational amenity and limited access to the public foreshore and beach. Importantly it destroys significant culture and heritage that is the fabric of Darwin and Territory society. This development has the potential to destroy important culture and heritage for current and future generations of Territorians, not least of all compounding intergenerational trauma for Aboriginal people.

I recommend that the EPA does not endorse this plan. Further that the EPA considers pursuing the Proponent for penalties under section 260 of the EP Act, and section 119 of the Criminal Code Act 1983 for the Proponent's repeated inclusion of false or misleading information included in its environmental impact assessment documents.

Yours sincerely

ⁱ https://ntepa.nt.gov.au/_data/assets/pdf_file/0005/1056920/north-one-hotel-development-referral.PDF page 5

ⁱⁱ https://ntepa.nt.gov.au/_data/assets/pdf_file/0006/1056921/north-one-referral-form.PDF

ⁱⁱⁱ https://ntepa.nt.gov.au/_data/assets/pdf_file/0005/1056920/north-one-hotel-development-referral.PDF page iii

^{iv} https://ntepa.nt.gov.au/_data/assets/pdf_file/0005/1056920/north-one-hotel-development-referral.PDF page ix

^v Attachment S. Covenants.

^{vi} https://ntepa.nt.gov.au/_data/assets/pdf_file/0005/1056920/north-one-hotel-development-referral.PDF page xiii

^{vii} https://ntepa.nt.gov.au/_data/assets/pdf_file/0005/1056920/north-one-hotel-development-referral.PDF page 13

^{viii} Appendix14-traffic-impact-assessment.PDF

^{ix} https://www.darwin.nt.gov.au/sites/default/files/old_7_agendas_and_minutes_files/09ts0221attach.pdf

^x Appendix15-visual-impact-study.PDF

^{xi} [Appendix 16 - Economic Benefits Snapshot](#)

^{xii} Appendix17-noise-impact-assessment.PDF

^{xiii} Appendix3-stakeholder-engagement-plan.PDF

^{xiv} Appendix20-heritage-impact-assessment.PDF

^{xv} Attachment K Archaeology Assessment Report

^{xvi} Chapter 5. *Past Rites, Present Rights* of the report *Town camp or homeland? A history of the Kulaluk Aboriginal community. Darwin: Report to the Australian Heritage Commission, Wells, S 1995.*