



# **DEVELOPMENT CONSENT AUTHORITY**

## **DARWIN DIVISION**

### **MINUTES**

**MEETING No. 366 – FRIDAY 6 NOVEMBER 2020**

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

**MEMBERS PRESENT:** Suzanne Philip (Chair), Mark Blackburn, Marion Guppy, Simon Niblock and

**APOLOGIES:** Peter Pangquee and Robin Knox

**LEAVE OF ABSENCE:** Nil

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), Ann-Marie Reynolds and Julie Hillier (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Cindy Robson

**Meeting opened at 10.30 am and closed at 11.50 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**

**PA2020/0201 CHANGE OF USE FROM WAREHOUSE TO ANIMAL RESCUE CENTRE AND VETERINARY CLINIC**

**PORTION 1336 (77) WINNELLIE ROAD, WINNELLIE, HUNDRED OF BAGOT**

**APPLICANTS** Northern Planning Consultants and PAWS Darwin

Mr Brad Cunnington (Northern Planning Consultants) and Ms Lisa Hansen (Operations Manager PAWS Darwin) attended.

Submitter Ms Wendy Crow sent her apology.

Submitters in attendance:- Mr Ben Steensen and Mr Jack Berno.

**RESOLVED  
198/20**

That, the Development Consent Authority vary the requirements of Clause 5.2.4.4 (Parking Layout), Clause 5.2.6 (Landscaping) and Clause 5.6.1 (Setbacks and Building Design in Zones LI, GI and DV) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Portion 1336 (77) Winnellie Road, Winnellie, Hundred of Bagot for the purpose of a change of use from warehouse to animal rescue centre and veterinary clinic for the following reasons:

**CONDITIONS PRECEDENT**

1. Prior to the endorsement of plans and prior to 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 with dimensions and must be generally in accordance with the plans submitted with the application but modified to show:
  - addition of two car parking spaces to provide a minimum of four car parking spaces for the operation of the animal rescue centre;
  - removal of structures (kennels) which are external to the building and less than 15m from the side and rear boundaries (excluding boarding associated with treatment of animals at the veterinary clinic); and
  - all existing and proposed building/works;
  - all existing within the street frontage of the lot;
  - removal of the tyre wall;
  - specification of existing and proposed fences to contain animals on and within the site; and
  - areas used as part of the veterinary clinic.
2. Prior to the endorsement of plans and prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction

of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details. The plan shall also indicate how uncontaminated stormwater will be collected on the site and connected underground to City of Darwin's system and ensure that no stormwater will sheet-flow into the road reserve.

3. Prior to commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, to the satisfaction of the consent authority.
4. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Policy 054, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.

### **GENERAL CONDITIONS**

5. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
6. 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.
7. 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.
8. 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.
9. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin to the satisfaction of the consent authority.
10. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of City of Darwin, to the satisfaction of the consent authority.
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 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-seal coat;
  - (d) drained;
  - (e) line marked to indicate each car space and all access lanes; and
  - (f) clearly marked to show the direction of traffic along access lanes and driveways;

to the satisfaction of the consent authority. Car spaces, access lanes and driveways must be kept available for these purposes at all times.

12. Signage to direct parking of vehicles to the onsite parking area must be provided, to the satisfaction of the consent authority.
13. The car parking shown on the endorsed plans must be available at all times for the exclusive use of the occupants of the development and their visitors.
14. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
15. Before the occupation of the development starts the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
16. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.
17. The animal rescue centre shall accommodate a maximum of 25 dogs and 10 cats.

**NOTES:**

1. There are statutory obligations under the *Waste Management and Pollution Control Act 1998* (the Act), that require all persons to take all measures that are reasonable and practicable to prevent or minimise pollution or environmental harm and reduce the amount of waste.

The proponent is required to comply at all times with the Act, including the General Environmental Duty under Section 12 of the Act.

Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority website at <https://ntepa.nt.gov.au/publications-and-advice/environmental-management>.

The proponent is advised to take notice of the SCHEDULE OF ENVIRONMENTAL CONSIDERATIONS.

The Act, administered by the Northern Territory Environment Protection Authority, is separate to and not reduced or affected in any way by other legislation administered by other Departments or Authorities. The Environment Operations Branch of the Environment Division may take enforcement action or issue statutory instruments should there be non-compliance with the Act.

2. Power and Water Corporation advises that the Water and Sewer Services Development Section (landdevelopmentnorth@powerwater.com.au) and the Power Network Engineering Section (powerconnections@powerwater.com.au) should be contacted via email a minimum of one month prior to construction works commencing to determine servicing requirements and the need for upgrading of infrastructure.

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. Designs and specifications for landscaping of the road verges adjacent to the property shall be submitted for approval by City of Darwin and all approved works shall be constructed at the applicant's expense, to the requirements of City of Darwin
5. Waste bin storage and pick-up shall be provided in accordance with City of Darwin Policy Number 54 - Waste Management.

## **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 (NTPS2020) applies to the land and a change of use from warehouse to animal rescue centre and veterinary clinic requires consent within Zone GI (General Industry) under Clause 1.8 (When development consent is required).

The Authority noted that the application purposed both a veterinary clinic and an animal rescue centre. A veterinary clinic is a 'permitted' form of development in Zone GI (General Industry), however required consent in this instance due to the variations in relation to the car parking layout, landscaping and setback requirements. With the exception of Clauses 5.2.4.4 (Parking Layout), Clause 5.2.6 (Landscaping) and Clause 5.6.1 (Setbacks and Building Design in Zones LI, GI and DV), the veterinary clinic was found to be compliant and as a result the Authority primarily considered the suitability of the animal rescue centre.

While the NTPS 2020 defines 'animal boarding' as "*premises used as a commercial enterprise for the accommodation of domestic animals...*" the animal rescue centre is considered to be an undefined use as it is a non-commercial enterprise.

Undefined uses are identified as Impact Assessable under Clause 1.8.1(c)(i) of the NTPS2020, and therefore the strategic framework (Part 2 of the Scheme, including the Darwin Regional Land Use Plan), zone purpose and outcomes of Clause 5.2.4 (Vehicle parking), Clause 5.2.6 (Landscaping), Clause 5.6.1 (Setbacks and Building Design in Zones LI, GI and DV) applicable to the application, 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 5.2.4.4 (Parking Layout), Clause 5.2.6 (Landscaping) and Clause 5.6.1 (Setbacks and Building Design in Zones LI, GI and DV).

The purpose of clause 5.2.4.1 (Parking Requirements) 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. Sub-clause (2) states that the number of car parking spaces required if a proposed use or development is not listed in the table to this clause, that use or development is to be determined by the consent authority.

In determining the parking demand for the use, the Authority considered the applicant's submission at the meeting which clarified the day to day operations of the premises as an animal rescue centre and veterinary clinic. The applicant, Mr Brad Cunnington, acknowledged that there are some similarities between the centre and 'animal boarding', a defined use within in the NTPS2020, however stated that the non-commercial nature and the way in which the facility operates determines the car parking demand generated and not parking requirements associated with 'animal boarding' as identified in the assessment report prepared by Development Assessment Services. During the week the demand is typically eight cars with three staff for each use plus one parking space for visitors/clients and at the weekend seven parking spaces are required with four being required for those attending animal obedience classes, two for the instructors and one for a staff member. Mr Cunnington advised that the animals that are received by the rescue centre are examined and treated as necessary, assessed behaviourally and fostered out to volunteers while awaiting adoption therefore the majority of animals are not kept on-site. There are no regular visitation times or peak pick-up and drop off times. 'Meet and greet' and adoptions generally occur at foster homes and any visits that do occur on-site are by appointment only. Based on the nature of the use, the Authority considered that the minimum number of parking spaces to support the operation of the animal rescue centre is four car parking spaces. Subsequently, two additional spaces are required to be provided onsite and a condition precedent has been included to reflect this requirement. In addition, a general condition has been included to ensure the onsite parking will be clearly line marked to identify each space.

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 5.2.4.4 (Parking Layout), Clause 5.2.6 (Landscaping) and Clause 5.6.1 (Setbacks and Building Design in Zones LI, GI and DV).

The purpose of Clause 5.2.4.4 (Parking Layout) is to ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose. The driveway entrance is 4.3m wide rather than 6m for two-way flow of traffic. The parking area is less than 3m from a road and landscaping between the parking area and the road is not shown.

The consent authority may consent to a car parking area that is not in accordance with sub clause 3 if it is satisfied that the non-compliance will not:

- (a) result in adverse impacts on the local road network or internal functionality of the car parking area; and
- (b) unreasonably impact on the amenity of the surrounding locality.

The Authority determined to vary the requirements of Clause 5.2.4.4 (Parking Layout). The non-compliance is existing and the proposal does not alter the existing car park layout.

In addition, the existing landscaping includes mature palms and shrubs adjacent the entry to the veterinary clinic. Whilst the width of landscaping is less than 3m and does not extend the required length of the frontage the Authority noted that the car parking area is suitably sealed, drained and conditions have been included to ensure the car parking area will be suitably line-marked and signage provided to clearly identify each space. Furthermore, the landscaping extent is existing and there is limited space to accommodate additional landscaping elsewhere within the frontage of the parking area due to the concrete sealed surface and bin storage which is screened by an existing solid screen fence.

The purpose of Clause 5.2.6 (Landscaping) is to ensure appropriate landscaping that is attractive, water efficient and contributes to a safe environment, is provided to development to enhance the streetscape and overall amenity of the locality. In Zones LI, GI and DV all street frontages, except access driveways or footpaths, are to be landscaped to a minimum depth of 3m.

There is landscaping within the street frontage however it does not extend the length of the boundary and is partly screened by the front fence. The Authority determined to vary clause 5.2.6 (Landscaping) as the extent of landscaping (approximately one metre wide) is existing and the ability to accommodate additional landscaping is limited due to the location of the existing car park and the location of the existing buildings. Furthermore, additional landscaping would likely require alterations to the existing car park which could result in fewer car parking spaces being provided. Nevertheless, the Authority noted that the extent of the existing landscaping within the site was not clearly identified on the plans submitted as part of the application. To ensure the existing landscaping is retained as part of this development, a condition has been included requesting revised plans to illustrate the extent of the existing landscaping within the site.

The purpose of Clause 5.6.1 (Setbacks and Building Design in Zones LI, GI and DV) is to ensure that buildings are sited and designed to facilitate the development of safe, attractive and legible industrial zones.

Within Zone GI buildings are to be setback a minimum of 3m to the street frontage and 5m to at least one side boundary and to the rear boundary. The setback to the front boundary varies from 2.3m to 0m

and is an existing non-compliance. The applicant notes that the existing building and site layout is lawful and the setback does not compromise the objectives of the clause. The Authority considered the purpose of the clause, the zone purpose and outcomes, and whether it is appropriate to the site having regard to such matters as its location, scale and impact on the safety and amenity of the locality and adjoining property, and determined to vary Clause 5.6.1 (Setbacks and Building Design in Zones LI, GI and DV) for the reasons outlined above.

Clause 5.7.2 (Animal Related Use - Animal Boarding and Stables) was considered as part of the assessment of this application as the purpose of the clause is to minimise the adverse effect of animal related use on the environment and to ensure that those activities do not detract from the residential amenity of the locality. The clause requires structures used for animal boarding to a setback of 50m from any road frontage and 15m from any side or rear boundary.

The animal rescue centre utilises an existing building and lot dimensions are approximately 63m x 41m, therefore the Authority acknowledged that the front, side and rear setback requirements outlined in Clause 5.7.2 cannot be achieved. Nevertheless, it considered the purpose of this clause and determined that although the animal rescue centre is undefined and not located in or adjacent to a residential area; removing the kennels external to the building and limiting the number of animals accommodated on site would assist with minimising any adverse effect the use may have on the locality. A condition is included which requires an amended plan to ensure all kennels located outside are removed.

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

The public submissions generally raised matters pertaining to the emission of noise (barking dogs) and odour from the use. At the meeting, submitter and owner of 85 Winnellie Road, Mr Ben Steenson, elaborated on concerns about the current operation on his land, particularly outside of operating hours. Mr Steenson acknowledged that the land is zoned GI and that a noisy industrial use could operate within the zone however, stated that he did not believe housing dogs on industrial land was appropriate. Mr Steenson also raised concerns regarding the dogs walkers and waste left on the road however reiterated his main concern related to noise.

Mr Jack Berno, the landowner of 71 Winnellie Road, the lot immediately adjacent to the site, identified similar concerns regarding the noise and stated that the animal rescue centre has impacted on his ability to lease the lot stating potential lessees were put-off by the proximity of 71 Winnellie Road to the animal rescue centre. Mr Berno also raised concerns regarding the smell associated with the site and the dog waste left behind on the road.



The submissions received and the concerns raised by the submitters at the meeting related mainly to noise and odour were noted by the Authority.

The Department of Environment, Parks and Water Security, recommended the inclusion of a note on any permit issued, which references a Schedule of Environmental Considerations and statutory obligations under the *Waste Management and Pollution Control Act 1998*.

The Schedule of Environmental Considerations includes requirements in relation to noise levels and recommended that the proposed Noise Management Plan be amended to include a complaint management process and noise mitigation measures. Further, the City of Darwin require conditions precedent to be incorporated to ensure appropriate arrangements for management of stormwater and waste generally, are in place and form part of any permit, which is anticipated to mitigate odour.

Therefore, whilst the Authority consent to the change in the use of the existing premises to a veterinary clinic and animal rescue centre, there will remain obligations under the *Waste Management and Pollution Control Act 1998* and to the provision of appropriate waste management, as required by City of Darwin, which is considered to respond to the concerns raised in the submissions.

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 currently developed and used for the purposes which are the subject of the application and has access to reticulated services, and subject to standard conditions which address stormwater, waste water, provision of water and electricity services and access, the land is considered capable of supporting the intended use. The physical characteristics of the land and other land will not be affected by the development.

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 land is within Zone GI (General Industry) and the primary purpose of the zone is to provide for industrial developments that require separation from more sensitive uses as the nature of activities may detrimentally impact on the amenity of the locality, in locations with access to services and transport networks capable of supporting heavy industry. Permitted uses in this zone includes industry-general, meaning an industry in which the process carried on, the machinery used and goods and commodities carried to and from the premises on which the industry is sited has potential for significant impacts on the

surrounding amenity due to off-site emissions including aerosol, fume, dust, smoke, waste products, odours, noise, generation of heavy vehicle traffic flows in the locality and the potential for night-time and/or outdoor activities.

The application includes the accommodation of animals including external playpens along the perimeter of the site and within a large shed building which is passively cooled and ventilated.

The Authority considered the relevance of Clause 5.7.2 (Animal Related Use - Animal Boarding and Stables) and while the proposal cannot meet the front setback requirements, it is possible to achieve the minimum side and rear setbacks requirements and the purpose of this clause. It determined that removing the kennels in areas within 15m of the side and rear boundaries and external to the building and limiting the number of animals accommodated on site would assist with minimising any adverse effect the use may have on the locality. A condition which requires an amended plan to be submitted is included to ensure all kennels located along the perimeter of the site are removed.

In addition, the requirement for appropriate arrangements for management of wastewater, stormwater and waste generally, to the requirements of the City of Darwin to be determined prior to the endorsement of plans were anticipated to mitigate concerns raised in relation to odour.

**FOR: 4**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:**

Notice of Consent and Development Permit

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

**SUZANNE PHILIP**

**Chair**

12 November 2020