



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES – ITEM 1 AND 2

MEETING No. 398 – FRIDAY 7 OCTOBER 2022

**BROLGA ROOM
NOVOTEL DARWIN CBD
100 THE ESPLANADE
DARWIN CITY**

MEMBERS PRESENT: Suzanne Philip (Chair, except for Item 2), Marion Guppy (presiding Member for Item 2), Trevor Dalton, Peter Pangquee and Morgan Rickard

APOLOGIES: Mark Blackburn and Mick Palmer

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Amit Magotra, Emily Hardy, Monica Pham and Breanna Lusty (Development Assessment Services)

COUNCIL REPRESENTATIVE: Cindy Robinson and Conneil Brown

Meeting opened at 10.30 am and closed at 1.10pm.

THE MINUTES RECORD OF THE EVIDENTIARY STAGE AND THE DELIBERATIVE STAGE ARE RECORDED SEPARATELY. THESE MINUTES RECORD THE DELIBERATIVE STAGE. THE TWO STAGES ARE GENERALLY HELD AT DIFFERENT TIMES DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.

The Chair, Development Consent Authority, under section 93(1) of the Planning Act 1999, appointed Trevor Dalton who is a member in relation to the Palmerston Division, to act as a member for Mark Blackburn in relation to the Darwin Division from 30 September 2022 to 17 October 2022 as Mark Blackburn is prevented from performing his duties of office because of absence.

That, pursuant to section 101(3) of the Planning Act 1999, in the Chair's absence the members of the Darwin Division of the Development Consent Authority elect Marion Guppy to preside at the hearing of Item 2 at the DCA Meeting on 7 October 2022.

ITEM 1 **CHANGE OF USE FROM WAREHOUSE TO OFFICE (UNIT 2) WITHIN LAND
SUBJECT TO STORM SURGE**
PA2022/0212 **LOT9670 (10) CARYOTA COURT, COCONUT GROVE, TOWN OF NIGHTCLIFF**
APPLICANT **MASTERPLAN NT**

Ms Chandhini Kumar, Mr Mark Hogan and Mr Satchaya Rajkumar (applicant) attended.

Ms Sorrell Ashby (landowner), and Ms Rachael Hoffman and Mr Ben Abbatangeb (staff members) attended.

The applicant tabled a letter of support from the Northern Land Council dated 6 October 2022 at the meeting.

Submitters Ms Fiona Douglas sent her apologies.

RESOLVED
59/22

That, the Development Consent Authority reduce the car parking requirements pursuant to Clause 5.2.4.2 (Reduction in Parking Requirements outside of Zone CB in Darwin) and vary the requirements of Clause 5.2.5 (Loading Bays) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 9670 (10) Caryota Court, Coconut Grove, Town of Nightcliff, for the purpose of change of use from warehouse to office (unit 2) within land subject to storm surge, subject to the following conditions:

GENERAL CONDITIONS

1. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
2. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
3. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage and electricity to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

Please refer to notation 1 for further information.

4. The use and development as shown on the endorsed plan must not be altered without the further consent of the consent authority.

NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (powerdevelopment@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
3. Notwithstanding the approved plans, any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin Policy Number 42 – Outdoor Advertising Signs Code.
4. The applicant is advised to engage a Northern Territory registered building certifier to ensure that the intended use of any existing buildings or structures is permitted by occupancy certification in accordance with the *Building Act 1993*.

REASONS FOR THE DECISION

1. Pursuant to section 51(1)(a) of the *Planning Act 1999*, the consent authority must take into consideration the planning scheme that applies to the land to which the application relates.

The NT Planning Scheme 2020 (NTPS 2020) applies to the land and an office requires consent under Clause 1.8 (When development consent is required). It is identified as Impact Assessable under Clause 4.14 Zone LI (Light Industry), therefore the Darwin Regional Land Use Plan 2015, Darwin Mid Suburbs Area Plan 2016, the zone purpose and outcomes of Clause 4.14 Zone LI (Light Industry) and Clause 5.2.1 (General Height Controls), Clause 5.2.4 Vehicle Parking, Clause 5.2.5 Loading Bays, Clause 5.2.6 Landscaping, and Clause 5.6.1 (Setbacks and Building Design in Zones LI, GI and DV), need to be considered. Clause 3.7 Overlay LSSS (Land Subject to Storm Surge) also needs to be considered.

3.7 - Overlay LSSS (Land Subject to Storm Surge)

The proposal is located in land subject to the Primary Storm Surge Area (PSSA) and the Secondary Storm Surge Area (SSSA).

Whilst the proposal is not a use listed in sub-clause 9 of the overlay, it is for a change of use from a warehouse to an office in an existing building. The application does not involve any additions to the building and unlikely to cause an increase risk to people, damage to property and costs to the general community caused by storm surge based on the change of use. Regarding sub-clause 10, the proposal is for a commercial land use and therefore complies with this sub-clause.

Part 2- Strategic Framework

The site is designated in an area for 'industry' in the Darwin Regional Land Use Plan 2015 (DRLUP). Page 25 of DRLUP, "Light and General" states that existing industrial areas at Winnellie, Coconut Grove, Berrimah,

Wishart and Pinelands will continue to provide opportunities for the government and private landowners to respond to demand.

The applicant at the hearing advised that the proposed use is seeking to provide an opportunity private co-working, office spaces which are growing in demand in recent times post COVID-19. Although COVID-19 is not a planning consideration, it is noted that the site is surrounded by similar uses and the application would provide an opportunity in response to demand.

The Darwin Mid Suburbs Area Plan primarily focuses on ensuring land in Zone LI (Light Industry) is constrained in Coconut Grove to the operations of Darwin International Airport. The proposal seeks to utilise existing development on site, with a maximum overall height of 5.54m which complies with Clause 5.2.1 (General Height Controls) and is unlikely to impact airport operations. The area plan is otherwise limited in what land use it constraints outside of light industry.

The site is situated between the ANEF (Aircraft Noise Exposure Forecast) contours 20 and 25. According to AS2021 - 2000 Acoustics - Aircraft noise intrusion - Building siting and construction, 'commercial building' is acceptable less than 25 ANEF. As such, the proposed use does not constrain the operations of the airport.

Clause 4.14 Zone LI (Light Industry)

When considering the purpose of Zone LI is to *"provide for low impact industrial and compatible non-industrial developments that will not by the nature of their operations, detrimentally affect adjoining or nearby land"*.

Zone Outcomes

1. *Land is primarily developed for low impact industry-light, motor body works, motor repair station, recycling depot, showroom sales, transport terminal, vehicle sales and hire, and warehouse, that are compatible with and are of such a kind that will not adversely affect the amenity of the light industrial function of the area.*
2. *Office and shops are limited to those that serve the needs of industrial uses on a site, or directly support and are compatible with the ongoing industrial use of the zone. Non- Industrial uses such as food premises-cafe/takeaway, bar-public, leisure and recreation, education establishment and hotel/motel are limited to those that:*
 - a. *will not be adversely impacted by the operation of industrial activities in the locality;*
 - b. *will not compromise or constrain the operation or viability of existing or future industrial activities; or provide a convenience, service or support role to industries and employees in the locality.*

The development proposes a private co-working, office spaces which is not limited to serve the needs of industrial uses on a site, or directly support the ongoing industrial use of the zone

The assessment notes that the consideration of the application requires, firstly, to determine whether the development meets the zone purpose and outcomes, and secondly, appraisal of the proposed use (office) as Impact Assessable.

Turning to the first matter, the assessment notes that although an office is listed as being limited to serving the needs of industrial uses on site, it is considered a compatible non-industrial use based on surrounding land uses. The use of an office is not a sensitive use and is unlikely to detrimentally effect the adjoining and nearby amenity of land in its use. Furthermore, the proposed use is unlikely to cause material detriment to the site and surrounding area as it will be in keeping with the surrounding site context with a mix of light industrial and non-industrial uses. Due to the scale of the proposed use (with a net floor area of 92m²) being a limited size for most industrial uses, the proposed office space is considered appropriate.

Turning to the second matter (appraisal of the use as Impact Assessable) – considering the scale of development, the nature of other uses on site and in the surrounding area, the proposed use of an office will not prejudice the integrity of the zone or generate an excessive demand for car parking (refer to the discussion provided under Parking Requirements).

At the hearing, Ms Chandhini Kumar (MasterPlan NT) and Ms Sorrell Ashby (landowner) gave an overview of the proposal. Ms Kumar explained to the Authority that the proposal would provide co-working office space for business starts-up to explore and work on their ideas. Ms Kumar stated that the site is within an isolated industrial zone and that Dick Ward Drive physically separates it from the main Coconut Grove Industrial district. Ms Kumar stressed that the industrial character of this area is different from the industrial character of Woolner or Berrimah, which consist of large industrial buildings. Ms Kumar added that the existing land uses within the site and within 200m of the site are all of a non-industrial character.

The Authority was satisfied that the proposal consistent with the zone purpose and outcomes and is compatible with the existing land uses in the locality. The Authority notes a great variety of non-industrial uses surrounding the subject unit. Therefore, the use is considering keeping with the site and surrounding area in its current and future use and development. The Authority also notes that the built form of the proposed development is compatible with the industrial use of the zone.

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NTPS 2020, the consent authority may consent to a proposed development which is not in accordance with a requirement set out in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:
 - (a) The purpose and administration clauses of the requirement; and
 - (b) The considerations listed under Clause 1.10(3) or 1.10(4).

Clause 5.2.4.1 Parking Requirements

The purpose of the clause is to “ensure that sufficient off-street car parking, constructed to a standard and conveniently located, is provided to service the proposed use of a site”. Administratively, “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”.

The assessment notes that the application relies on the existing 16 car parking spaces available within the site. Under the use of an office, 2.5 car parking spaces for every 100m² of net floor area are required. The current proposal requires 2.3 (3) car parking spaces, however the previous use of a warehouse required 1.58 (2) car parking spaces. The proposed development therefore includes a shortfall of one car parking space.

Clause 5.2.4.2 Reduction in Parking Requirements outside of Zone CB in Darwin

Clause 5.2.4.2 allows the Authority to approve a use or development with fewer car parking spaces than required if it is satisfied that a reduction is appropriate, having considered matters including “(a) the zoning of the land, the use or development or proposed use or development of the land and the possible future use or development of the land; the provision of car parking spaces in the vicinity of the land; (c) the availability of public transport in the vicinity of the land and; (d) the use or development relates to a heritage place and the Minister responsible for the administration of the Heritage Act 2011 supports the reduced provision of car parking spaces in the interest of preserving the significance of the heritage place”.

Regarding (a), the site is located in Zone LI (Light Industry), with zone outcome 2 stating “Office and shops are limited to those that serve the needs of industrial uses on a site, or directly support and are compatible with the ongoing industrial use of the zone”. As previous discussed, although the proposal for an office is not supported by this statement, the proposed use is considered a “compatible non-industrial use” in keeping with the zone purpose and surrounding land context. The development utilises existing buildings, infrastructure and car parking on site with the use unlikely to impact of the future use and development of the land.

Regarding (b) and (c), the Authority confirmed with Ms Sorrell Ashby that the proposed use of an office would be between 9am to 5pm on weekdays with up to 12 hot desks. Ms Ashby confirmed there would be a membership required and a booking system to ensure no more than 12 people are using the office space at one time.

Ms Kumar discussed the car parking demand assessment that accompanied the application, the availability of car parking on site and why a car parking levy was not required.

The Authority carefully considered the information provided by the applicant in the application along with the matters provided under the NTPS 2020 and determined to reduce the parking required by Clause 5.2.4.1 (Parking Requirements) through the provision of Clause 5.2.4.2 (Reduction in Parking Requirements outside of Zone CB) as discussed above.

Clause 5.2.5 Loading Bays

The purpose of the clause is to “provide for the loading and unloading of vehicles associated with the use of land”. Administratively, “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”.

The development requires one loading bay on site and not proposed as part of the application.

The Authority was satisfied with the Technical Assessment provided by Development Assessment Services, which concluded that the scale and proposed use of an office being only 92m² is unlikely to generate the need for a loading bay. The location of the unit is within the existing industrial estate and not near the road network and is therefore unlikely to impact it. Any deliveries are likely to utilise existing car parking for a short term visit, with the use unlikely to cause larger trucks needing access to the site.

For the reasons above, the Authority was satisfied to grant a variation to the requirement for a loading bay. The Authority considers that as the development provides minor use, which is unlikely to require loading facilities as contemplated under the NTPS 2020, which is designed for loading / offloading large bulky goods. The development presents a predominant office use, to which deliveries are expected to be infrequent and of a scale more appropriate to van-type deliveries that can occur within the car parking area.

3. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent authority must take into considered any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application;

One public submission was received during the exhibition period. The submission requested a car parking levy be conditioned for the proposed reduction in car parking.

In relation to parking shortfall, the Authority relies on its reasons listed in point (2) above, which concludes that a total of two car parking spaces appropriate given the scale and the nature of the proposed use. The Authority notes that the application was referred to the City of Darwin (Council), and no levy was requested by the Council.

4. Pursuant to section 51(1)(j) of the *Planning Act 1999*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development.

The land is capable of supporting the proposed use. The proposal will utilise existing development on site, include the building and car parking. The use of office is in keeping with surrounding non-industrial land uses and is unlikely to adversely impact the site and surrounding area.

The subject is situated between the ANEF (Aircraft Noise Exposure Forecast) contours 20 and 25. According to AS2021 - 2000 Acoustics -

Aircraft noise intrusion – Building siting and construction, 'commercial building' is acceptable less than 25 ANEF.

All service authority comments are addressed through the inclusion of appropriate conditions and/or notations on the development permit. No land capability issues have been identified.

5. Pursuant to section 51(1)(n) of the *Planning Act 1999*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated.

The impact on amenity should be considered in the context of the site and its surrounds. The development is existing and consistent with the existing character of the site and surrounding area, noting various non-industrial uses in proximity. The assessment notes that proposed office use will not jeopardise other (industrial) activities in Zone LI.

Where the development does not comply with the relevant clauses of the NTPS 2020, the impact on existing and future amenity has been considered and a variation to the parking requirements supported as the Authority considered the amenity will not unduly be impacted upon by this proposal.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent

**ITEM 2
PA2022/0280
APPLICANT**

**DWELLING-GROUP (4 X 4 BEDROOM) IN 2 X 2 STOREY BUILDINGS
LOT 133 (26) PANDANUS STREET, NIGHTCLIFF, TOWN OF NIGHTCLIFF
MR GEORGE PAUL SAVVAS**

Mr George Savvas and Ms Jess Brittain (Concept Designs NT) attended. Mr Brad Cunnington (Cunnington Rosse Town Planning and Consulting) attended on behalf of the applicant.

Helen and Nathan Tobin and Mr Mark Kersemakers (submitters) attended in person and Ms Elizabeth Morris (submitter) attended via Microsoft Teams.

**RESOLVED
60/22**

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 133 (26) Pandanus Street, Nightcliff, Town of Nightcliff for the purpose of Dwelling-group (4 x 4 bedroom) in 2 x 2 storey buildings, to require the applicant to provide the following additional information that the Authority considers necessary in order to enable proper consideration of the application:

- Re-exhibition of the application as per Section 47 of the *Planning Act 1999*

REASONS FOR THE DECISION

Section 47 of the *Planning Act 1999* relates to public notice of development applications. Under section 47(1) subject to sections 47A and 47B, before the consent authority determines a development application it must: (a) give public notice of the application; or (b) require, by written direction, the applicant to give public notice of the application.

Under section 47(2) the notice must be given in the prescribed manner and form and must include (a) a statement that a development application has been made to the consent authority; and (b) the details of the application; and (c) an invitation to members of the public to make written submissions about the application within the period specified in the notice; and (d) any other information required by the Regulations.

In reviewing the public notice (sign), the Authority notes that it does not have the power to determine the application as the public notice requirements have not been met.

The Authority notes that the sign includes a key variations section which allows the public to be informed about the key variations the development is requesting. The Authority found that the sign for the application did not identify the setback variation therefore the application was not exhibited in accordance with the Section 47 of the *Planning Act 1999*.

At the hearing, Mr Brad Cunnington of Cunnington Rosse Town Planning and Consulting, attended on behalf of the applicant and spoke to the public notice of the application. Mr Cunnington noted that the signs are provided to the applicant by the Development Assessment Services (DAS) in the prescribed manner and as such the applicant has complied with the written direction provided to them.

Mr Cunnington noted that the *Planning Regulation 2000* under section 6A provides additional details to the information required under section 47(2) of the Act, the notices and signs must include the following information:

- (a) the Lot, Section or Portion number of the land to which the development application relates and the street address of the land;
- (b) the current zone of the land;
- (c) the place where or the manner in which the public can view a copy of the development application;
- (d) a description of how submissions about the development application may be lodged.

Mr Cunnington noted that the Act and Regulation doesn't include detail or consideration about how an application complies or doesn't comply with the requirements of the NT Planning Scheme or satisfies or doesn't satisfy the required test and information provision under section 46(3) of the *Planning Act 1999*.

Mr Cunnington queried the applicant's role is installing the public notice and whether the details of the application on a sign can realistically form the extent of information the consent authority is concerned about.

Mr Cunnington noted that a Statement of Effect is a detailed document that is required to satisfy section 46(3) of the *Planning Act 1999* and that there is a range of information that cannot be included on the sign.

Mr Cunnington commented that when lodging an application, the applicant has a set number of options to choose between which are limited to 5 key variations, where some variations are not included. Mr Cunnington queried whether the Act requires the variations to be included as Mr Cunnington notes the information on the sign meets the requirements but there is also additional information on the sign (e.g. image of the development).

The Authority has taken the comments raised by Mr Cunnington into account and carefully considered the applicant's response to the matters raised.

The Authority notes that the requirement of Section 47 of the Act is to provide a detailed and accurate description of the application to the public.

In this instance, the Authority considers that the public notice requirements under Section 47 of the Act have not been met as the sign stated that there were no key variations identified, however the application in the Statement of Effect requests a setback variation. The Authority is of the view that this is misleading to the public.

The Authority determined that it cannot consider the application as the public notice requirements under Section 47 of the Act have not been met and therefore the Authority has no power to consider the application.

FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Deferral

RATIFIED AS A RECORD OF ATTENDANCE AND DETERMINATIONS MADE AT THE MEETING



**MARION GUPPY
PRESIDING MEMBER**

12 October 2022