



# **DEVELOPMENT CONSENT AUTHORITY**

## **DARWIN DIVISION**

### **MINUTES**

**MEETING No. 288 – FRIDAY 10 FEBRUARY 2017**

**PRESENTATION SUITE  
LEVEL 5, 21 KITCHENER DRIVE  
DARWIN WATERFRONT**

**MEMBERS PRESENT:** Stephen Ward (Deputy Chairman), Bob Elix, Garry Lambert and Doug Phillips

**APOLOGIES:** John Gleeson

**OFFICERS PRESENT:** Sarah Gooding, May Banh, Amit Magotra and Anthony Brennan (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Nil

**Meeting opened at 9:30 am and closed at 10:30 am**

**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.**

**ITEM 1                    EXTENSION OF TIME**  
**PA2011/0272        LOT 2017 (6) QUEEN STREET, TOWN OF DARWIN**  
**PLANNER            MAY BANH**  
**APPLICANT        GEORGE MAMOUZELLOS**

The applicant did not attend

**RESOLVED**  
**16/17**

That, pursuant to Section 59(3)(a) of the *Planning Act*, the Development Consent Authority consent to the application for an extension of time for the purpose of extending the base period of Development Permit DP13/0012 for an additional 24 month period to develop Lot 02017 (6) Queen Street, Town of Darwin for the purpose of 12 x 2 bedroom multiple dwellings in a 4 storey building plus basement car parking.

**REASONS FOR THE DECISION**

1. The consent authority assessed that there has been no relevant planning scheme amendments which would alter the compliance of the proposal with the Northern Territory Planning Scheme.

**ACTION:** Extension of Time Permit

**ITEM 2                    RECONSIDERATION: CHANGE OF USE FROM WAREHOUSE TO LEISURE AND RECREATION (GYM)**  
**PA2016/0535        LOT 1741 (4) FINNISS STREET, TOWN OF DARWIN**  
**PLANNER            AMIT MAGOTRA**  
**APPLICANT        CROSSFIT DARWIN**

Ms Kelly Giblin from Crossfit Darwin was present.

Submitters Mr Franz Kratschmer and Mr Graeme Suckling attended opposing the application. Mr David Smyth was an apology.

Ms Taylor Rau, Ms Kelly Rau and Ms Annie Feuerherdt attended in support of the application.

Mr Jeff Collins attended in support of the application.

**RESOLVED**

That, That, the Development Consent Authority reduce the required parking pursuant to Clause 6.5.2 (Reduction in Parking Requirements), vary the requirements of Clause 6.6 (Loading Bay) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act*, consent to the application to develop Lot 1741 (4) Finnis Street, Town of Darwin for the purpose of change of use from warehouse to leisure and recreation (gym) and light industry, subject to the following conditions:

**CONDITIONS PRECEDENT**

1. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale, and must be generally in accordance with the plans submitted with the application but modified to show:
  - a) the design of car park spaces in accordance with the diagram to clause 6.5.3 of the Planning Scheme. The layout must provide minimum 11 car spaces;
  - b) a loading bay for the light industry tenancy. The loading bay should have a minimum dimension of a 3m x 6m to accommodate a van;
  - c) a shade sail to block the view of the gym from the balconies directly opposite to the gym; and
  - d) a bike rack.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation) a local traffic assessment with particular attention to vehicular, pedestrian and cyclist safety issue in regards to vehicles accessing and egressing the site shall be submitted to and approved by City of Darwin to the satisfaction of consent authority.

**GENERAL CONDITIONS**

3. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
4. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewer and electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
5. 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.
6. The area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
  - a) constructed;

- b) properly formed to such levels that they can be used in accordance with the plans;
  - c) surfaced with an all-weather-sealed coat;
  - d) drained;
  - e) line marked to indicate each car space and all access lanes;
  - f) clearly marked to show the direction of traffic along access lanes and driveways;
  - g) to the satisfaction of the consent authority.
- Car spaces, access lanes and driveways must be kept available for these purposes at all times.
7. The car parking shown on the endorsed plan(s) must be available at all times for the exclusive use of the occupants of the development and their visitors.
  8. Storage for waste bins is to be provided to the requirements of the City of Darwin to the satisfaction of the consent authority.
  9. The use and development must be managed so that the amenity of the area is not detrimentally affected by undue noise to the satisfaction of the consent authority. The development (Gymnasium) is to provide following measures as per the additional information provided at the Development Consent Authority meeting dated 21 October 2016 and 10 February 2017:
    - a) rubber softfall surface on either side of all the lifting platforms;
    - b) sound proofing installation between the warehouse wall and plywood lining to reduce the noise impact; and
    - c) keep the roller door facing towards the Catalyst apartment closed until 7.00am;
  10. No external sound amplification equipment or loud speakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose to the satisfaction of consent authority.
  11. No goods are to be stored or left exposed outside the building(s) so as to be visible from any public street to the satisfaction of the consent authority.
  12. No gym activities are permitted on Mirambeena or Finniss Street without the consent of the City of Darwin to the satisfaction of the consent authority.
  13. Use of future Stuart Highway Realignment Corridor (Lot 5939, Town of Darwin) for group exercises shall be carried out to the requirements of Transport Infrastructure Planning division of Department of Infrastructure, Planning and Logistics to the satisfaction of the consent authority
  14. No parking shall be permitted on the future Stuart Highway Realignment Corridor (Lot 5939, Town of Darwin) without the consent of Transport Infrastructure Planning division of Department of Infrastructure, Planning and Logistics to the satisfaction of the consent authority.

15. Group exercise class must only be scheduled between the hours of 5.30am – 8.00pm Monday to Friday, and 8.30am -8.00pm on weekends, to the satisfaction of the consent authority.

## NOTES

1. Notwithstanding the approved plans, all signage is subject to City of Darwin approval, at no cost to Council.
2. The Environment Protection Authority has advised that the proponent must comply with their General Environment Duty provided by section 12 of the *Waste Management and Pollution Control Act*.
3. The Development Consent Authority advises that the operation of the 5.30am group session should not commence until the measures identified in the development permit are completed, to the satisfaction of the consent authority.

## REASONS FOR THE DECISION

1. The Development Consent Authority has reconsidered the application in light of the Northern Territory Civil and Administrative Tribunal Order No. 21655220 and the additional information provided by the applicant and submitters related to condition number 15 included in Development Permit DP16/0514.

The additional material provided by the applicant outlines the various steps undertaken together with the landowner to control the undue noise emanating from the gym activities. The applicant explained to the authority that testing had been conducted on various floor types to assess the noise dampening qualities of various products, and concluded that the installation of rubber softfall surface on either side of the lifting platforms would absorb the sound of the barbell hitting the floor such that there would be no adverse noise impacts on adjoining residences. The applicant also advised that the weekend 8.00am session has been rescheduled to 8.30am, and that the roller door facing towards the Catalyst apartment remains closed until 7.00, as required by the conditions of the DP16/0514.

Pursuant to Section 51 (n) of the *Planning Act*, the consent authority must take into account the potential impact on the existing and future amenity of the area in which the land is situated. The authority noted the applicant's willingness to investigate and adopt numerous measures to control noise, and to comply with the other conditions of DP16/0514, and determined that condition number 15 be amended to allow for 5.30am group exercises as the authority considers that there will be no adverse amenity impacts resulting

from the 5:30am class, provided that the use is carried out in accordance with the permit conditions.

2. Pursuant to Section 51 (e) of the *Planning Act*, the consent authority must take into account any submissions received under section 49, any evidence or information received under Section 50 in relation to the development application. A total of 6 public submissions were received when the proposal was originally placed on exhibition. Following advice that the application was to be reconsidered in light of the Northern Territory Civil and Administrative Tribunal Order No. 21655220, additional information was provided by the applicant and was circulated to all submitters. Additional comments were also received from submitters in response to the additional information provided by the applicant, and submitters also attended the reconsideration hearing and made verbal submissions to the authority.

The submitters acknowledged that the applicant has had adopted certain measures such as reducing the volume of music, especially during morning sessions, and has stopped using Mirrambeena Street for gym exercises. The submitters continued to raise concerns relating to on-street parking, traffic generation and potential noise impacts that result if 5:30am classes were allowed by the permit. The authority considered the matters raised by the submitters and concluded provided that the use is carried out in accordance with the permit conditions, there will be no adverse amenity impacts resulting from the 5:30am class. With regards to on-street parking and traffic generation, the Authority considers that these matters were adequately addressed through the original consideration, and that no new information had come to light that would require the original decision to be amended. It is noted that conditions have been included on the permit to address the on-street parking and the provision of on-site parking.

3. The Development Consent Authority has reconsidered its reasons for decision in relation to the non-compliance with Clause 6.6, and includes an additional reasons for decision for the variation to Clause 6.6 (Loading Bays) as follows:

“Clause 2.5(3) (Exercise of Discretion by the Consent Authority) allows the authority to vary the provisions of Parts 4 or 5 only if it is satisfied that special circumstances justify the giving of consent.

A variation to the requirements of Clause 6.6 (Loading Bays) is required as the proposal identifies a loading bay with dimensions of 3m x 6m rather than the 3.5m x 7m dimensions required by the clause. The purpose of Clause 6.6 is to provide for the loading and unloading of vehicles associated with the use of the land. A number of cumulative factors are considered to exist and represent ‘special circumstances’ which warrant a variation to the requirements of clause 6.6 as below:

- a) The application is for a change of use with no physical works proposed. The original warehouse was approved without a compliant loading bay, and the requirement to provide a fully compliant loading bay is considered unnecessarily onerous given a slightly smaller 3m x 6m loading bay can be provided without altering the existing building;
- b) Having specific regard to the industrial use of the development which is not conducive to large items transported by vehicles of a size which would constitute the need for a compliant size loading bay; and
- c) The majority of works are carried out off-site, and therefore deliveries to the subject site are expected to be infrequent.

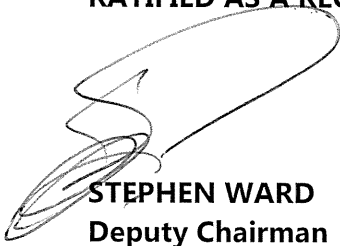
It is therefore considered that the applicant has adequately demonstrated circumstances that are unusual, exceptional, out of the ordinary and unexpected in the context of a Zone CB Central Business site. The characteristics of the site give rise to the non-compliance and as such a variation to Clause 6.6 (Loading Bays) of the Northern Territory Planning Scheme is supported."

4. Pursuant to Section 51 (m) of the *Planning Act*, the consent authority must take into account the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

The original application was circulated to the relevant service authorities and the issues identified have had been addressed by the inclusion of conditions on the development permit. Noting that the overall substance of the application had not been altered, further comments from the relevant service authorities were not considered warranted.

**ACTION:** Notice of Consent and Development Permit

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



**STEPHEN WARD**  
Deputy Chairman

10/2/2017