



DEVELOPMENT CONSENT AUTHORITY

PALMERSTON DIVISION

MINUTES

MEETING No. 245 – WEDNESDAY 15 SEPTEMBER 2021

**AGORA ROOM
QUEST BERRIMAH
4 BERRIMAH ROAD
BERRIMAH**

MEMBERS PRESENT: Suzanne Philip (Chair), Steve Ward, Trevor Dalton, Ben Giesecke and Sarah Henderson

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Breanna Lusty (A/Secretary), Adelle Godfrey, Elissa Gee and Cooper McLaurin (Development Assessment Services)

COUNCIL REPRESENTATIVE: Nil

Meeting opened at 10.00 am and closed at 10.40 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

**PA2021/0221 BAR-PUBLIC AND FOOD PREMISES-RESTAURANT IN TWO STAGES
LOT 6594 (3) MALUKA DRIVE, PALMERSTON CITY, TOWN OF PALMERSTON**
APPLICANT Masterplan NT – Alex Deutrom

Alex Deutrom and Chandhini Kumar (Masterplan NT), Doug Phillips (Landowner) and Paul Palmer (The Hub Tavern)

**RESOLVED
34/21**

That, the Development Consent Authority vary the requirements of Clause 5.2.4.1 (Parking Requirements) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 6594 (3) Maluka Drive, Palmerston City, Town of Palmerston for the purpose of a bar-public and food premises-restaurant in two stages, 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. The development must proceed in the order of stages as shown on the endorsed plan unless otherwise agreed in writing by the consent authority.
3. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage and electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
4. 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.
5. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Palmerston, to the satisfaction of the consent authority.
6. 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, to the satisfaction of City of Palmerston.
7. Any reinstatement works required as a result of any damage caused to infrastructure or landscaping must be undertaken by the developer, to the technical standards of and at no cost to the City of Palmerston, to the satisfaction of the consent authority. This includes grassing the verge between the property boundary and the kerb.

8. The existing landscaping on the site must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.

NOTES

1. Transport and Civil Services Division of the Department of Infrastructure, Planning and Logistics advises that no new vehicular access or pedestrian access is permitted from the Roystonea Avenue or Temple Terrace road reserves.
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. 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*.
4. 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.

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 applies to the land and a bar-public and food premises-restaurant require consent under Clause 1.8 (When development consent is required). Both uses are identified as *Merit Assessable* under Clause 1.8(1)(b)(i), therefore the strategic framework (Part 2 of the Scheme, including the Central Palmerston Area Plan, is relevant to this application), zone purpose and outcomes of Clause 4.10 (Zone CB – Central Business), and Clauses 5.2.4 (Vehicle Parking), 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 5.5.3 (Commercial and Other Development in Zones HR, CV, CB, C, SC, TC, OR, CP, FD and T), 5.5.10 (Nightclub Entertainment Venue, Bar-Public and Bar-Small) and 5.5.11 (Food Premises), need to be considered.

These clauses have been considered and it is found that the proposal complies with the relevant requirements of the Planning Scheme except for Clause 5.2.4.1 (Parking Requirements).

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(3) or 1.10(4).

The proposal has been found not to be in accordance with Clause 5.2.4.1 (Parking Requirements), because the proposal will result in 150 car parking spaces being provided for the bar-public and food premises-restaurant in lieu of 256 spaces.

It is considered that a variation to this clause is appropriate in this instance because:

- a. The proposal is consistent with the purpose of Clause 5.2.4.1 (Parking Requirements) in that the number of car parking spaces proposed is considered sufficient for the bar-public and food premises-restaurant use. Administratively, the consent authority may consent to a use or development that is not in accordance with the minimum parking requirements 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 site contains 318 car parking bays, provided in the basement and in at-grade car parking areas across the site. Development Permit DP98/0253 approved the initial development comprising a cinema, licensed club, office, showroom and motor repair station with a car parking shortfall of 129 spaces. At the time, the consent authority deemed the development *“to provide adequate parking within the site taking into account the mixture of land uses and their hours of operation.”* The proposed bar-public and food premises-restaurant is expected to operate in a similar manner to the pre-existing licensed club and is expected to generate a similar level car parking demand. It is understood that car parking availability was not a concern while the previous uses operated at the site.

This proposal results in 150 car parking spaces being allocated to the bar-public and food premises restaurant in lieu of the 256 spaces required. The proposal has the effect of increasing the overall shortfall on the site from 29% of the required number of spaces, to 41%. This is based on the existing and proposed uses on the site, and noting that the future use of vacant tenancies will require separate consent and assessment of car parking at the time of application.

While this is a substantial variation, the reduction has been assessed under Clause 5.2.4.2 (Reduction in Parking

Requirements outside of Zone CB in Darwin).

Administratively, the consent authority may consent to a use or development with fewer car parking spaces than required by column 2 of the table to clause 5.2.4.1 (Parking Requirements) if it is satisfied that a reduction is appropriate for the use or development, having considered all the matters at sub-clause 2. The matters at subclause 2 have been considered and the reduced number of car parking spaces is considered appropriate due to the location of the site in the Palmerston City Centre within Zone CB, the close proximity of public transport, the anticipated cross-utilisation of car parking spaces and the differing operating hours between the uses on the site. Further, given the nature of the proposal, it is anticipated that many patrons will be dropped off or picked by taxis or ride-share vehicles.

- b. The considerations listed under Clause 1.10(3) have been given regard to and it has been found that the proposal complies with all relevant requirements of the NT Planning Scheme 2020, except for Clause 5.2.4.1 (Parking Requirements), as identified above.
3. 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 proposal will utilise an existing vacant building. No land capability concerns have been identified during the assessment.

4. 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 proposal is not anticipated to impact on the existing and future amenity of the area. The Noise Impact Assessment concluded that the noise objectives are capable of being achieved provided the noise control strategies within the report are adopted. Further, the Venue Management Plan details the management strategies that will be put in place to further minimise off-site amenity impacts.

In their comments, City of Palmerston requested that a condition precedent be included on the development permit requiring the provision of landscaping, shading and softening of hard surfaces to improve amenity and promote active movement along Maluka Drive. At the hearing, the applicant put forward that this requirement was unreasonable as Maluka Drive is at the opposite end of the site to the subject tenancy and that it should be the responsibility of closer tenancies to upgrade the landscaping in this area. Further, the applicant confirmed that the car parking spaces to be allocated to the bar-public and food premises-restaurant will be located at the northern end of the site, far from the Maluka Drive frontage.

While the DCA agreed with Council that landscaping on the site could be improved, it was concluded that it would be onerous to impose a condition requiring landscaping along Maluka Drive due to the location of the subject tenancy and allocated car parking at the opposite end of the site. However, the authority considered it appropriate and reasonable that the applicant improve the existing landscaping in the vicinity of the subject tenancy. General condition 8 has been included to ensure that existing landscaping on the site is maintained which will assist in improving the amenity of the site and the area. Specifically this relates to maintaining the landscaping on the plans endorsed under the original development permit DP98/0253 for the site along the Roystonea Avenue frontage, as required by the conditions of this permit.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Consent and Development Permit

ITEM 2

PA2021/0143

CERTIFICATE OF EXISTING USE FOR SERVICE INDUSTRY AND MOTOR REPAIRING

LOT 6337 (5) CALVIN STREET, YARRAWONGA, TOWN OF PALMERSTON

APPLICANT

DAC Enterprises Pty Ltd – Dion Farrell

Dion Farrell (Applicant) attended in person.

**RESOLVED
35/21**

That, the Development Consent Authority defer consideration of the application for a certificate of existing use for service industry and motor repairing at Lot 6337 (5) Calvin Street, Yarrawonga, Town of Palmerston, to require the applicant to provide the following additional information that the authority considers necessary in order to enable the proper consideration of the application.

The additional information is required specifically with reference to the use of the land on, and leading up to 31 January 2007, in addition to the ongoing use of the land since this date. In order to establish the nature and extent of the use as at 31st January 2007 and to compare it with the present use:

- A detailed description of the scale/nature of the use as at 31st January 2007, including:
 - The processes and activities carried out.
 - Plant/machinery installed.
 - A list of all vehicles, plant and machinery serviced and repaired at the site including identification of vehicles registered under the *Motor Vehicles Act 1949*, where applicable.
 - The hours of operation.
- Further detail on the site plan clarifying:
 - The designation of the processes and activities carried out as at 31st January 2007, consistent with the written description. This is to include a breakdown of the processes and activities carried out within the main workshop building, plus all external areas of the site.
- Details of all building permits including any occupancy permit certificates.

- Copies of any leases or licences applicable.
- Utility and/or insurance records applicable.
- Receipts evidencing purchases made from suppliers, and invoices to evidence works carried out to demonstrate operation of the business at the premises.
- Worklogs over a period of time to establish the intensity of use. These may be provided over a period of 2 years up to 31 January 2007 for example, to establish the existing intensity at this time.
- Statutory declarations made by witnesses who have direct knowledge of the use (for example, a customer or supplier) and including any evidence to be provided by Mr Douglas Taylor, who can verify:
 - The precise nature of the use undertaken on the land (statements must be specific about the use) as at 31st January 2007
 - The continuous use of the land
 It is recommended legal advice be sought as to how this should be set out.
- Aerial photographs of the site and surrounds.
- Similar evidence establishing the current scale/nature of the use to provide a comparison with that as at 31st January 2007.

REASONS FOR THE DECISION

1. The additional information is required to enable the consent authority to determine, on the balance of probabilities, the nature and extent of the use of Lot 6337 (5) Calvin Street, Yarrowonga, Town of Palmerston that could be classified as an existing use on 31 January 2007, as provided for by Part 4 of the *Planning Act 1999*. The applicant bears the onus of establishing that the current use, which is sought to be protected, is “*really and substantially*” a use for the same purpose as the historic purpose to be relied upon as an existing use under Part 4. (see *Application by Darren Charles On; Attorney-General for the Northern Territory, Intervenor* [2019] NTSC 93)
2. The additional information will allow the consent authority to consider whether the current use can be classified as a continuation of an existing use as within Section 33(1) of the *Planning Act 1999*, including that the use was lawfully established immediately before the commencement of a planning scheme relating to the land, that the use was lawful under the *Planning Act 1999* as a permitted use without the consent of a consent authority, and that the use would cease to be lawful after the commencement if not for this part.

The information requested will allow the consent authority to determine the nature of the existing use, and how the existing use is defined by the Palmerston Town Plan 1982 and whether that use was a permitted use without the consent of a consent authority at the time. The information requested will allow the consent authority to determine whether the existing use would cease to be lawful after the commencement of the Northern Territory Planning Scheme 2007, which is the planning scheme put forward as requiring the existing use be only carried out with consent.

The date of 31 January 2007 is relevant as the last date on which the existing use is put forward as being able to operate as a permitted use

under the Palmerston Town Plan 1982, before the Northern Territory Planning Scheme 2007 came into effect on 1 February 2007.

3. The additional information will allow the consent authority to consider whether the current use in fact amounts to a continuation of an existing use under Section 34(1) and, if so, whether the intensity of that existing use is not greater than the intensity of use immediately before the commencement of the conflicting provision as required by under Section 34(2)(a) of the *Planning Act 1999*

The information requested will allow the consent authority to define the scale and intensity of the existing use on 31 January 2007, and compare it to the use as currently occurring of the land.

4. Section 37 of the *Planning Act 1999* provides that if a person discontinues an existing use for a continuous period of not less than 12 months, the person is conclusively presumed to have abandoned that use.

The additional information will allow determination of whether the business has been used continuously since 31 January 2007.

5. Section 37B of the *Planning Act 1999* requires that a certificate of existing use issued under Section 37A, be evidence of the facts certified as at the date specified in the certificate.

The consent authority requires further detail in the evidence of the facts submitted as part of the application, to consider and determine the application.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION:

Notice of Deferral

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

SUZANNE PHILIP
Chair

23 September 2021