



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 386 – FRIDAY 4 FEBRUARY 2022

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

MEMBERS PRESENT: Suzanne Philip (Chair), Marion Guppy, Mark Blackburn, Peter Pangquee and Mick Palmer

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

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

COUNCIL REPRESENTATIVE: Apology

Meeting opened at 11.15 am and closed at 11.30 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

**PA2021/0392 ALTERATIONS AND ADDITIONS TO AN EXISTING FOOD PREMISES-RESTAURANT (TENANCY 3) WITH ALFRESCO DINING AREA
LOT 8914 (2) TANG STREET, COCONUT GROVE, TOWN OF NIGHTCLIFF**

APPLICANT One Planning Consult

Israel Tshupo Kgosiemang (One Planning Consult) attended.

**RESOLVED
5/22**

That, the Development Consent Authority vary Clause 5.2.5 (Loading Bays) and reduce the car parking requirements pursuant to Clause 5.2.4.2 (Reduction in Parking Requirements outside of Zone CB in Darwin) 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 8914 (2) Tang Street, Town of Nightcliff for the purpose of alterations and additions to an existing food premises-restaurant (tenancy 3) with alfresco dining area, subject to the following conditions:

CONDITION 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:
 - (a) The inclusion of one loading bay/ vehicle bay (3.5m x 5.5m) within the development; and
 - (b) Provision of a turn-around bay in the car park.

GENERAL CONDITIONS

2. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
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. 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.

6. Storage for waste disposal bins is to be provided to the requirements of the City of Darwin, to the satisfaction of the consent authority.
7. 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).
8. The use as shown on the endorsed plans must not be altered without the further consent of the authority

NOTES

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

REASONS FOR THE DECISION

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

The NT Planning Scheme 2020 applies to the land food premises-restaurant require consent under Clause 1.8 (When development consent is required). It is identified as Impact Assessable under Clause 1.8(1)(c)(i), therefore the strategic framework (Part 2 of the Scheme, including Darwin Regional Land Use Plan and Darwin Inner Suburbs Area Plan, which are relevant to this application), zone purpose and outcomes of Clause 4.14 (Zone LI - Light Industry) and clauses 5.2.1 (General Height Control), 5.2.4 (Vehicle Parking), 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 5.5.11 (Food Premises), 5.6.1 (Setbacks and Building Design in Zones LI, GI and DV) need to be considered.

The development is for the purpose of alterations and additions to an existing food premises-restaurant (tenancy 3) with alfresco dining area and includes conversion of part of the building from warehouse to food premises - restaurant, the addition of storage and food preparation area and alfresco dining.

These clauses have been considered, and it is found that the proposal complies with the relevant requirements of the Planning Scheme 2020 except for Clause 5.2.4.1 (Parking Requirements) and 5.2.5 (Loading Bays).

The assessment notes that the proposed development is intended as a complementary component to the surrounding industrial uses and other non-industrial uses located along Dickward Drive. The development layout is similar to a café style and will be available to provide services to support the ongoing light industrial uses in the area. As such, the use will not prejudice the integrity of the zone or impact the ongoing operation and viability of surrounding industrial activities. A condition is recommended on any permit that the use must not be altered without the further consent of the Authority.

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 are listed under Clause 1.10(3) or 1.10(4).*

5.2.4.1 (Parking Requirements).

The proposal has been found not to be in accordance with Clause 5.2.4.1 (Parking Requirements). The proposal will result in 12 car parking spaces being provided for the existing and proposed development where 17 is required. A reduction in the parking by Clause 5.2.4.1 (Parking Requirements) through the provision of Clause 5.2.4.2 (Reduction in Parking Requirements outside of Zone CB) is supported as the number of car parking spaces proposed is considered sufficient for the food premises-restaurant use. The Authority notes that when considering the possible future use or development of the land, the site includes three existing warehouse premises and should the future use of the tenancies change to use that has a higher parking demand than one per 100m², the use may only establish with consent. The use proposed includes elements that may be expected to operate with varying parking demands throughout the week, day and night due to baking and peaks in customer flow to food premises. Further, the use of the premises is likely to see cross utilisation between the food production for wholesale and distribution (industry) and for on-site consumption (restaurant), which may reduce the overall parking demand.

The Authority further notes that the City of Darwin have raised no concerns with regard to parking and there is public transport in the vicinity of the land. The site is not a heritage place.

Given the location of the site and the anticipated cross-utilisation of car parks, the reduction would be unlikely to impact on the surrounding road network and the amenity of the locality and adjoining property.

5.2.5 (Loading Bays)

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

The proposed development requires 1 loading bay for every 2,000m² of the total net floor area. The clause also requires that:

A loading bay is to:

- (a) be at least 7.5m by 3.5m;*
- (b) have a clearance of at least 4m; and*
- (c) have access that is adequate for its purpose.*

The Authority notes that a car park bay (space no. 8) is designated for an interchangeable use as a loading bay at the rear of the property. While the height clearance of 4m is achieved, it presents non-compliance with the minimum size requirement (3.5m x 7.5m required and 2.5m x 5.0m provided).

The relevant Administration of this clause is – “The consent authority may consent to a use or development that is not in accordance with sub-clauses 2 and 3 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and that the non-compliance will not result in adverse impacts on the local road network nor the number or availability of car parking spaces.”

Mr Israel Tshepo Kgosiemang (One Planning Consult) attended the meeting and spoke further about the non-compliance. Mr Kgosiemang noted that the business has been operating for a number of years and currently utilises an existing a car parking space without incident.

The Authority notes the above-mentioned comments of the applicant however concurs with the Development Assessment Services' recommendation to increase the size of the existing loading bay from 2.5m x 5.0m to 3.5m x 5.5m. The Authority considers the requirement to increase the size of the existing loading bay necessary to ensure delivery trucks have adequate room to unload goods.

In addition, taking into account the purpose of Clause 5.2.5 (Loading Bays), the Authority grants a variation to the dimension requirements for loading bays, noting the following circumstances which have been identified:

- The expected deliveries needs for the proposed uses can be accommodated within a smaller size loading bay area.
- Conditions can be included on any permit issued to ensure that all loading and unloading occur on site including.
- There is a separate loading bay within each of the other three warehouse tenancies.

A condition is recommend to provide amended plans showing 1 loading bay/service vehicle bay (3.5m x 5.5m) for the proposed development.

The Authority also notes that the car parking bay no. 12 shown on the plan is proposed over the turnaround bay in the car park. The provision of amended plans showing an area for a three-point turn bay in the car park is required to allow a car to enter from and exit to Tang Street in a forward gear in the event that the car park is full.

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 assessment found that the development is consistent with that anticipated in Zone LI with respect to the land's capability and the effect on surrounding properties. Service authority comments are addressed by including appropriate conditions and/or notations on the development permit. No land capability issues have been identified.

4. Pursuant to Section 51(1)(m) of the *Planning Act 1999*, the consent authority must consider 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 application was circulated to the relevant authorities and comments received from these authorities are addressed by the inclusion of conditions and/or notations on the development permit as required.

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 proposed changes to the existing restaurant are not expected to adversely affect the amenity of the area due to the nature of the development and surrounding land uses. Where the development does not comply with the relevant clauses of the Scheme, the impact on existing and future amenity has been considered and a variation has only been supported in cases where this amenity will not unduly be impacted upon.

FOR: 5

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

07 February 2022