



# DEVELOPMENT CONSENT AUTHORITY

## PALMERSTON DIVISION

### MINUTES

**MEETING No. 260 – FRIDAY 10 NOVEMBER 2023**

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

**MEMBERS PRESENT:** Suzanne Philip (Chair), Elisha Harris, Marion Guppy, Sarah Henderson and Athina Pascoe-Bell

**APOLOGIES:** Trevor Dalton

**LEAVE OF ABSENCE:** Nil

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), Adelle Godfrey, Ben Wollinski and Fletcher Willis (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Ric Halse

**Meeting opened at 10.15 am and closed at 12.40 pm**

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

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.

The Chair, Development Consent Authority, under section 93(1) of the *Planning Act 1999*, appointed Marion Guppy who is a member in relation to the Darwin Division, to act as a member for Trevor Dalton in relation to the Palmerston Division from 31 October 2023 to 20 November 2023 as Trevor Dalton is prevented from performing his duties of office because of absence.

**ITEM 1**  
**PA2023/0255**      **DWELLING-GROUP (6 X 1 BEDROOM) IN 2 X 1 STOREY BUILDINGS**  
**LOT 11311 (5) DAVIES COURT, JOHNSTON, TOWN OF PALMERSTON**  
**APPLICANT**      Cunnington Rosse Town Planning and Consulting

Athina Pascoe-Bell and Sarah Henderson are community members of the Development Consent Authority and Mayor and Councillor respectively, for City of Palmerston. City of Palmerston is a submitter to this application under Section 49 of the *Planning Act 1999*.

The Chair noted that section 98A of the *Planning Act 1999* - Independence of Community Members - contemplates that Community Members, while acting independently, may take account of opinion of a local government council in relation to a development application. No parties present raised any concerns with Mayor Pascoe-Bell or Councillor Henderson considering the application.

Pursuant to section 97 of the *Planning Act 1999*, the Chair determined that Mayor Pascoe-Bell and Councillor Henderson's interest or relationship was not significant or relevant, and both were permitted to form part of the quorum and participate in determination of this item.

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

Submitters attending: Craig Jones, Emma Kelly (representing submitter Matthew Giess) and City of Palmerston represented by Ric Halse.

Submitters who sent their apology: Zoe Jones, Matthew Giess and Kylie Dennis.

**RESOLVED**  
**20/23**

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Lot 11311 (5) Davies Court, Johnston, Town of Palmerston for the purpose of dwelling-group (6 x 1 bedroom) in 2 x 1 storey buildings 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:

- Further information/amended plans demonstrating increased compliance with Clause 5.4.1 (Residential Density), by changing the design to a maximum of 4 dwellings.
- Further information/amended plans demonstrating increased compliance with Clauses 5.2.4.1 (Car Parking Spaces) and 5.4.6.1 (Private Open Space for Dwellings-Single, Dwellings-Independent and Dwellings-Group).

## REASONS FOR THE DECISION

1. Pursuant to section 46(4)(b) of the *Planning Act 1999*, if the consent authority considers additional information is necessary to enable it to consider the application properly, it may require the applicant to provide the information.

The application was lodged as dwelling-group, and referred to the development being funded by the National Disability Insurance Scheme (NDIS), being designed for participants who are able to live by themselves with limited care. The report prepared for the Development Consent Authority recommended the consent authority consider the use as dwellings-group (specialist disability accommodation), however, the consent authority notes that the NTPS 2020 contains no such use in the defined uses contained in Schedule 2(1) Defined Uses, the Zoning Tables or otherwise. The Authority considers that the development and use of the land is assessable as a dwelling-group as defined by Schedule 1 of the Northern Territory Planning Scheme 2020, being a *Merit Assessable* development in Zone LMR (Low-Medium Density Residential).

The application proposed dwelling-group (6 x 1 bedroom) in 2 x 1 storey buildings, however the site area of 1,140m<sup>2</sup> limits a compliant density to a maximum of 3 dwellings under Clause 5.4.1 (Residential Density). The purpose of Clause 5.4.1 (Residential Density) is to:

*“Ensure that the development of residential buildings:*

*(a) is of a density compatible with adjoining or nearby development or development reasonably anticipated;*

*(b) is of a density compatible with the existing or planned provision of reticulated services and community facilities which will service the area; and*

*(c) is consistent with land capability having regard to relevant characteristics including but not limited to the drainage, slope, seasonal inundation, landforms or soil characteristics, heritage constraints or noise from aircraft operations.”*

The clause further provides in 5.4.1.1 that the authority may consent to a development that is not in accordance with the prescribed density *“only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.”*

In relation to the scale of the proposed development, the Authority notes that it is twice the number of permitted dwellings and, further, the proposal was non-compliant with 5 other clauses. Additional variations were sought to requirements for the total number of car parking spaces, car parking layout, building setbacks, private open space, and building articulation. The proposal sought particularly substantial variations to private open space (two dwellings having a 32m<sup>2</sup> minimum when 45m<sup>2</sup> is required by Clause 5.4.6.1), and car parking (7 spaces provided when 12 are required by Clause 5.2.4.1). The Authority further notes the concerns of submitters in relation to the impact of traffic and potential street parking on the adjoining and nearby property. The consent authority considers those variations, considered as a whole, mean that it cannot be satisfied that the proposed application is appropriate to the site as required by Clause 5.4.1

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

Whilst the dwellings comprise a single bedroom only, the number of bedrooms is not considered sufficient circumstances to warrant the extent of variations being proposed to private open space and car parking requirements. Nor did the consent authority consider that proposed conditions 11 and 12, purporting to limit the use to “specialist disability accommodation, equating the use with conditions required for a dwelling-community residence and to limit the occupancy to a single occupant per dwelling, were appropriate or enforceable. The proposed development does not meet the requirements for a dwelling-community residence as defined in the Scheme and no such specialist disability accommodation use is recognised by the NTPS 2020. In order for conditions on a permit to be valid they must support that which has been applied for, not significantly change it. In this case the application is for a dwelling-group, The proposed conditions 11 and 12 seek to significantly constrain the operation of that defined use. The power to impose conditions is vested in a planning authority for the purpose of enabling it to regulate incidental aspects of the use and development. The power to impose conditions is not provided to enable the Authority to confine the development from being used in the ordinary way. Resort to the use of such conditions is tantamount to an acknowledgement that the proposed development is inappropriate for the subject land. Such conditions go beyond incidental aspects of the intended land use and strike directly at the nature of the intended land use itself. Such conditions are unlikely to meet the test of validity as set out in *Newbury District Council v Secretary of State for the Environment* [1981] AC 578.

Deferral of the application will allow the applicant to prepare and submit amended plans to improve compliance. The consent authority considers that a proposal of dwelling-group (4 x 1 bedroom), whilst still an additional density beyond what Clause 5.4.1 requires, would allow for improved compliance with the requirements such that the proposal would be of a scale more appropriate to the site.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:** Notice of Deferral

**ITEM 2**  
**PA2023/0267**

### **CHANGE OF USE FROM WAREHOUSE TO MOTOR BODY WORKS**

**LOT 1142 (55) GEORGINA CRESCENT, YARRAWONGA, TOWN OF PALMERSTON**

**APPLICANT**

Cunnington Rosse Town Planning and Consulting

Applicant: Brad Cunnington (Cunnington Rosse Town Planning and Consulting) and Mr Mason Anderson (landowner) attended.

Mr Cunnington tabled:-

- a map showing the location of automotive businesses in the area;
- 50 supporting submissions who do not see any concerns with the current motor Body Works located at 55 Georgina Crescent; and
- a NT WorkSafe Report.

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

Submitter – City of Palmerston attended represented by Ric Halse

Submitters who sent their apology Christopher and Gayle Horne

### RESOLVED 21/23

That the Development Consent Authority vary the requirements to Clause 5.2.4.4 (Layout of Car Parking) and Clause 5.6.3 (Motor Body Works and Motor Repair Station) of the NT Planning Scheme 2020, and pursuant to section 53(a) the *Planning Act 1999*, consent to the application to develop Lot 1142 (55) Georgina Crescent, Yarrowonga, Town of Palmerston for the purpose of a change of use from warehouse to motor body works.

### CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works, 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) landscaping details, with species designed to lessen the visual impact of the car parking area when viewed from Callanan Road.
2. Prior to the commencement of works, details of waste storage and servicing shall be submitted to and approved by the City of Palmerston, to the satisfaction of the consent authority.
3. Prior to the commencement of works, a parking management plan is to be provided, demonstrating the measures to be taken to ensure the movement of vehicles minimises off site impacts, to the satisfaction of the consent authority. The parking management plan will be endorsed and form part of the permit. The plan is to include (but is not limited to), details of an appointment booking system for vehicle quotes, delivery and collections, no after hour tow-truck (unless attended by a staff member), and use of an off-site storage yard if there is insufficient capacity within the subject site.
4. Prior to the commencement of works, a signed mechanical design certificate and associated mechanical drawings are to be provided by a suitably qualified and registered engineer (NT registered building practitioner, National Engineering Register or similar) which confirms that the spray booth exhaust meets relevant Australian Standards, 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 to the development shown on the endorsed plan in accordance with the authorities'

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

requirements and relevant legislation at the time. Please refer to notation 1 for further information.

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. 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.
9. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of City of Palmerston, to the satisfaction of the consent authority.
10. The owner shall:
  - (a) remove disused vehicle and/ or pedestrian crossovers;
  - (b) collect stormwater and discharge it into the drainage network; and
  - (c) undertake reinstatement works; all to the technical requirements of and at no cost to the City of Palmerston, to the satisfaction of the consent authority.
11. 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 City of Palmerston, to the satisfaction of the consent authority.
12. Storage for waste disposal bins is to be provided to the requirements of City of Palmerston, to the satisfaction of the consent authority.
13. The use must be operated in accordance with the parking management plan endorsed as forming part of this permit.
14. A signed mechanical construction certificate is to be provided by a suitably qualified and registered engineer (NT registered building practitioner, National Engineering Register or similar) which confirms that the spray booth exhaust meets relevant Australian Standards, to the satisfaction of the consent authority.
15. Before the use or occupation of the development starts, the area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans (this only applies to the external car parking area) 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 parking spaces, access lanes and driveways must be kept available for these purposes at all times.

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

16. Before the use 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.
17. 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.

### NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section ([waterdevelopment@powerwater.com.au](mailto:waterdevelopment@powerwater.com.au)) and Power Network Engineering Section ([powerdevelopment@powerwater.com.au](mailto: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. 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*.
3. 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](mailto: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 the development requires consent under Clause 1.8 (When development consent is required). It is identified as Impact Assessable under Clause 1.10(4), and therefore the strategic framework (Part 2 of the Scheme, including the Darwin Regional Land Use Plan and Central Palmerston Area Plan), the zone purpose and outcomes of Clause 4.12 Zone SC - Service Commercial, Clause 5.2.1 General Height Control, Clause 5.2.4.1 Car Parking Spaces, Clause 5.2.4.4 Layout of Car Parking Areas, Clause 5.2.5 Loading Bays, Clause 5.2.6.1 Landscaping in Zones other than Zone CB, Clause 5.3.7 End of Trip Facilities in Zones HR, CB, C, SC & TC, Clause 5.5.2 Commercial Plot Ratio, and Clause 5.6.3 Motor Body Works and Motor Repair Station, need to be considered.

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

The proposal is found to comply with the Darwin Regional Land Use Plan and Central Palmerston Area Plan identified within the service commercial area of Yarrowonga. The land is not subject to any overlays.

The proposal is found as consistent with the purpose of Zone SC (Service Commercial) being to “*Facilitate destination retailing, commercial and other activities that individually require a large floor area for the handling, display and storage of bulky goods, or activities, in locations that enable convenient access by the broader regional population.*” The proposed change of use is consistent with other existing destination service commercial and light industry uses in Yarrowonga including a number of existing motor body works and motor repair businesses. The proposed motor body works requires a large floor and site area for the repairing of and storage of vehicles being worked on, and utilises and retains the existing built form and site layout of the subject lot.

The change of use has been assessed as complying with the requirements of Clause 5.2.1 General Height Control and Clause 5.2.4.1 Car Parking Spaces. The proposed change of use uses an existing site a building, and there are no height controls to land Zoned SC. A total of 32 car parking bays are required with a total of 39 car parking spaces, including informal working bays, provided.

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 Layout of Car Parking Areas. The application proposes car parking less than 3m to the Georgina Crescent lot boundary, and there is an existing non-compliance of 1.5m to the Callanta Road lot boundary approved under previous Development Permit DP04/0234. The application proposes a car parking layout that does not provide separate access to each car parking space, and a number of car parks do not meet the dimensions set out in the diagram to Clause 5.2.4.4 or dimensions for parking spaces at the end of the driveway.

The consent authority determined that a variation to this clause is appropriate because the non-compliant car parks are for the storage of vehicles waiting to be worked on, and as such, vehicles to be parked in these spaces are only moved by staff of the business and not by customers. It is clear that the arrangement is appropriate for the intended purpose and operation of the business.

The consent authority determined by require by condition a parking management plan, to demonstrate the measures to be carried out to ensure the movement of vehicles minimises off site impacts.



## Palmerston DCA Meeting No 260 – Friday 10 November 2023

The proposal has also been found not to be in accordance with Clause 5.6.3 Motor Body Works & Motor Repair Station sub-clause 7. The clause requires “A clearly identifiable, dedicated pedestrian access is to be provided to the main entrance of the building from the street and customer car parking areas.” The existing building, car parking, and site access arrangements do not allow for the inclusion of a dedicated pedestrian link.

The consent authority determined to vary this clause because the configuration of the site and existing structures does not allow for the inclusion of dedicated pedestrian access and staff and customer parking is within a short distance of office and admin facilities of the business.

The proposal has an existing non-compliance with Clause 5.2.6.1 Landscaping in Zones other than Zone CB, where car parks 1 to 16 have a reduced setback of 1.5m from the Callanan Road lot boundary approved under DP04/0234, and where existing shade structure approved under DP04/0234A, built within the setback to the Georgina Crescent lot boundary does not allow for landscaping.

A condition precedent for a landscaping plan to be provided to manage this existing non-compliance is appropriate, and given the application proposes upgrades to existing landscaped areas fronting Callanan Road. The application also proposes Screening to 1.8m high along the non-landscaped areas fronting Georgina Crescent.

2. 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 comprises the change of use of an existing building with no concerns raised with regard to land capability.

3. 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 potential impact on amenity is considered in the context of the site and its surroundings. The development is consistent with the broader intent of Zone SC (Service Commercial) as previously discussed. The public submissions received during exhibition of the proposal suggest that the motor body works has to date, had an effect on locality amenity. The applicant has demonstrated a range of measures already implemented, and additional measures proposed to mitigate offsite impacts. This includes demonstration of verge and on-street car parking being reduced by implementing a booking and appointment system for the drop-off and pick-up of vehicles. This is to be confirmed in a parking management plan required by condition, as previously described.

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

The applicant presented information in relation to how dust and fume emissions are managed through appropriate tools and enclosed and sealed dedicated areas to conduct fume and dust emission generating activities. The consent authority requires by condition the submission of mechanical design and construction certificates to confirm the spray booth exhaust meets the relevant Australian Standards.

The applicant tabled to the consent authority a report by NT Worksafe which reported no offence odours on site. In addition to 50 supporting submissions who see no concerns with the proposal.

In addition, at the public hearing the applicant tabled a survey of existing land uses in the locality, demonstrating that whilst in Zone SC, a range of automotive and industrial uses exist in the immediate locality of the site. This includes welding businesses, other crash repair businesses, heavy diesel mechanics, and 4wd parts and servicing. Overall this information demonstrates that the proposal is consistent with the locality.

Overall, it is considered that through the measures proposed or implemented, and through conditions of this permit, that the proposed change of use is reasonably consistent with the service commercial and light industry purpose and character of the locality, and that the use can operate in a manner with no unreasonable loss of amenity for surrounding premises, having regard to the mixed use nature of the zone.

4. Pursuant to section 51(1)(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.

Three public submissions were received during exhibition of the proposal, plus an additional two submissions made upon receipt of further information circulated for comment. The primary concerns raised in the submissions comprised exhaust and paint fumes/emissions from the site, and traffic and parking congestion and including parking overflow impacting on surrounding properties. The consent authority has considered the information presented in the submissions and application, in relation to the nature of the use, parking, and how emissions will be managed, and is satisfied by condition, that the use can be operated in a manner such that there is no unreasonable loss of amenity for the surrounding premises, as detailed in reason 3 above.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

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

**ITEM 3**  
**PA2023/009**  
**4**

**FOOD PREMISES-RESTAURANT AND BAR-PUBLIC IN A SINGLE STOREY BUILDING**

**APPLICANT**

**LOT 15757 (118) BLOODWOOD STREET, ZUCCOLI, TOWN OF PALMERSTON**  
Rossi Architects

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

Athina Pascoe-Bell and Sarah Henderson are community members of the Development Consent Authority and Mayor and Councillor respectively, for City of Palmerston. City of Palmerston is a submitter to this application under Section 49 of the *Planning Act 1999*.

The Chair noted that section 98A of the *Planning Act 1999* - Independence of Community Members - contemplates that Community Members, while acting independently, may take account of opinion of a local government council in relation to a development application. No parties present raised any concerns with Mayor Pascoe-Bell or Councillor Henderson considering the application.

Pursuant to section 97 of the *Planning Act 1999*, the Chair determined that Mayor Pascoe-Bell and Councillor Henderson's interest or relationship was not significant or relevant, and both were permitted to form part of the quorum and participate in determination of this item.

Applicant: Desmond Robertson (Rossi Architects), June D'Rozario (June D'Rozario & Associates), Hermanus Louw, David Anthony and Leandre Piggot attended.

Submitter - City of Palmerston attended represented by Ric Halse

### RESOLVED 22/23

That, the Development Consent Authority vary the requirements of Clauses 5.2.4.1 (Car Parking Spaces), 5.2.4.4 (Layout of Car Parking Areas), 5.5.15 (Design in Commercial and Mixed Use Areas) and 5.5.17 (Building Frontage in Commercial and Mixed Use Areas) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 15757 (118) Bloodwood St, Zuccoli, Town of Palmerston for the purpose of food premises-restaurant and bar-public in a single storey building, subject to the following conditions:

### CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to the commencement of works, a landscape plan to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plan will be endorsed and will then form part of the permit. The landscaping plan must be generally in accordance with the landscape concept plan, updated to reflect the revised layout, and must include a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, sizes at maturity, and quantities of each plant. All species selected must be to the satisfaction of the consent authority.
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.

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

3. Prior to the commencement of works, in principle approval is required for the provision of awnings to the street frontages to the requirement 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 and telecommunication networks to the development shown on the endorsed plan 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 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.
9. Before the use or occupation of the development starts, the area(s) set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
  - (a) constructed;
  - (b) properly formed to such levels that they can be used in accordance with the plans;
  - (c) surfaced with an all weather seal coat;
  - (d) drained; and
  - (e) 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.
10. The kerb crossovers and driveways to the site approved by this permit are 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.

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

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

11. 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.
12. Storage for waste disposal bins is to be provided to the requirements of the City of Palmerston to the satisfaction of the consent authority.
13. 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.
14. 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](mailto:waterdevelopment@powerwater.com.au)) and Power Network Engineering Section ([powerdevelopment@powerwater.com.au](mailto: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. All developers, including owner-builders, are required to comply with Commonwealth telecommunications requirements. Under Commonwealth law, developers are generally required to provide fibre-ready pit and pipe in their developments at their expense. Developers may be able to access an exemption from these arrangements in some circumstances. For more information visit [www.infrastructure.gov.au/tind](http://www.infrastructure.gov.au/tind)
4. If you choose nbn to service your development, you will need to enter into a development agreement with nbn. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered nbn will be in contact to discuss the specific requirements for the development. Nbn requires you to apply at least 3 months before any civil works commence. All telecommunications infrastructure should be built to nbn guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/builders-designers.html>
5. 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

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

- (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.
6. 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.
7. 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 the use of bar-public requires 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 the Darwin Regional Land Use Plan and the Palmerston Eastern Suburbs Planning Principles and Area Plan, which are relevant to this application), zone purpose and outcomes of Clause 4.22 Zone CP (Community Purpose), and Clause 5.2.1 (General Height Control), 5.2.4 (Car Parking), 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 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 (Interchangeable Use and Development), 5.5.2 (Commercial Plot Ratio), 5.5.4 (Expansion of Existing Developments in Zones CB, C, SC and TC), 5.5.10 (Nightclub Entertainment Venue, Bar-Public and Bar-Small), 5.5.11 (Food Premises), 5.5.15 (Design in Commercial and Mixed Use Areas) and 5.5.17 (Building Frontage in Commercial and Mixed Use Areas), 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 with the exception to Clauses 5.2.4.1 (Car Parking Spaces), 5.2.4.4 (Layout of Car Parking Areas), 5.5.15 (Design in Commercial and Mixed Use Areas) and 5.5.17 (Building Frontage in Commercial and Mixed Use Areas).

Clause 5.5.10 (Nightclub Entertainment Venue, Bar-Public and Bar-Small) relates to the development. The purpose of this clause is *“Ensure that the establishment and operation of a nightclub entertainment venue, bar-public and bar-small:*

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

- (a) Provides an active interface to the public domain and contributes to the interest and diversity of the locality;
- (b) minimises unreasonable amenity impacts to surrounding properties, recognising that a reasonable level of ambient noise is associated with the convenience of proximity to central business, entertainment or mixed use precincts; and
- (c) is designed for the safety of patrons.”

The clause requires an acoustic report demonstrating how amenity impacts will be addressed, including an assessment of noise generation, plus a management plan addressing operational hours, the details of estimated patronage, how amenity impacts on any residential or accommodation within 400m would be addressed, and details of waste management, proximity to transport, and how outdoor courtyards will be managed to limit late night noise generation.

The application included the required information, with the submitting information recommending a range of controls including: limiting volume from live music entertainment, glazing thicknesses, ceiling insulation, and for an acoustic barrier around the outdoor areas to control the noise emissions to the adjacent residential properties, subject to completing an environmental survey and once the music noise criterion is determined. The management plan details the operational hours from 10am – 24:00am each day, and the maximum patronage of 280 persons. The nearest residential boundary is around 50m to the south, and waste management details have been provided. The nearest bus route will run along Bloodwood Street and Tuckeroo Boulevard, with taxis and ride share also available. With regard to noise from the alfresco area, the following is provided, *“The al fresco area is screened by the building itself and will be set in an enclosed garden. Service will cease at 24:00 hours. Limiting noise will be by compliance with noise control conditions in the liquor licence, namely, that noise emanating from the premises must not cause unreasonable disturbance to ordinary comfort of neighbouring premises and residences; and that the Director of Liquor Licensing may review noise issues, and notwithstanding compliance with the foregoing condition, may require the licensee to implement noise mitigation measures as directed.”*

Overall the consent authority notes this information is considered as part of the liquor licence application/permit, and considers the proposal complies with Clause 5.5.10.

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 Clauses 5.2.4.1 (Car Parking Spaces), 5.2.4.4 (Layout of Car Parking Areas), 5.5.15 (Design in

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

Commercial and Mixed Use Areas) and 5.5.17 (Building Frontage in Commercial and Mixed Use Areas).

Regarding part (a) above, The proposal is non-compliant with Clause 5.2.4.1 (Car Parking Spaces) because the proposal will result in 62 car parking spaces where 83 is required.

*Administratively, the consent authority may consent to a use or development that is not in accordance with sub-clause 4 if it is satisfied a reduction of the number of car parking spaces is appropriate with regard to:*

- (a) the zoning of the land, the use or development or proposed use or development of the land, and the possible future use or development of the land;*
- (b) the provision of car parking spaces in the vicinity of the land;*
- (c) the availability of public transport in the vicinity of the land; and*
- (d) the potential impact on the surrounding road network and the amenity of the locality and adjoining property;*

*or if the use or development relates to a heritage place and the Minister responsible for the administration of the Heritage Act 2011 supports the reduced provision of car parking spaces in the interest of preserving the significance of the heritage place.*

It is determined that a variation to this clause is appropriate in this instance because an alternate parking assessment is provided which is more appropriate for the proposal, and finds the 62 spaces is appropriate. The car parking rate of the *bar-public* is considered unreasonably high to accommodate the specific use of the proposed development. While the *bar-public* rate is appropriate for venues that function predominantly as bars, the proposal is primarily a bistro where the bar is a place to obtain drinks and return to seats rather than congregate and the indoor kid's playground is seen to be ancillary and unlikely to generate car parking and therefore is recommended to have a nil car parking rate. When re-calculated with amended rates, the proposed development is considered to have an appropriate number of car parking spaces. Although there are car parking spaces in the vicinity of the land, as discussed above, it is unlikely these will be required. Furthermore, bicycle parking has been provide in excess to what is required and a new bus route is planned to travel past the proposed bistro with a bus stop close by allowing further options for pedestrians. For the reasons above it is unlikely the proposed development will have an adverse impact on amenity and the variation to Clause 5.2.4.1 (Car Parking Spaces) is supported.

The proposal is non-compliant with Clause 5.2.4.4 (Layout of Car Parking Areas) as two corners of the car park have landscaped setbacks of less than 3m. A variation is granted given the non-compliances only effect a small portion of the development boundary and are softened further by large patches of landscaping surrounding the non-compliances. The car parking area is considered to be well screened from the street despite these non-compliances. Sub-clause 3 allows the consent authority *to consent to a car parking area that is not in accordance with sub-clause 6 if it is satisfied that the non-compliance will not unreasonably impact on the amenity of the surrounding locality.* Overall the proposal is considered to meet the purpose of the clause, being to *“Ensure that a car parking area is appropriately designed, constructed and*



## Palmerston DCA Meeting No 260 – Friday 10 November 2023

*maintained for its intended purpose”, with no unreasonable amenity impacts expected.*

The proposal is non-compliant with Clause 5.5.15 (Design in Commercial and Mixed Use Areas) since the proposal does not provide an awning or verandah to all street frontages that adjoin a footpath. Administratively, *the consent authority may 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.*

Adjacent the proposed development is the proposed park area which the development has chosen to prioritise connection with and because of this, the building itself is set back a distance from the street that makes it unpractical to expect that awnings or verandahs are provided. The development provides an alternate response to shading, both providing awnings along the pathway wrapping the building within the open space adjacent to the site, which may represent a preferred pedestrian route through the area, and also shade trees along the footpaths.

The proposal is non-compliant with Clause 5.5.17 (Building Frontage in Commercial and Mixed Use Areas) since the development does not include an awning for the full length of the primary building frontage (requirement 6), and also includes one break in the 60% primary building frontage length (requirement 5). Administratively, *the consent authority may consent to a development that is not in accordance with sub-clause 4 and 5 if satisfied that the building design allows for adequate passive surveillance and provides visual interest appropriate to the locality, and, the consent authority may consent to a development that is not in accordance with sub-clause 6 if the development provides appropriate shading for pedestrians adjacent to the primary frontage.* The design is accepted as it includes openings and alfresco dining that allows passive surveillance of the majority of the eastern side of the development which overlooks the proposed park. The building design is well thought out and uses setbacks, projections, varied heights, varied material palette and projecting features to create visual appeal which also considers the future use of the land. 3m wide awnings are provided for approximately 80% of the primary building frontage with the only part having awnings less than 3m wide being the south eastern corner. In this case the awnings provide enough shading to the majority of the primary building frontage and the main areas of access from the proposed park. For these reasons, the variation to 5.5.17 (Building Frontage in Commercial and Mixed Use Areas) is granted.

Regarding part (b), the considerations listed under Clause 1.10(4) 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 those clauses 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

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

the development on the land and on other land, the physical characteristics of which may be affected by the development.

The land has been developed and zoned for Zone C (Commercial Purposes) and is therefore considered capable of supporting the proposed development.

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 surrounding land is currently undeveloped, however, the proposed development takes a considered approach to the developments interaction with future uses as proposed in the Zuccoli Master Plan. The design takes care to ensure the development will be visually appealing and well integrated into the future park and streetscape. The development itself provides desirable services in an appropriate location and although the development has the potential to create amenity issues in the way of loud noise, lights and traffic impact, these have been reduced through a thoughtful approach to the design and through a management plan. Because of these reasons, it is expected that the development will have a positive impact on the future amenity of the area.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

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

**ITEM 4  
PA2023/0206**

### **CHILD CARE CENTRE IN A 2 STOREY BUILDING**

#### **LOT 11202 (1) LIND ROAD, JOHNSTON, TOWN OF PALMERSTON**

**APPLICANT** The Retail Group Pty Ltd

Applicant Jade Liebel attended via teams.

**RESOLVED  
23/23**

That, the Development Consent Authority vary the requirements of clauses 5.2.4.1 (Car Parking Spaces), 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR), 5.5.7 (Child Care Centre), 5.5.15 (Design in Commercial and Mixed Use Areas), and 5.5.17 (Building Frontage in Commercial and Mixed Use Areas) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 11202 (1) Lind Road, Johnston, Town of Palmerston for the purpose of a child care centre in a 2 storey building, subject to the following conditions:

#### **CONDITION PRECEDENT**

- 1) Prior to the endorsement of plans and prior to the commencement of works, a waste management plan demonstrating waste disposal, storage and removal, shall be submitted to and approved by the City of Palmerston, to the satisfaction of the consent authority.
- 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 DCA Meeting No 260 – Friday 10 November 2023

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 to an underground system.

3) Prior to the commencement of works, approval of the kerb crossovers and driveways to the site including necessary upgrades to the surrounding street network as recommended in the traffic impact assessment submitted with the application, to the technical 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 and telecommunication networks to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time. Please refer to notations 1, 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) Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to the City of Palmerston, to the satisfaction of the consent authority.

8) The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the City of Palmerston, to the satisfaction of the consent authority.

9) 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.

10) Storage for waste disposal bins is to be provided to the requirements of the City of Palmerston, to the satisfaction of the consent authority.

11) Upon completion of any works within or impacting upon existing road reserves, the road reserve shall be rehabilitated to the standards and requirements of the City of Palmerston, to the satisfaction of the consent authority.

12) 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;

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

- (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 parking spaces, access lanes and driveways must be kept available for these purposes at all times.

13) 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.

14) 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.

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.

### NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section ([waterdevelopment@powerwater.com.au](mailto:waterdevelopment@powerwater.com.au)) and Power Network Engineering Section ([powerdevelopment@powerwater.com.au](mailto: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. All developers, including owner-builders, are required to comply with Commonwealth telecommunications requirements. Under Commonwealth law, developers are generally required to provide fibre-ready pit and pipe in their developments at their expense. Developers may be able to access an exemption from these arrangements in some circumstances. For more information visit [www.infrastructure.gov.au/tind](http://www.infrastructure.gov.au/tind)
3. If you choose nbn to service your development, you will need to enter into a development agreement with nbn. The first step is to register the development via <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments.html> once registered nbn will be in contact to discuss the specific requirements for the development. Nbn requires you to apply at

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

least 3 months before any civil works commence. All telecommunications infrastructure should be built to nbn guidelines found at <http://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/buildersdesigners>. Html

4. Any proposed works on/over City of Palmerston property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Palmerston.
5. Designs and specifications for landscaping of the road verges adjacent to the property shall be submitted for approval by City of Palmerston and all approved works shall be constructed at the applicant's expense, to the requirements of City of Palmerston.
6. Notwithstanding the approved plans, any proposed signage for the site shall be subject to the City of Palmerston approval, at no cost to Council.
7. 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](mailto:info@ntbuild.com.au)) or by phone on 08 89364070 to determine if the proposed works are subject to the Act.
8. There are statutory obligations under the *Waste Management and Pollution Control Act 1998* 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 WMPC Act, including the General Environmental Duty under section 12 of the WMPC Act. There is also requirement to obtain an authorisation prior to conducting any of the activities listed in Schedule 2 of the WMPC Act. Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority (NT EPA) website . The WMPC Act, administered by the NT EPA, is separate to and not reduced or affected in any way by other legislation administered by other departments or authorities. The NT EPA may take enforcement action or issue statutory instruments should there be non-compliance with the WMPC Act.
9. The development and use hereby permitted must be in accordance with Northern Territory legislation including (but not limited to) the *Building Act 1993*, the *Public and Environmental Health Act 2011*, the *Food Act 2004* and the Education and Care Services National Regulations that apply to the requirements for the establishment and operation of child care centres.

### 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.

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

The NT Planning Scheme 2020 (NTPS 2020) applies to the land and child care centre requires consent under Clause 1.8 (When development consent is required). It is identified as Merit Assessable under Clause 1.8(1)(b)(i), therefore zone purpose and outcomes of Clause 4.11 (Zone C - Commercial), and Clauses 5.2.1 General Height Control, 5.2.4.1 Car Parking Spaces, 5.2.4.4 Layout of car parking area, 5.2.5 Loading Bays, 5.2.6 Landscaping, 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, 5.5.2 Commercial Plot Ratio, 5.5.7 Child Care Centre, 5.5.15 Design in Commercial and Mixed Use Areas, 5.5.17 Building Frontage in Commercial and Mixed Use, need to be considered.

These clauses have been considered, and it is found that the proposal complies with the relevant requirements of the NTPS 2020 except for clauses 5.2.4.1 (Car Parking Spaces), 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR), 5.5.7 (Child Care Centre), 5.5.15 (Design in Commercial and Mixed Use Areas), and 5.5.17 (Building Frontage in Commercial and Mixed Use Areas).

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).

Under Clause 1.10(3) (Exercise of Discretion by the Consent Authority), "In considering an application for a use or development identified as Merit Assessable the consent authority must take into account all of the following:

- a. the relevant requirements, including the purpose of the requirements, as set out in Parts 5 or 6;
- 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 relevant to a variation of requirements in Part 5 and 6.

The proposal complies with the relevant Part 5 development requirements of the NTPS 2020 except for clauses 5.2.4.1 (Car Parking Spaces), 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR), 5.5.7 (Child Care Centre), 5.5.15 (Design in Commercial and Mixed Use Areas), and 5.5.17 (Building Frontage in Commercial and Mixed Use Areas).

### Part 3 – Overlays and Part 4 – 4.11 Zone C (Commercial)

No overlay listed under Part 3 applies to the land. The purpose of Zone C is to "provide a mix of activities and services well connected to a surrounding community at varying scales, including: (a) mixed use centres providing a wide range of retail, entertainment, community and business activities that serve the broader community; (b) smaller centres that cater for convenience needs of immediately surrounding communities; (c) small local centres predominantly

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

*focused on convenience retailing; and (d) residential development commensurate to the scale of the commercial precinct.”*

The relevant zone outcome is: *“A diversity of commercial activities that provide for a range of needs of the surrounding area at an appropriate scale for their location, including: child care centre, club, residential care facility, and other community activities and support services.”*

The proposal is consistent with the purpose of Zone C and the relevant zone outcome as it provides a child care facility at a location connected to the surrounding community and provides a service for the broader community. The site is connected to an established pedestrian network, and the building design, site layout and landscaping responds to the climate and include breeze circulation. There is no impact of overlooking from adjacent land, and the design contributes to reducing the appearance of building massing relative to surrounding buildings. The development has attractive outdoor spaces, enhances the streetscape and will not have any impact of loss of amenity for surrounding premises.

### Part 5 – Development Requirements

#### 5.2.4.1 (Car Parking Spaces)

*The Purpose of this clause is to ensure that sufficient off-street car parking, constructed to a standard and conveniently located, are provided to service the proposed use of a site.*

Subclause 4 requires *“Use and development is to include the minimum number of car parking spaces specified in the table to this clause (rounded up to the next whole number).”*

Table to Clause 5.2.4.1 (Minimum number of required parking spaces) requires 1 parking space for every employee plus 1 parking space for every 20 children. There is a requirement to provide 66 parking spaces and only 63 are provided. Administratively under subclause 2 of clause 5.2.4.1 *“The consent authority may consent to a use or development that is not in accordance with sub-clause 4 if it is satisfied a reduction of the number of car parking spaces is appropriate with regard to:*

- (a) the zoning of the land, the use or development or proposed use or development of the land, and the possible future use or development of the land;*
- (b) the provision of car parking spaces in the vicinity of the land;*
- (c) the availability of public transport in the vicinity of the land; and*
- (d) the potential impact on the surrounding road network and the amenity of the locality and adjoining property;*

*or if the use or development relates to a heritage place and the Minister responsible for the administration of the Heritage Act 2011 supports the reduced provision of car parking spaces in the interest of preserving the significance of the heritage place.”*

The variation to the requirements of clause 5.2.4.1 (Car Parking Spaces) is granted as:

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

- There is existing on street car parking surrounding the site.
- The site is connected to the public transport network (Bus) located directly adjacent the development on Farrar Boulevard.
- The parking shortfall is unlikely to have any impact on the road network.
- The car parking demand generated by the proposal is expected to be accommodated within the existing areas without impacting unreasonably on the amenity of the area or adjoining property, through the cross utilisation of car parking spaces between businesses.

### 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR)

*The purpose of this clause is to protect the visual and acoustic amenity of residential buildings where they are adjacent to non-residential development.*

Subclause 2 requires “A use or development or a proposed use or development that is:

- a) not a residential building;
  - b) on land that is in a zone other than Zones LR, LMR, MR or HR; and
  - c) abuts land in any of those zones;
- must provide a setback to the boundary that abuts any of those zones of not less than 5m.”*

The amended plans illustrates car space 40 being converted and developed into a loading bay 3m from the northern boundary. Administratively under clause 5.2.7, there is no guidance for varying the setback requirement of subclause 2. However, guidance through clause 1.10(3)(c) (Exercise of Discretion by the Consent Authority), as described above, is applied.

With regards to clause 1.10(3)(c), the guidance provided in Part 4 for the purpose and outcomes in Zone C (Commercial) for the loading bay being setback 3m from the northern lot boundary, is generally consistent with the zone purpose and outcomes as:

- The child care centre provides a mix of activities and services well connected to a surrounding community.
- There are no adverse impacts on the local road network, identified in the Traffic Impact Assessment, regarding the loading bay.
- The location of the loading bay minimises any unreasonable impacts to the amenity of surrounding current or future residents.
- The loading bay is of a scale and character appropriate to the child care centre.
- Providing a loading bay for the child care centre, which include the management of waste, is appropriate for the development.

### Clause 5.5.7 – Child Care Centre

*The purpose of this clause is to “ensure that a child care centre: (a) is developed in a location that provides convenient vehicle access and does not interfere with the safe or efficient operation of the local road, cycle and footpath network; (b) incorporates appropriate site layout, building and landscape design to ensure that there is no unreasonable loss of amenity for adjoining and nearby properties.”*



Subclause 6(a) requires *“If a child care centre is located adjacent to land in Zones LR, LMR, MR or HR: (a) the development is to be set back 5m from all site boundaries and landscaped to a minimum depth of 3m to provide a visual screen;”*

The amended plans illustrates car space 40 being converted and developed into a loading bay 3m from the northern boundary. Administratively under subclause 1 of clause 5.5.7, *“The consent authority may consent to a child care centre that is not in accordance with sub-clauses 2-6 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and it is appropriate to the site, having regard to such matters as its location, nature, and scale, and impact on the amenity of the locality.”*

The amended plans retains the elements of subclause 6(a) by retaining a minimum 3m depth of landscaping and a visual screen with a 1.8m high acoustic fence. The location of the loading bay is appropriate with regards to being within the car parking area and adjacent to the waste storage area servicing the child care centre. The impact on amenity through the retained visual and acoustic elements the size and limited use of the loading bay, is considered to have negligible impacts to the amenity to other businesses or uses on the site or for residential dwellings on adjacent land.

The Traffic Impact Assessment, which included the child care centre loading bay, confirms that the development is not anticipated to negatively affect traffic flow or road safety in the area consistent with the clause purpose. As detailed above, the loading bay for the child care centre is also consistent with Zone C (Commercial) purpose and outcomes.

#### Clause 5.5.15 (Design in Commercial and Mixed Use Areas)

The purpose of this clause 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.*

Subclause 17 of the clause requires *“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; (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.”*

An awning is required to Lind Road, where the street frontage adjoins the footpath, with no awning proposed. An awning is not required to Farrar Boulevard, where the footpath is separated from the street frontage by a wide landscaped verge. Administratively, under sub-clause 5 of Clause 5.5.15, the consent authority may 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*

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

(b) *the development provides an alternative response for shading.*

With regards to part (a), the established character includes existing footpaths on streets in the locality without awnings, and being generally exposed to the elements. This site is the only commercial parcel in the locality, with the adjoining vacant residential land to the north and east not requiring any future awning to the street frontage. The development is not considered to detract from the established character of the streetscape by not providing an awning.

With regards to part (b), the development proposes to include trees (Crepe Myrtle and Red Beach Hibiscus) along the Lind Road boundary. The proposed trees on the boundary of Lind Road have a span of between 4-6m when fully grown and are considered to provide a suitable alternative response to shading of the Lind Road pedestrian footpath.

### Clause 5.5.17 (Building Frontage in Commercial and Mixed Use Areas)

The purpose of this clause is to “encourage primary frontages of commercial buildings to contribute to a pleasant pedestrian environment and provide visual connectivity with their surroundings.”

Subclause 6 of the clause requires “Buildings are to provide awning of the length of the primary building frontage to a minimum of 3m wide.” The development is designed to orientate the primary building frontage inwards, towards the car park. The awning along the building frontage only extends between 0.8m and 1.8m, over the pedestrian footpath.

Administratively, under subclause 3 of Clause 5.5.17, “the consent authority may consent to a development that is not in accordance with subclause 6 if the development provides appropriate shading for pedestrians adjacent to the primary frontage.”

The awning is considered to provide some shelter from the elements. The extent of cover is considered appropriate and suitable shading for pedestrians provided, since:

- The time spent walking under the awning would be short as vehicles and customers would typically park as close as possible to the building entrance, only requiring shelter for a small amount of time.
  - The distance between existing the car and proximity to the awning is very close.
3. Pursuant to section 51(1)(m) of the *Planning Act 1999*, the consent authority must take into consideration 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 proposal was circulated to service authorities for comment. There was no opposition to the application and was supported in principle.

## Palmerston DCA Meeting No 260 – Friday 10 November 2023

Concerns were raised from the City of Palmerston regarding the location and function of the existing loading bay, site access, waste storage area and management. A revised Traffic Impact Assessment, including swept path diagrams, were submitted illustrating functionality of the loading bay, access and waste removal vehicles in/out and through the site. To ensure compliance, approval of a waste management plan and access designs have been included as conditions at the request of the City of Palmerston.

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 impact on amenity should be considered in context of the site and its surrounds. The child care centre is centrally located within the residential suburb of Johnston and will enhance the amenity of the area by providing a service that is conveniently located to residents and is of a use that is compatible with the surrounding shopping complex and residential zoning. The nature of the proposal is consistent with the commercial opportunities of the land and is expected within the zone.

**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

16 November 2023