



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING NO. 426 – FRIDAY 9 AUGUST 2024

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

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

APOLOGIES: None

LEAVE OF ABSENCE: None

OFFICERS PRESENT: Margaret Macintyre (Secretary), Amit Magotra, Kaleb Thomas and Elya Sugg (Development Assessment Services)

COUNCIL REPRESENTATIVE: Apology

Meeting opened at 10.15 am and closed at 11.45 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 TIME DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.

ITEM 1 **FOOD PREMISES-RESTAURANT AND PART-TIME PLACE OF WORSHIP**
PA2024/0174 **(MID-DAY PRAYER) (UNIT 5)**

UNIT 5, UNIT PLAN NO. U2008/055, BUILDING LOT 7683, TOWN OF
DARWIN (8B, GARDINER STREET, DARWIN CITY)

APPLICANT Cunnington Rosse Town Planning

Applicant: Brad Cunnington (Cunnington Rosse Town Planning and Consulting)
Chowdhury Sadaruddin (Chairman, Islamic Council of NT) and Sophia Feroz Khan
(Islamic Society) attended.

Submitters in attendance: Faith Woodford, Lesley Kemmis, Simon Pugh and Chew
Yee Tan

Interested Parties in attendance: Katerina Saraidaris and David Swift.

RESOLVED
53/24

That, the Development Consent Authority reduce the car parking requirements pursuant to Clause 5.9.2.12 (Reduction in car parking spaces in Darwin City Centre) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Unit 5, Unit Plan No. U2008/055, Building Lot 7683, Town of Darwin (8B, Gardiner Street, Darwin City) for the purpose of food-premises restaurant and part-time place of worship (mid-day prayer) (unit 5), subject to the following conditions:

CONDITION 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 the place of worship use in the tenancy.

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 and sewerage to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time. Please refer to notation 1 for further information.

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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. Only one (1) prayer activity per weekday (i.e. Monday to Friday), between the hours of 12pm and 1:30pm may take place in the place of worship use approved by this permit.
6. The place of worship use approved by this permit shall provide for a maximum of 50 persons at any one time during the hours of operation.
7. No external sound amplification equipment or loudspeakers, associated with the place of worship, shall be used for the purpose of the announcement, broadcast, playing of music or similar purpose.

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. 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.
3. The applicant is advised to engage a Northern Territory registered building certifier to ensure that the intended use of any existing buildings or structures is permitted by occupancy certification in accordance with the *Building Act 1993*.
4. The applicant is reminded of their obligations under the *Waste Management and Pollution Control Act*, and ensure that operational activities remain compliant with the NT Noise Management Framework Guideline. More information on the guideline can be found at <https://ntepa.nt.gov.au/your-environment/noise>

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 application is for the establishment of a food premises-restaurant and a part-time place of worship for mid-day prayer within an existing vacant tenancy (located on the ground floor of a mixed-use development at 8

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Gardiner Street ('*Evolution*' development). The NT Planning Scheme 2020 (NTPS 2020) applies to the land and is located in Zone CB (Commercial Business). A food premises-restaurant is a *Permitted* land use in Zone CB except where the use does not comply with the relevant development requirements set out in Part 5 of the NTPS 2020. In this case, the food premises-restaurant does not comply with Clause 5.9.2.11 (Car parking spaces in Darwin City Centre); the use, therefore, becomes *Merit Assessable* under Clause 1.8(1)(b)(ii)(2) of the NTPS 2020. Furthermore, the development of a place of worship is *Merit Assessable* in Zone CB. As such, the proposal requires consent under Clause 1.8 (When development consent is required), and the proposed uses being *Merit Assessable* by virtue of under Clause 1.8(1)(b)(i) and (ii)(2) of the NTPS2020, Clauses 5.2.1 (General Height Controls), 5.2.5 (Loading Bays), 5.5.1.1 (Interchangeable Use and Development in Zone CB), 5.5.4 (Expansion of Existing Development in Zones CB, C, SC and TC), 5.5.11 (Food Premises), 5.5.15 (Design in Commercial and Mixed Use Areas), 5.5.16 (Active Street Frontage), 5.8.4 (Exhibition Centre, Place of Assembly and Place of Worship), 5.9.2.1 (Building Design in Darwin City Centre), 5.9.2.2 (Volumetric Control), 5.9.2.10 (Alfresco Dining Areas), 5.9.2.11 (Car parking spaces in Darwin City Centre), 5.9.2.12 (Reduction in car parking spaces in Darwin City Centre) and 5.9.2.13 (Design of Car Parking Areas and Vehicle Access) need to be considered.

The Authority notes the assessment of the Development Assessment Services (DAS), which concludes that the proposed uses (hereinafter referred to as 'development') comply with all relevant requirements except for 5.9.2.11 (Car parking spaces in Darwin City Centre). The Authority also notes that both the applicant and DAS's assessment have identified that the food premises restaurant and place of worship are two separate uses of the premises.

Part 4 – Zone Purpose and Outcomes (Clause 4.10 Zone CB – Central Business)

The purpose of Zone CB (Central Business) is to *promote an active and attractive mixed use environment that maximises its function as the commercial, cultural, administrative, tourist and civic centre for the surrounding region that is integrated with high density residential development.*

Subclause 5 of Zone Outcomes provides that - *cultural and community focused activities such as child care centre, community centre, exhibition centre, medical clinic, **place of assembly and place of worship** support the needs of the local or regional population and contribute to the diversity and activity of uses within the zone; and*

Subclause 10 provides that - *developments are designed and operated in a manner that avoids unreasonable loss of amenity for surrounding premises, having regard to the close proximity between residential and entertainment uses, and the overall mixed use nature of the zone.*

In relation to zoning, Zone CB (Central Business) is a flexible zone intended to provide a diversity of activities, including food premises – restaurant and

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place of worship. Furthermore, the proposal will contribute to the aspirations detailed in the Central Darwin Area Plan (CDAP) by introducing commercial and community development in a vacant tenancy in the CBD and will directly contribute to the CDAP objective of intensifying mixed-use development.

The Authority notes that the zone outcomes encourage the development of land for food premises- restaurant where they contribute to a diversity of land uses and activity at a locality, while taking into account the character and amenity of existing uses in area. In addition, the zone outcomes encourage place of worship where the facilities support the needs of the local/regional population, and contribute to a diversity of land-uses at the area. The proposed food premises-restaurant and place of worship, are *Permitted* and *Merit Assessable*, respectively. As such, these land-uses are reasonably expected within Zone CB.

Mr Brad Cunnington from Cunnington Rosse Town Planning Consultants (applicant) and Mr Chowdhury Sadaruddin of the Islamic Council of NT (beneficiary) attended the meeting and, spoke further to the application, and, provided an overview of the proposed development. Mr Sadaruddin also provided information on the operational aspects of the development for the consideration of the Authority and the members of the public. Mr Sadaruddin advised that the proposed place of worship will provide a space for members of the Islamic community working within the CBD, with the premises primarily operating as a restaurant open to the general public.

Mr Cunnington explained that the development will take place within an existing vacant tenancy that previously operated as a restaurant until it closed in 2019. Mr Cunnington noted that, in terms of the primary use, the tenancy would operate as a food-premises restaurant with a focus on dine-in and an option for takeaway. The restaurant will operate from 10:30am to 4:30pm on weekdays (with the potential for weekend trading during these hours) and will offer halal food and drinks to the public. The restaurant will utilise the existing internal dining space, alfresco areas, and kitchen service areas, with the only internal modification being the addition of two toilet facilities.

Regarding the use of the tenancy for a place of worship, Mr Cunnington explained that it would provide a dedicated area for midday prayers from 12pm to 1:30pm on weekdays, with the exact time varying from day to day. This space will allow residents and workers to fulfil their cultural obligations by attending midday prayer sessions. Mr Sadaruddin clarified that the mid-day prayer session would be in the form of a group of congregants meeting at the venue to conduct a group prayer. No other religious teaching or instruction will take place. Mr Sadaruddin indicated that although the Darwin mosque and Palmerston mosque have teaching elements, this proposal is purely for a place to conduct the mid-day prayer.

In response to a question raised by Ms Katerina Sadaruddin (Interested Parties in attendance) regarding how much floor space would be dedicated to the place of worship activities and whether an appropriate car parking

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space requirement was calculated, Mr Cunnington noted that this application is for a dual land-use and an area of 80 m² has been identified for place of worship use. The car parking requirement for the place of worship should not be considered in addition to the requirement for the food premises-restaurant, as both cannot occupy the same area concurrently.

The Authority also noted that the plans submitted with the application do not clearly show the area designated for the place of worship within the tenancy and questioned the applicant on the possibility of providing amended plans with these details. The applicant agreed that updated plans to better identify the area of the premises that will be used for place of worship activities can be provided and was amenable to the inclusion of a condition to this effect.

Part 5 - Development Requirements

The Authority notes that the assessment of the proposal has found that it complies with the relevant requirements of the NTPS 2020, with the exception of Clause 5.9.2.11 (Car parking spaces in Darwin City Centre). This is addressed further under reason 2. In addition, further consideration of Clause 5.8.4 (Exhibition Centre, Place of Assembly and Place of Worship) was considered prudent by the Authority and is also addressed further below (under reason 2).

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 5 of the NTPS2020, *the consent authority may consent to a proposed development which is not in accordance with a requirement set out in Part 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) of 1.10(4).*

As discussed above, the relevant requirements set out in Part 5 of the NTPS2020 have been considered and it is found that the proposed development complies with all relevant requirements except for Clause 5.9.2.11 (Car parking spaces in Darwin City Centre).

Pursuant to clause 5.9.2.12 (Reduction in car parking spaces Darwin City Centre), sub-clause 2 of the NTPS2020, the consent authority may also consent to a use or development with fewer car parking spaces than required by clause 5.9.2.11 (Car parking spaces in Darwin City Centre).

The assessment of the development against Clause 5.9.2.11 (Car parking spaces in Darwin City Centre) has found that 4.08 (~5) car parking spaces are required for the development, where only 4 are provided for the tenancy in the development.

Clause 5.9.2.12 (2) allows the Authority to reduce the parking requirement by 10% if the development is within 200 m walking distance of an existing, publically accessible car park with a combined total of 100 car parking

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spaces or more. The Authority noted that the subject site is located within 200 m walking distance of the McMinn Street off-street car park, and based on the allowable reduction of 10%, determined to reduce the car parking requirement to 3.68 (4) car parking spaces. The Authority noted that although submissions were received concerning the potential for inadequate parking at the site, no concerns were raised by the City of Darwin, which manages adjacent roads and the McMinn Street car park.

Mr Sadaruddin mentioned at the hearing that the premises will also provide office space for the Islamic Council of the Northern Territory. The Authority noted that the plans provided and the application material does not refer to office use in the tenancy.

The applicant clarified that the office in the food-premises restaurant area is for the restaurant manager; however, if needed, it can also function as an office use for ICNT under clause 5.5.1.1 (Interchangeable Use and Development in Zone CB). The Authority noted that the definition of the place of worship allows for an ancillary office and can, therefore, occur without planning approval.

The Authority has also evaluated Clause 5.8.4 concerning Exhibition Centre, Place of Assembly and Place of Worship to confirm that the intended use is suitable and meets all the necessary criteria specified in the clause. This is discussed in detail below:

Clause 5.8.4 concerning Exhibition Centre, Place of Assembly and Place of Worship

Purpose

- (a) *Ensure that an exhibition centre, place of assembly or a place of worship: provides convenient vehicle access and does not interfere with the safe or efficient operation of the local road and footpath network;*
- (b) *incorporates appropriate building and landscape design to ensure that there is no unreasonable loss of amenity for adjoining and nearby property;*
- (c) *is of a scale and intensity suitable to the site and is consistent with the prevailing and likely neighbourhood character in which the development is proposed; and*
- (d) *is operated to be considerate of the amenity of adjoining and nearby property.*

The relevant requirements applicable to the proposal are contained within sub-clause 3, which states that, 'the operation of the use or development must take into account the amenity of the surrounding locality having regard to (a) hours of operation; (b) number of events annually; (c) maximum capacity of patrons; and (d) any other relevant aspects of the day-to-day operation of the use or development.'

The Authority notes that the application proposes using the ground floor area of the tenancy part-time to hold 30-minute prayer sessions once per day. The prayer sessions will be held Monday through Friday between 12 pm and 1:30 pm. The congregants will be city-based residents and workers

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who attend 'Dhuhur' (mid-day) prayer sessions to meet religious obligations.

In regard to sub-clause (a) and (b), the proposed hours of operation for a place of worship are considered reasonable given the site's CBD location and surrounding activities, which comprise a mix of office, commercial, and residential land uses. It is not unreasonable to expect some overflow of the use beyond the identified 30-minute prayer session window (for example, 15-20 minutes before/after) as a result of early/late arrivals or perhaps members visiting the premises or area on other business first.

Mr Sadaruddin explained that basic management procedures include providing pre-instruction for members to attend sessions and regulating member numbers by organisers to avoid overcrowding and minimise potential noise impacts. Mr Sadaruddin suggests that attendees are typically city-based professionals, students, and visitors who come to the venue to conduct a group prayer to meet cultural obligations.

The Authority noted that submitters raised concerns regarding the longer/multiple prayer sessions occurring on the premises and the impact on other land uses in the area and, accordingly, determined to restrict the place of worship use to only one (1) prayer activity per weekday (i.e. Monday to Friday), between the hours of 12 pm and 1:30 pm via a condition (general condition 5) of development approval.

In regards to sub-clause (c) the Authority notes that the application suggests that up to 50 congregants may attend the service. In response to concerns raised by submitters around the capacity of the tenancy and particularly how many congregants may attend the place of worship activities and what happens in the event more congregants than expected arrive, Mr Brad Cunnington explained that an analysis of the space to accommodate this number of people has not been completed, however, that this concern was a matter to be dealt with under applicable Building Codes. Mr Sadaruddin advised that the proposed activities are generally expected to be a small group (10-15 people), but may, on occasion, rise to 50-60 congregants. Mr Cunnington noted that the operators are aware of the community who will utilise the place of worship activities; however, no direct response was provided to the query regarding what happens if more than the expected number of congregants arrive.

The Authority noted these concerns and determined that although the applicant has discussed an expected number of congregants, a permit condition be added to ensure there is the maximum permitted number of congregants at any time to manage potential amenity impacts. The Authority also noted that the capacity of the premises is dealt with under the Building Regulations, and a note is included on the approval to engage a building certifier to ensure that the intended use of the place of worship is permitted by occupancy certification in accordance with the *Building Act 1993*.

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3. 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.

The application was advertised between 28 June 2024 and 12 July 2024, pursuant to Section 47 of the *Planning Act*. Seven (7) public submissions were received during the exhibition period under Section 49 of the *Planning Act*. Of the 7 submissions, 6 submissions objected to the proposal, with one submission expressing mild support, albeit looking for more information.

The submissions raised concerns about the potential increase in traffic, noise, and car parking, which could impact the overall quality of the area. Additionally, the submissions questioned the permissibility of having two primary land uses operating from the tenancy and the practicality of a place of worship activity operating at the same time as a food-premises restaurant.

The applicant also provided a written response to the comments and concerns raised by submitters and clarifications on how the application interacts with the NTPS 2020. The response was circulated to the public members who made a submission in relation to the application.

In addition to the written submissions, the Authority heard from submitters: Ms Faith Woodford, Ms Lesley Kemmis, Mr Simon Pugh and Ms Chew Yee Tan, who were present at the hearing. Ms Katerina Saraidaris and Mr David Swift, whilst not submitters under section 49 of the Act, were welcome to make verbal submissions at the hearing.

The matters raised by submitters, both in the written submissions and orally at the meeting included:

Appropriateness of using the definition of 'place of worship'

Concerns were raised that the proposal does not adequately demonstrate that it is a 'place of worship', under the NTPS 2020; that a place of worship should be located in a standalone building; that the term 'premises' is not appropriate in this context; and, that the activities taking place may be more of a cultural nature, than religious.

My Cunnington and Mr Sadaruddin, in response to the concerns raised, indicated the following:

- The proposed place of worship meets the definition as it will be a 'place of religious instruction or worship'.
- That a place of worship does not need to be located in its own building, nor must it be of a building form such as a church, chapel, mosque etc
- That the term premises does not mean a separate building, and can refer to the internal division of a building
- The distinction between the definitions of religious and cultural can be difficult to determine. It was noted that the proposed place of worship activities will be for a religious midday prayer.

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- It was also noted that there are 28 nationalities reflected in the Darwin mosque congregation.

The Authority noted the Schedule 2 Definitions of the NTPS 2020 provides that:

place of worship means premises used as a church, chapel, mosque, temple, synagogue or place of religious instruction or worship or for the purpose of religious training. The use can include where ancillary an office and shop;

It further noted that the term “premises” is not defined and, in such case, the usual or common usage of the word is applicable. The term is commonly used in documents such as leases and would normally be considered to include any land, building or part of a building. The Authority also considered the suggestion that, if the definition is read ejusdem generis, a place of worship is to be interpreted as a stand-alone building/site/place. The Authority did not accept that proposition, noting that examples listed in the definition could equally take place in a stand-alone building or a part of a building and determined that the application was properly framed as a ‘place of worship’ and capable of being approved as such.

Permissibility of two primary land uses operating in one tenancy

Concerns were raised that the NTPS2020 does not allow for multiple land uses at a site, and that one land use must be identified as a primary land use. A question was raised whether the NTPS 2020 need to determine primary and subservient land use.

Mr Cunnington explained that the NTPS 2020 does not restrict the occurrence of multiple land uses on a site. As confirmed in other determinations, the Authority has considered multiple land uses on a single subject lot.

The Authority noted these concerns, however, it determined that the applicant suitably demonstrated that the NTPS2020 does allow for the identification of multiple primary land uses, and as such, this concern does not have any planning implications. It is was also noted that the *Planning Act 1999* does not differentiate primary and subservient land-uses (with the exception of ancillary land uses).

Consideration of the proposal against the Zone CB purpose

Ms Saraidaris raised concerns about how the proposal considers sections 51(n) and 51(k) of the *Planning Act 1999* and how the proposal addresses the impact on other land uses in the area.

Mr Cunnington explained that the proposal needed to be considered in the context of the mixed-use purpose of Zone CB (Central Business). Mr Cunnington further explained that the assessment of amenity and what is considered suitable or unreasonable in terms of its impact should be based on the specific context. Mr Cunnington stated that those considerations vary based on the zoning and location. Mr. Cunnington noted that these

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considerations differ depending on the zoning and location. In suburban or rural areas, particularly rural living or rural residential areas, the focus is primarily on residential uses and development. In this instance, the amenity context should consider the CB zoning, which allows for a mix of retail, commercial, high-rise residential, and tourist accommodation uses.

The Authority noted these concerns and considered that the issue is addressed in the application. More details about how the proposal addresses the zoning outcomes of Zone CB (Central Business) are provided under reason 1.

Place of worship activities

The majority of submitters present at the hearing raised concerns about what activities associated with the place of worship would take place at the venue.

My Cunnington, with the support of Mr Sadaruddin, indicated that the midday prayer session would be in the form of a group of congregants meeting at the venue to conduct a group prayer. No other religious teaching or instruction will take place. Mr Sadaruddin indicated that although the Darwin mosque and Palmerston mosque have teaching elements, this proposal is purely for a place to conduct the mid-day prayer.

The Authority noted these concerns; however, it determined that the applicant has suitably demonstrated that the proposed activities are limited and specific in nature and adequately satisfy the definition of place of worship under the NTPS2020.

Floor area of place of worship

Concerns were raised about how much floor space would be dedicated to the place of worship activities. This concern was raised as to whether an appropriate car parking space requirement was calculated.

My Cunnington explained that as this application was for a dual land use (of which 80 m² has been identified for place of worship), the car parking requirement for the place of worship should not be considered in addition to the requirement for the food premises-restaurant, as both cannot occupy the same area concurrently.

As discussed under reason 1 above, the Authority noted that the plans submitted with the application do not clearly show the area designated for the place of worship within the tenancy. The condition of the approval requires the applicant to provide amended plans identifying the area of the premises that will be used for place of worship activities.

Operation of food-premises restaurant and place of worship in one tenancy

Concerns were raised about how the food premises-restaurant and place of worship will operate at the same time, in the same venue (without separate rooms). Concerns were also raised regarding hours of operation for the food premises-restaurant.

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Addressing the concerns raised, Mr Cunnington and Mr Sadaruddin indicated the following:

- There are examples of places of worship (mosques) in Melbourne which operate a café with a place of worship. Upon clarification, it was noted this was often in the form of discrete rooms for different functions
- Both land-uses will be operated by a religious organisation, and provide a specific cuisine
- The proponents do not have concerns that the land-uses are incompatible
- There does not need to be a separation of these uses due to cultural obligations
- The food premises-restaurant will remain open, and patrons can continue dining
- The entrance to premises will remain open during the place of worship activities
- The operational times of the food premises-restaurant is not a planning matter. It was noted that whether the food premises-restaurant is open during Ramadan will be a commercial decision made in the future.

The Authority noted these concerns, however, determined that how the day to day operation of the two land uses impact upon one another within the subject premises is not a planning matter, except to the extent that activities may have an impact on the amenity of the locality. The Authority did not consider that those matters had such impact.

What happens in the event one of the land uses cease

Concerns were raised about how the premises would operate in the event that one of the land uses were to cease operating.

Mr Cunnington indicated that as this application is not seeking to establish one land use as ancillary to the other, there are no planning implications if one use were to cease.

The Authority notes that both the applicant's and DAS's assessments have identified that the food premises, restaurant, and place of worship are two separate uses of the premises. The Authority agreed with the applicant that there would be no planning implications if one use were to cease.

Noise concerns

Concerns were raised at the hearing about the expected level and duration of noise emissions if any studies have been completed to date, and if there are any guideline values for the noise emissions.

Addressing the concerns raised, Mr Cunnington indicated the following:

- Amplification will be limited to a microphone, which will only be used inside
- Fugitive noise emissions will occur when the venue doors open as people enter and exit, but the noise emissions are unlikely to be unreasonable in the context of the location and time of day.

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- No noise studies have been completed to date, but any studies would be unreasonable considering the scale and location of the proposal.
- Noise emissions are currently captured under the NT Environment Protection Authority Noise Management Framework Guideline. Under this guideline, the proposed use should be considered against the Residential – Urban – Day guideline.

While acknowledging the concerns of the submitters, the Authority noted that the CBD has an expected level of noise, including that associated with land uses such as restaurants. The Authority was mindful of the potential amenity impacts on residential apartments in the building and determined to include a condition to ensure that amplification devices associated with the place of worship activities are limited to being located within the building. A note is also included on the approval referring to obligations under the *Waste Management and Pollution Control Act* and ensuring that operational activities remain compliant with the NT Noise Management Framework Guidelines.

Capacity of the venue

Concerns were raised around the capacity of the subject lot, how many congregants may attend the place of worship activities, and what happens in the event more congregants than expected arrive.

Mr Cunnington explained that an analysis of the space to accommodate this number of people has not been completed; however, this concern was a matter under applicable Building Codes. Mr Sadaruddin explained that the proposed activities are expected to be a small group (10-15 people), but may get up to 50-60 congregants. It was explained that the operators are aware of the community that will be utilising the place of worship activities; however, no direct response was provided to the query regarding what would happen if more than the expected number of congregants arrived.

The Authority noted these concerns and determined that although the applicant has discussed an expected number of congregants, the condition of the approval requires a maximum number of congregants at any time to manage potential amenity impacts. The Authority also noted that the capacity of the premises is dealt with under the Building Regulations, and a note is included on the approval to engage a building certifier to ensure that the intended use of the place of worship is permitted by occupancy certification in accordance with the *Building Act 1993*.

Provision of car parking spaces

Concerns were raised around the inadequate provision of car parking spaces; the availability of car parking to patrons and congregants.

Speaking to the concerns raised, Mr Cunnington indicated that under the NTPS2020, it is permissible for a dual-use proposal to utilise a single calculation for the purposes of determining the number of car parking spaces that are required. Under this method, and taking into account the Darwin location specific development requirements, 4.16 (rounded up to

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5) car parking spaces are required. It was stated that the NTPS 2020 does not state that car parking spaces need to be available for patrons or congregants.

The Authority noted these concerns, however, determined that the applicant has suitably demonstrated that the car parking rate applied for the proposal is correct.

Traffic management concerns

Concerns were raised that the existing road network in the vicinity of the subject lot is already under strain; that this proposal may add to existing pressures; that the Evolution porte-cochere is for residents only; and, that car parking availability in the area is already limited.

Brad Cunnington, with the support of Mr Sadaruddin, indicated the following:

- Traffic management concerns were not considered as part of this proposal due to the nature of the proposal
- The proponents completed an informal walking study to inform the consideration of how congregants and patrons will access the site
- It was noted that the utilisation of the publically available McMinn Street car park is not a planning matter.

The Authority notes that these concerns are relevant to the City of Darwin, who did not raise any concerns with the proposal in their submission. It is noted that the operation of the Evolution porte-cochere is a matter for the Building's Body Corporate.

Enforcement of permit conditions

In response to concerns raised around how permit conditions are enforced, the Authority advised that the conditions on any permit that is granted will be made available to the public to view, and a breach of the condition can be brought to the Authority's attention by lodging a complaint pursuant to section 78 of the *Planning Act*.

Issue of signage displayed on the tenancy

A concern was raised about the signage details that will be provided at the site. Mr Cunnington indicated that signage will be dealt with through the City of Darwin.

The Authority noted this concern; however, it determined that the applicant has correctly identified that this is a matter that will be addressed by the City of Darwin.

Incompatibility of land-uses

Concerns were raised that the operation of the place of worship may have a negative impact on the existing cultural fabric of the area.

Mr Sadaruddin mentioned that the proposed place of worship will provide a culturally appropriate space for congregants to complete their midday prayer obligations. It was stated that visiting dignitaries

The Authority noted the reasons for the proposal. The Authority considered that the cultural or religious background of the proponents is not considered to be a planning matter.

The Authority has taken all comments into account and carefully considered the deeply held concerns of the submitters. The Authority notes that the majority of concerns raised by submitters relate to the place of worship use, which have been addressed through the approval conditions. Furthermore, the assessment of the proposal against Clause 5.8.4 concerning Exhibition Centre, Place of Assembly and Place of Worship confirms that the intended use is suitable and meets all the necessary criteria specified in the clause. Other concerns that are considered relevant to the NTPS2020 are addressed further in reasons 4 and 5.

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 subject lot is within Zone CB (Central Business) and is identified for 'Mixed Use (Commercial, Civic, Residential, Education, Tourism, Recreation & Retail' land uses under the Darwin Area Plan. No issues were identified with respect to the capability of the land for the proposed development. Additionally, the application was circulated to service authorities, which did not identify or raise any issues or concerns in relation to land capability.

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. Section 3 of the Act provides that *amenity, in relation to a locality or building, means any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable*. Any change to the use or way land is developed has the potential to impact the amenity of the surrounding areas. The issue for the Authority to determine is whether that potential impact on the existing and future amenity of the area is consistent with what could reasonably be expected from any development in accordance with the zone provisions and, further, pursuant to the requirements of NTPS2020.

Public submission were received, raising concerns with the development on the basis that the use would impact the amenity of the surrounding area and, in particular, other land uses of the site.

Taking into account the nature of the zoning, the requirements of NTPS2020, in particular clause 5.8.4, and the matters raised by submitters, the Authority has concluded that the impact on amenity is consistent with reasonable expectations for the building and locality provided that certain conditions to the operation of the place of worship are included. In order

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to ensure that the proposed place of worship activities at the subject site are mitigated, the Authority has included several conditions and notes to the development permit. The permit conditions relate to stipulating a defined maximum value for amenity-related requirements, as per the application material, to ensure that the impacts of the place of worship activities are mitigated.

The Authority also notes that the development is located within the Central Business District (CBD) of Darwin and is surrounded by a mix of land uses in the broader locality, accommodating a range of retail, commercial, and high-rise residential and tourist accommodation uses. The development is consistent with the anticipated range of uses that can occur in zone CB and will add to the amenity and increase activity by occupying a vacant tenancy.

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

2024.08.16

15:59:26

+09'30'

SUZANNE PHILIP

Chair

16 August 2024