



DEVELOPMENT CONSENT AUTHORITY

PALMERSTON DIVISION

MINUTES

MEETING No. 271 – FRIDAY 14 FEBRUARY 2025

**AGORA ROOM
HUDSON BERRIMAH
4 BERRIMAH ROAD
BERRIMAH**

MEMBERS PRESENT: Suzanne Philip (Chair), Trevor Dalton, Elisha Harris, Sarah Henderson and Athina Pascoe-Bell

APOLOGIES: None

LEAVE OF ABSENCE: None

OFFICERS PRESENT: Margaret Macintyre (Secretary), Benjamin Taylor, Sebit Rambang and Daniel Herlihy (Development Assessment Services)

COUNCIL REPRESENTATIVE: Christopher Tickner

Meeting opened at 10.00 am and closed at 11.00 am

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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 TIME DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.

ITEM 1

PA2024/0344

CHANGE OF USE TO INDUSTRY-LIGHT

LOT 4314 (4) MALUKA DRIVE, PALMERSTON CITY, TOWN OF PALMERSTON

APPLICANT

MASTERPLAN NT

Applicant: -George Dakis, Nick Kearns and Michael Richardson (Masterplan NT), Scott Berwick (Project Manager-Forth Construction Group) and Marc Christianson (Lead Architect- DKJ Project) attended in person. Attended via MS Teams Steven Kong (Landowner - Northpharm) and Con Tsolos (Project Manager – Northpharm)

RESOLVED 04/25

That, the Development Consent Authority vary the requirements of Clause 5.2.5 (Loading Bays), Clause 5.2.6.2 (Landscaping In Zone CB), Clause 5.5.15 (Design in Commercial and Mixed Use Areas) and Clause 5.5.16 (Active Street Frontage) 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 4314 (4) Maluka Drive, Palmerston City, Town of Palmerston for the purpose of change of use to industry-light in a single storey building, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of drawings and prior to commencement of works, amended drawings to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the drawings will be endorsed and will then form part of the permit. The drawings must be drawn to scale with dimensions and must be generally in accordance with the drawings dated 15/01/2025 (prepared by DKJ Projects Architecture – Project Number 243010) but modified to show:
 - (a) Locations and details (species) of existing vegetation (trees and shrubs) to be retained on the site;
 - (b) the location and quantity of new each plant (referenced on 15/01/2025 drawings), with the objective of enhancing the visual appearance of the development, lessen the visual impact of the car parking area and provide shade to the car parking area;
 - (c) bollards and light poles labelled on the drawings so the locations of new plants do not conflict with this infrastructure.
 - (d) Clarification of whether the existing mezzanine level on the site will be retained and associated “net floor area” and room use (mezzanine is not currently shown on drawings dated 15/01/2025);
 - (e) Dimensions of the access easement (LTO Dealing Number 362066) labelled on the site plans.
2. Prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Palmerston stormwater drainage system shall be submitted to and approved by the City of Palmerston, to the satisfaction of the consent authority. The plan shall include details of site levels and Council’s stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council’s system or an alternate approved connection.

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3. Prior to the commencement of works, a Waste Management Plan addressing the City of Palmerston's Waste Management Guidelines must be prepared, to the requirements of the City of Palmerston, to the satisfaction of the consent authority.

GENERAL CONDITIONS

4. The works carried out under this permit shall be in accordance with the drawings, endorsed as forming part of this permit.
5. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage, electricity facilities, to the development shown on the endorsed drawings in accordance with the authorities' requirements and relevant legislation at the time. Please refer to notations 2, 3 and 4 for further information.
6. 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.
7. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or site is to be created.
8. The loading and unloading of goods from vehicles must only be carried out on the land within the designated loading bay and must not disrupt the circulation and parking of vehicles on the land.
9. Before the use/occupation of the development starts, the landscaping works shown on the endorsed drawings must be carried out and completed to the satisfaction of the consent authority.
10. The landscaping shown on the endorsed drawings must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.
11. Before the use or occupation of the development starts, the areas set aside for the parking of vehicles and access lanes as shown on the endorsed drawings must be:
 - a) constructed; properly formed to such levels that they can be used in accordance with the drawings;
 - b) surfaced with an all weather seal coat;
 - c) drained; and
 - d) clearly marked to show the direction of traffic along access lanes and driveways to the satisfaction of the consent authority.Car parking spaces, access lanes and driveways must be kept available for these purposes at all times.
12. The kerb crossover and driveway to the site approved by this permit is to meet the technical standards of the City of Palmerston, to the satisfaction of the consent authority.

The owner shall:

 - (a) remove disused vehicle and/ or pedestrian crossovers; and
 - (b) undertake reinstatement works.

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All to the technical requirements of and at no cost to the City of Palmerston, to the satisfaction of the consent authority.

13. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street, in accordance with the requirements of the City of Palmerston, to the satisfaction of the consent authority.
14. Storage for waste disposal bins is to be provided to the requirements of the City of Palmerston to the satisfaction of the consent authority
15. All air conditioning condensers (including any condenser units required to be added or replaced in the future) are to be appropriately screened from public view, located so as to minimise thermal and acoustic impacts on neighbouring properties and condensate disposed of to ground level in a controlled manner to the satisfaction of the consent authority.
16. All pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the consent authority.

NOTES

1. A “Permit to Work Within a Road Reserve” may be required from the City of Palmerston before commencement of any work within the road reserve.
2. 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.
3. This permit will expire if one of the following circumstances applies:
 - a) the development and use is/are not started within two years of the date of this permit; or
 - b) the development is not completed within four years of the date of this permit. The consent authority may extend the periods referred to if a request is made in writing before the permit expires.
4. This development permit is not an approval to undertake building work. You are advised to contact a Northern Territory registered building certifier to seek a building permit as required by the Northern Territory *Building Act 1993* before commencing any demolition or construction works.
5. Any proposed works which fall within the scope of the *Construction Industry Long Service Leave and Benefits Act 2005* must be notified to NT Build by lodgement of the required Project Notification Form. Payment of any levy must be made prior to the commencement of any construction activity. NT Build should be contacted via email (info@ntbuild.com.au) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.

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6. Notwithstanding the approved plans, all signage is subject to City of Palmerston approval, at no cost to Council.

REASONS FOR THE DECISION

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

The NT Planning Scheme 2020 applies to the land which is zoned CB (Central Business). In accordance with sub-clause 1(c) of Clause 1.8 of the NTPS 2020 the primary use and development of industry-light is 'Impact Assessable' in Zone CB and requires consent. Pursuant to sub-clause 1(b) of Clause 1.9, the ancillary "office" area for the "industry-light" is 'merit assessable'.

Sub-clause 4 of Clause 1.10 (Exercise of Discretion by the Consent Authority) of the NTPS 2020 specifies:

In considering an application for a use or development identified as Impact Assessable the consent authority must take into account all of the following:

- (a) any relevant requirements, including the purpose of the requirements, as set out in Part 5;
- (b) any Overlays and associated requirements in Part 3 that apply to the land;
- (c) the guidance provided by the relevant zone purpose and outcomes in Part 4; or Schedule 4.1 Specific Use Zones; and
- (d) any component of the Strategic Framework relevant to the land as set out in Part 2.

- The strategic framework (Part 2 of the Scheme), including the Darwin Regional Land Use Plan, Holtz to Elizabeth River Land Use Plan and Palmerston Central Area Plan, which are relevant to the land and development application;
- Zone purpose and outcomes of Clause 4.10 Zone CB (Central Business), and
- the following Clauses of "Part 5":
 - 5.2.1 (General Height Control)
 - 5.2.4 (Car Parking Spaces)
 - 5.2.4.4 (Layout of Car Parking Areas)
 - 5.2.5 (Loading Bays)
 - 5.2.6.2 (Landscaping In Zone CB)
 - 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR)
 - 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC)
 - 5.5.1.1 (Interchangeable Use and Development In Zone CB)
 - 5.5.4 (Expansion of Existing Development in Zones CB, C, SC and TC)
 - 5.5.15 (Design in Commercial and Mixed Use Areas)
 - 5.5.16 (Active Street Frontage)
 - 5.9.3 (Palmerston City Centre)
 - 5.9.3.1 (Building Design in Palmerston City Centre)
 - 5.9.3.2 (Volumetric Control)
 - 5.9.3.3 (Development along Priority Activated Frontages)
 - 5.9.3.4 (Development along Green Links)
 - 5.9.3.7 (Future Road Networks)

need to be considered in the context of section 51(3) of the *Planning Act 1999*. However, Clauses 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR), 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC), 5.5.1.1

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(Interchangeable Use and Development In Zone CB), 5.5.4 (Expansion of Existing Development in Zones CB, C, SC and TC) are not applicable to the type of development proposed on the site.

With regards to the Strategic Framework, the land use is consistent with the Darwin Regional Land Use Plan, Holtze to Elizabeth River Land Use Plan. There are no “Gateway Locations” (Overlay in Part 3 of NTPS2020) relevant to the site, consequently, there is limited design guidance (for the site) referenced in clauses:

- 5.9.3 (Palmerston City Centre)
- 5.9.3.1 (Building Design in Palmerston City Centre)
- 5.9.3.2 (Volumetric Control)
- 5.9.3.3 (Development along Priority Activated Frontages)
- 5.9.3.4 (Development along Green Links)
- 5.9.3.7 (Future Road Networks)

to be read in conjunction with Palmerston Central Area Plan.

Therefore, it is found that the proposal complies with the relevant requirements of the NT Planning Scheme 2020 except for:

- Clause 5.2.4.4 (Layout of Car Parking Areas)
- Clause 5.2.5 (Loading Bays)
- Clause 5.2.6.2 (Landscaping In Zone CB)
- Clause 5.5.15 (Design in Commercial and Mixed Use Areas)
- Clause 5.5.16 (Active Street Frontage)

Amended drawings are required to improve the landscaping response of the proposed development to comply with the criteria listed in Clause 5.2.4.4 (Layout of Car Parking Areas), Clause 5.2.6.2 (Landscaping In Zone CB) and Clause 5.5.15 (Design in Commercial and Mixed Use Areas) of the NT Planning Scheme 2020.

With regards to the land use guidance contained in the Palmerston Central Area Plan, the application is for an industry-light primary land use with ancillary office and storage areas in the floor layout. The proposal is considered to meet the objectives because the proposed use adds to the mixture of land uses in the locality and complements the medical clinics and shop (pharmacy) on the adjacent site. In addition to this, the applicant indicates that the operation of the use will provide employment for up to 50 staff members and that the business will be in operation 24 hours a day, 7 days a week. The addition of 50 staff is likely to contribute to surrounding commercial business and provide some activation to the area during the day and night. Overall, the proposed change of use is considered to respond to the current need of the area by occupying a vacant building and increasing the activity and attractiveness through 24/7 employment and additional landscaping.

The proposal supports the purpose and outcome statements 1, 7, 8, 9 and 10 of Clause 4.10 – Zone CB (Central Business), in that the footprint, façade and height of the existing building will not be altered. The proposed development is an adaptive reuse of an existing building that will complement those uses on adjacent properties in particular the medical clinics and shop (pharmacy) on adjacent Lot 5903. The development is relatively small-scale (reuse of an existing building) and is considered appropriate for the Palmerston community.

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2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NT Planning Scheme 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(4).

5.2.5 (Loading Bays)

The original development on the site (approved by Development Permit DP00/0307) included a loading bay. Based on the 'net floor area' of the proposed industry-light building fit out, one 'loading bay' is required.

'loading bay' means - *an area set aside or designated for the loading and unloading of vehicles associated with the use of the land.*

The loading bay for the 2024 application for change of use application will be in the same position on the site as approved by DP00/0307. Improvements will be made to the rear driveway / parking layout to ensure there is functional access to the loading area.

The only aspect of technical non compliance is for - sub-clause 4(c) of Clause 5.2.5 which requires a loading bay to have a clearance of at least 4m. The proposal does not comply with this requirement because the proposed access to the loading bay has a clearance of 3.5m.

The purpose of Clause 5.2.5 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-clause 4 - *only if it is satisfied sufficient, safe and functional loading areas are available to meet the needs of the use with regard to:*

- (a) the scale of the use and development on the site;*
- (b) any potential adverse impacts on the local road network; and*
- (c) any agreements for off-site loading and unloading of vehicles, such shared loading areas or approval to carry out loading activities in a laneway or secondary street.*

A variation to Clause 5.2.5 is recommended in this instance for the following reasons:

- (a) The applicant has identified the types of vehicles that will be using the loading area which are 'courier sized vans'.
- (b) A variation to the clearance height of the loading bay is unlikely to adversely impact on local road networks. Additionally, the applicant indicates that the expected frequency of these vehicles will be two deliveries, and one pickup per day.
- (c) There are no off-site loading areas. The proposed loading bay is considered adequate for the proposed use.
- (d) The loading bay / area is at the rear of the site and will not impact on the functionality of the road reserve
- (e) The proposed height dimension appears to be consistent with what was originally approved by DP00/0307 - upgrading the height may not be practicable (structural considerations etc).

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For the above reasons it is considered that the proposal has provided a loading bay is suitable for the loading vehicles associated with the proposed land use and in this instance a variation to Clause 5.2.5 is supported.

5.2.6.2 (Landscaping in Zone CB)

Requirement 3 of Clause 5.2.6.2 specifies - *development in Zone CB is to provide areas of landscape planting equivalent to 10% of the site area.*

The area of the site is 2990m² and therefore the proposed 'development' (change of use) is technically required to provide 299m² of "landscaping". The drawings submitted with the application (as amended) show approximately 106m² of landscaping and therefore the proposal does not comply with Clause 5.2.6.2.

The purpose of Clause 5.2.6.2 is - *to ensure developments within central business districts minimise heat capture and enhance the visual amenity of the area when viewed from the street or from surrounding buildings.*

Administratively, the consent authority may consent to a development that is not in accordance with sub-clause 3 if:

- (a) *it is a small development and the consent authority is satisfied that it would be unreasonable to provide the required landscaping, having regard to the intended use of the development or whether the development would become unfeasible; or*
- (b) *the development provides an alternative response to achieve the purpose of this clause.*

The landscaping areas (m² and locations on site) shown on the application (as amended) drawings is generally consistent with what the Development Consent Authority originally issued Development Permit DP00/0307 for the site. Providing additional areas of planting would require alterations to the car parking, driveway and pedestrian pathway areas on the site.

Subject to an updated landscaping plan (with clarification on locations and quantities of plants), the application is considered to provide an alternative response that achieves the purpose of Clause 5.2.6.2 because the application proposes additional (replacement) landscaping along the north side boundary that is likely to shade part of the car parking area and reduce heat capture. Additionally, further landscaping is proposed along the primary street boundary which is likely to enhance the visual appearance of the development when viewed from the street.

For these reasons and subject to an updated landscaping plan it is considered that the proposal achieves the purpose of Clause 5.2.6.2 and in this instance a variation is supported.

Clause 5.5.15 (Design in Commercial and Mixed Use Areas)

Sub-clause 17 of Clause 5.5.15 requires that - *unless advised otherwise by the relevant local government council or controlling agency for roads (whichever is applicable), development is to provide an awning or verandah to all street frontages that adjoin a footpath, which:*

- (a) *extends along the full length of the site boundary to provide continuous coverage for pedestrians;*

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- (b) covers the full width of the footpath or has a minimum width of 3m; and*
- (c) allows for the growth of existing trees and the planting and growth of reasonably anticipated trees within the road reserve.*

The proposal does not comply with sub-clause 17 of Clause 5.5.15 because the:

- application does not propose an awning to the primary street frontage; and
- Written response from City of Palmerston (local government council) encourages - *additional design measures be included, particularly at the interface with Maluka Drive, to better contribute to the public realm and to further activate this part of the CBD. A detailed landscape and pedestrian plan that considers this interface may be one way this could be achieved.*

The purpose of Clause 5.5.15 is to “*encourage a diverse mix of commercial and mixed use developments that are safe, contribute to the activity and amenity of commercial centres, are appropriately designed for the local climate, and minimise conflicts between different land uses within and surrounding the commercial centre*”.

Administration Clause 5 allows the consent authority to **consent** to a development that is not in accordance with sub-clause 17 if it is satisfied that:

- (a) the development provides a considered response to the established character of the streetscape; and*
- (b) the development provides an alternative response for shading.*

The application (as amended) is considered to meet the requirements of sub-clause 5 because:

- the Development Consent Authority approved (DP00/0307) the façade and roof awnings of the building in the year 2000 and the current application is for a change of use. The character of the Maluka Drive frontages was lawfully established primarily before sub-clause 17 of Clause 5.5.15 was introduced into the Planning Scheme.
- The public bus stop is controlled by the NT Government and there may be restrictions regarding works adjacent to the bus stop (clear path of travel, clearance heights etc)
- the proposal will retain some mature landscaping and will include new/replacement landscaping along the primary street boundary which is consistent with other developments within Zone CB along Maluka Drive and the proposed landscaping is likely to provide some shading to the footpath and the bus stop located in front of the building.

In addition to the above, the proposal is unlikely to conflict with the purpose of Clause 5.5.15 because the proposal is a mixed use development that is expected to employ 50 staff which is likely to positively impact on surrounding commercial developments. Furthermore, the applicant has provided details on how the proposal will reduce impacts to amenity which include the use of exhaust filters and ventilation, and acoustic control design features, as such, it is considered unlikely there will be conflicts between neighbouring land uses. For these reasons it is considered the proposal achieves the purpose of Clause 5.5.15 and the requirements of administration-clause 5, and in this instance a variation the Clause 5.5.15 is supported.

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5.5.16 (Active Street Frontage)

Sub-clause 6 of Clause 5.5.16 requires that *buildings are to provide a minimum of 60% of the length of each site boundary that fronts a primary or secondary street, or public open space, as active street frontage, made up of any combination of the following components, where the distance between individual components is no more than 1.5m:*

- (a) *windows that maintain clear views to and from the street, with openings that have dimensions not less than 0.9m wide and 1.2m high;*
- (b) *operational and legible entrances (excluding fire egress) that are directly accessible from the public domain;*
- (c) *areas within the site that are used for alfresco dining that provide visual interaction with the street/public open space; or*
- (d) *well-designed spaces that allow for pedestrian movement and/or seating.*

The NTPS2020 definition of 'active street frontage' means - *any ground level frontage of a commercial building that stimulates interest and activity on the adjacent street, or to a public space;*

The development application (as amended) did not technically comply with sub-clause 6 of Clause 5.5.16 because the use will be contained within an existing building with a ~18m long blank wall facing the street frontage (Maluka Drive) and no retrofitting (to comply with sub-clause 6) is proposed.

The purpose of Clause 5.5.16 is to - *provide a site-responsive interface between commercial buildings and the public domain that:*

- (a) *is attractive, safe and functional for pedestrians;*
- (b) *encourages activity within the streetscape; and*
- (c) *encourages passive surveillance of the public domain.*

Administration-clause 2 allows the consent authority to **consent** to a development that is not in accordance with sub-clauses 5, 6 and 7 if:

- (a) *an alternative solution effectively meets the purpose of this clause;*
- (b) *the **site** design reflects the established character of the area; or*
- (c) *it is satisfied that compliance would be impractical considering servicing requirements and any advice provided under sub-clause 4.*

Administration sub-clause 3 specifies - *landscaping may be counted toward the percentage of active street frontage required under sub-clause 6 if it is comprised of:*

- (a) *significant existing vegetation; or*
- (b) *vertical landscaping for the full height of the ground level street frontage;*
and the development still meets the purpose of the clause.

The application (as amended) is considered to meet the requirement of administration clauses 2(b) and 3(a) because:

- the building is existing and was lawfully established and found to be a suitable development under the Palmerston Town Plan 1982 thereby partly contributing to the character of the area.
- The site and building design is consistent with the landscaping, car parking layout and building design of other lawfully established developments in Maluka Drive.
- Existing areas of landscaping will be upgraded (replanted).
- the development is seen to meet the purpose of Clause 5.5.16 because the proposal does not prevent the safe and functional movement of pedestrians and

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encourages activity and passive surveillance of the public realm 24 hours a day and 7 days a week,

3. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the Development Consent Authority must, in considering a development application, take into account any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application.

No public submissions were received during the exhibition period under Section 49 of the *Planning Act 1999* with respect to the proposal.

The City of Palmerston did not 'oppose' the application but did provide comments that were seen to contradict the application. Under Section 49(7), this was taken to be a 'submission'. Matters identified in the City of Palmerston comments were considered in the section 51(1)(a) and section 51(1)(m) matters. Pursuant to section 50(2) of the *Planning Act 1999*, Council were invited to attend the public session of a Development Consent Authority meeting, and the Authority considered the verbal evidence provided by the Council representative at the meeting held on 14 February 2025.

4. Pursuant to section 51(1)(j) of the *Planning Act 1999*, the Development Consent Authority must, in considering a development application, take into account 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 physical characteristics of the land are considered suitable for the proposed development and use. The use will be contained within the footprint of an existing building that will be refurbished. No new works will occur on the access easement registered on the land title. Conditions of approval will address local government council requirements in terms of works/impact on the adjacent road reserves and storm water drainage.

5. Pursuant to section 51(1)(m) of the *Planning Act 1999*, the Development Consent Authority must, in considering a development application, take into account the public utilities or infrastructure provided in the area in which the land is situated, services to be connected to the land and the requirement, if any, for those facilities or infrastructure to be provided by the developer:

The conditions of approval and advisory notes are intended to assist in ensuring:

- Service authority interests are duly recognised in terms of storm water drainage, works within the road reserves, connections to and upgrading of electricity supply, water supply and sewerage services that apply to the alterations and additions to the site; and
- The NTPS2020 objectives and development performance criteria relating to vehicle access, works within road reserves and the provision of services/infrastructure will be complied with.

6. Pursuant to section 51(1)(n) of the *Planning Act 1999*, in considering a development application the consent authority is required to take into account the potential impact on the existing and future amenity of the area in which the land is situated.

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Subject to the development complying with the permit conditions and advisory notes, the proposed development and use is expected to improve the amenity of the locality as the landscaping will be upgraded to better comply with “Part 5” of the NTPS2020 and the proposal is an adaptive reuse of an existing building.

7. Pursuant to section 51(1)(r) of the *Planning Act 1999*, in considering a development application, the Development Consent Authority is required to take into account any potential impact on natural, social, cultural or heritage values, including, for example, the heritage significance of a heritage place or object under the *Heritage Act 2011*. The assessment of the application did not identify any declared natural, cultural or heritage values relevant to the subject site.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

ITEM 2
PA2024/0045

VARIATION TO CONDITION 6 AND ADDITION OF A CONDITION TO DP24/0098 TO UNDERTAKE THE DEVELOPMENT IN 2 STAGES

APPLICANT

**LOT 4537 (2) PALMERSTON CIRCUIT, PALMERSTON CITY, TOWN OF PALMERSTON
CUNNINGTON ROSSE TOWN PLANNING AND CONSULTING**

Applicant:- Gerard Rosse (Cunnington Rosse Town Planning and Consulting) attended.

RESOLVED
05/25

That, pursuant to section 57(5) of the *Planning Act 1999*, the Development Consent Authority refuse to vary Condition 6 and addition of a condition to Development Permit DP24/0098 to undertake the development in 2 stages for the following reasons:

1. Notice of Consent and Development Permit DP24/0098 were issued on 1 May 2024 for the purpose of ‘showroom sales (Tenancy 5)’. Condition 6 of DP24/0098 requires that ‘*the works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit*’. The applicant seeks a variation to complete the development in two stages (end of trip facilities to be completed in a second stage).

Section 56 of the *Planning Act 1999* provides that - a condition under section 55 may:

- (a) *provide that the development is permitted in stages specified in the permit;*
- (b) *specify the conditions to be satisfied at the conclusion of a stage; and*
- (c) *specify that if a stage is completed in accordance with the conditions specified to relate to that stage, use may be made of the part of the development completed at that stage:*
 - (i) *whether the stage completed relates to all or part of the area of land to which the permit relates; and*
 - (ii) *although conditions relating to stages yet to be completed have not been complied with.*

Pursuant to section 57(3) of the *Planning Act 1999* (the Act), the consent authority may, in writing, vary a condition of a development permit if:

- (a) *the proposed variation will not alter a measurable aspect of the development by a margin greater than 5% and, in the opinion of the consent authority, will not materially affect the amenity of adjoining or nearby land or premises; or*

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- (b) *in the opinion of the consent authority, the alteration resulting from the proposed variation is not conveniently measurable and the proposed variation will not materially affect the amenity of adjoining or nearby land or premises.*

Section 57(4) is not applicable as there are no existing or proposed dwellings on the site. The power granted by Section 57(3) to vary a permit is discretionary, provided that either of the subsections (a) or (b) (of Section 57(3)) are met. The only restriction placed upon the exercise of that discretion is a requirement in sub-section (5) that, if refused, reasons must be provided.

The proposed variation is not supported because it is inconsistent with Reason 1 included in the Notice of Consent for DP24/0098 which states:

Clause 5.3.7 (End of trip facilities in Zones HR, CB, C, SC and TC) ensures that new commercial buildings provide sufficient safe, quality and convenient end of trip facilities to enable active travel choices by residents, visitors, workers and customers for the proposed use of the site. Whilst the development may not be considered a new building, building works include internal fit-out and upgrades to the parking area, and the proponent intends to provide end of trip facilities in accordance with the NTPS2020. Condition Precedent 1 requires amended plans which demonstrate compliance with Clause 5.3.7 (End of trip facilities in Zones HR, CB, C, SC and TC) including the relevant Australian Standard and provision of lockers, shower and changing facilities.

In response to Condition Precedent 1 and Reason 1 of DP24/0098, drawings were endorsed (inclusive of end of trip facility consisting of a shower and 8 lockers in the staff breakout area) by a delegate of the Development Consent Authority. However, the proposed variation is seeking to reverse the endorsed drawings.

The Authority considers that the test to a 'measurable aspect' of the development, as a result of the variation, is to determine whether each stage is able to operate completely independently and is compliant with the performance criteria of the Northern Territory Planning Scheme (NTPS2020) if any of the remaining stages did not go ahead. Nevertheless, the proposed variation is attempting to separate a permit and seeks to have a staged development permit that depends on the completion of later stage.

The Authority notes that the difficulty with staging the development and approving, is that there are no time constraints on completing a stage over and above the life of the permit. Further, there is no necessity, to complete the Stage 2.

Creation of a staged permit in the circumstances presented will result in partial or temporary non-compliance with of sub-clause 16 (of Clause 5.5.3) which requires the provision of "...bicycle access, storage facilities and shower facilities". Additionally, the proposed variation will introduce a non-compliance with sub-clause 5 of Clause 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC) of NTPS2020. Variations to both of these sub-clauses were not part of the initial consideration by the consent authority because the initial application complied with these sub-clauses.

Therefore, creation of Stage 1 will result in the works to deliver part of DP24/0098 with exclusion of internal fit-out such as end of trip facilities (provision of locker storage facilities and shower) until the completion of proposed Stage 2. The applicant indicated that full use and occupation of the premises may not occur until Stage 2 is complete and

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a Certificate of Compliance (section 65 *Planning Act 1999*) issued as supported by correspondence dated 20 December 2024. While this statement can be acknowledged, granting an incomplete permit is not supported. Granting the permit in stages to complete 'base works' exclusive of some aspects of 'internal works' without indicating any timeframes may result in Stage 2 not being considered an integral part to operate the permitted use because it is possible to use the subject site as showroom sales if all other aspects of the permit is delivered except for lockers and/or a shower for end of trip facility.

It is acknowledged that section 65(1) of the *Planning Act 1999* states: a person may apply to the consent authority for a certificate, in the approved form, certifying the extent of compliance with the following:

(a) *The conditions of a development permit*

However, the permit condition (for staging of end of trip facilities) may be difficult to implement, and/or follow up by the consent authority is unlikely if nobody lodges a complaint of non-compliance because it will dependent on the owner/occupier of the Tenancy 5 or the building certifier to pursue compliance with that specific condition.

Additionally, a Certificate of Compliance (section 65 *Planning Act 1999*) is not a mandatory requirement, and as such, lodgement of an application cannot be subject to follow up by the consent authority. Should "Stage 2" not be completed, the development will be deemed non-compliant however there is limited measures to stop a tenant from operating within the site after Stage 1 is completed because Stage 2 may not be considered as an integral part to operate the permitted use if all other aspects of the permit is delivered except for lockers and/or a shower for end of trip facility.

As an alternative to staging, the Development Consent Authority has the ability (after and application being made) under section 65 – issue a certificate that certifies the extent of compliance with the conditions of a development permit. A Certificate of Compliance (in part) could identify what works had not been completed or other conditions of a permit not yet satisfied.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Refusal

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

SUZANNE PHILIP
Chair

18 February 2024