



## **DEVELOPMENT CONSENT AUTHORITY**

### **PALMERSTON DIVISION**

### **MINUTES**

**MEETING No. 261 – MONDAY 11 DECEMBER 2023**

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

**MEMBERS PRESENT:** Suzanne Philip (Chair), Trevor Dalton, Marion Guppy, Sarah Henderson and Danielle Eveleigh

**APOLOGIES:** Elisha Harris and Athina Pascoe-Bell

**LEAVE OF ABSENCE:** Nil

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), Adelle Godfrey and Daniel Herhily (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Nadine Nilon and Ned Talbot

**Meeting opened at 10.15 am and closed at 1.30 pm**

## Palmerston DCA Meeting No 261 – Monday 11 December 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 Elisha Harris in relation to the Palmerston Division from 5 December 2023 to 15 December 2023 as Elisha Harris is prevented from performing her duties of office because of absence.

**ITEM 1**                    **DWELLING-SINGLE FOR USE AS DWELLING-COMMUNITY RESIDENCE**  
**PA2023/0333**        **LOT 15613 (128) CROSBY STREET, ZUCCOLI, TOWN OF PALMERSTON**  
**APPLICANT**        One Planning Consult

Applicant Israel Kgosiemang (One Planning Consult) and Philip Hoare (Multibuild) attended.

**RESOLVED**            That, the Development Consent Authority, pursuant to section 53(a) of the  
**26/23**                    *Planning Act 1999*, consent to the application to develop Lot 15613 (128) Crosby Street, Zuccoli, Town of Palmerston for the purpose of dwelling single for use as dwelling-community residence, subject to the following conditions:

### CONDITIONS PRECEDENT

1. 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.

### GENERAL CONDITIONS

2. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
3. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage and electricity networks 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.
4. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
5. The kerb crossings 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.
6. The owner shall
  - (a) remove disused vehicle and/ or pedestrian crossings; and
  - (b) undertake reinstatement works;

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all to the technical requirements of and at no cost to the City of Palmerston, 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 dwelling-community residence is to be such that the management of the household is assisted by a community, religious or charitable organisation or an educational, departmental or institutional establishment, to the satisfaction of the consent authority.

### NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) and Power Network Engineering Section (powerdevelopment@powerwater.com.au) should be contacted via email a minimum of 1 month prior to construction works commencing in order to determine the Corporation's servicing requirements, and the need for upgrading of on-site and/or surrounding infrastructure.
2. 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.

### 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 dwelling-single for use as dwelling-community residence 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 the zone purpose and outcomes of Zone SP1\*20, and Clauses 5.2.1 General Height Control, 5.2.4 Vehicle Parking, 5.2.6 Landscaping, 5.4.1 Residential Density, 5.4.3 Building Setbacks of Residential Buildings and Ancillary Structures, 5.4.6 Private Open Space and 5.4.14 Dwelling-Community Residence, need to be considered.

Clause 1.7(1)(d) provides "...the provisions of parts 1, 2, 3, 5, 6 and 7 apply to development described in Schedule 4.1 (Specific Use Zones) except where they conflict with any conditions specified in that Schedule." The assessment found full compliance with the requirements of Zone SP1\*20 plus the relevant clauses under Part 5 of the Planning Scheme 2020.

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The purpose of Zone SP1\*20 is to “Provide for a range of lot sizes that will facilitate a variety of low rise housing options and compatible residential uses in a location supported by appropriate commercial and community facilities and where full reticulated services are available.” Zone SP1\*20 provides the following specific requirement for dwelling-community residences:

“21. A dwelling-community residence may only:

- (a) be developed on a dwelling-single lot that has an area greater than 500m<sup>2</sup>,  
and
- (b) accommodate a maximum of 6 persons residing in the dwelling.”

The proposal complies with the above requirement, noting the land is 639m<sup>2</sup>, and the dwelling has 4 rooms including the overnight assistance room. In addition the following requirements of Zone SP1\*20 and Part 5 of the Planning Scheme are met:

- Building setbacks: The design meets the setbacks endorsed for this stage of the Zuccoli Village subdivision, including meeting the minimum primary street setback to Crosby Street and secondary street setback to Follington Street, plus side and rear setbacks.
- Car parking: A dwelling-community residence requires 1 car park for every 4 beds, which would require 2 spaces (1.6 rounded), with the design including a double garage plus additional parking on the driveway.
- Private open space: Over 110m<sup>2</sup> of private open space is provided when 45m<sup>2</sup> minimum is required. The private open space is also directly accessible from main living area, is screened to the street, and includes landscaping and a shade tree.

The proposal is compatible with the surrounding locality, a typical size to surrounding households, and indistinguishable to adjacent residences. The proposal is likely to be established in a way that does not impact on the amenity of the area, and accords with the relevant zone purposes and outcomes.

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 lot was recently created as part of Zuccoli Village Phase 3.6 and no concerns have been identified with respect to be capability of the land in supporting the proposed development. Additionally, the Department of Environment, Parks and Water Security did not identify or raise any issues of concern in relation 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 proposal is compatible with the surrounding locality, being of similar size and scale to surrounding households. The dwelling is likely to be

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indistinguishable from the adjacent residences and is not expected to unduly impact on the amenity of the area.

4. Pursuant to section 51(1)(t) of the *Planning Act 1999*, the consent authority must take into consideration other matters it thinks fit.

The Northern Territory Fire and Rescue Service (NTFRS) submitted comments on the application, citing concerns with the development and that it be better described as a 'residential care facility', defined within the Planning Scheme 2020 as "... the use of premises for supervised accommodation where the use integrates:

(a) rehabilitation; and/or

(b) medical; and/or

(c) other support;

*facilities for residents who cannot live independently and/or require regular nursing or personal care, and may include where ancillary an office;"*

By contrast, the definition of dwelling-community residence, "... means a dwelling:

(a) used to accommodate persons who are not necessarily related and who live together as a single household, with or without paid supervision or care; and

(b) that is managed so that day to day activity is of a residential character; and

(c) where the management of the household is assisted by a community, religious or charitable organization or an educational, departmental or institutional establishment, but does not include a residential care facility;"

NTFRS highlight that a residential care facility is 'a 'facility for residents who cannot live independently', and requested that the application be considered under this definition. NTFRS suggest "This would clearly define the compliance requirements for the building under the National Construction Code regarding building classification type and occupant safety, with the goal of improving life safety for the future occupants of the building."

The consent authority determined the proposed use is a dwelling-community residence, noting the development is a 'dwelling' (meaning "a building, or part of a building, designed, constructed or adapted as a self-contained residence") of residential character, accommodating persons who are not necessarily related, with care provided, and where management is intended to be assisted by an organisation. At the hearing, the applicant indicated the service provider is not yet known for the development, and a condition was imposed by the consent authority that ensures the management of the household is "...assisted by a community, religious or charitable organisation or an educational, departmental or institutional establishment".

The plans do not integrate rehabilitation, medical or other support areas within the building, and as such is not considered a residential care facility. The land use definitions in the Planning Scheme may not always neatly align with classifications under the National Construction Code. Any concerns with achieving appropriate building certification, and fire and

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safety requirements, is a relevant matter for consideration by the building certifier under the Building Act 1993.

FOR: 5

AGAINST: 0

ABSTAIN: 0

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

ITEM 2  
PA2023/0324

**DWELLING-MULTIPLE (13 X 3 BEDROOM) AND (14 X 2 BEDROOM) IN 1 X 3 STOREY BUILDING UNITS 13888 (APT 2) AND 13892 (COMMON PROPERTY), (11) TARAKAN COURT, JOHNSTON, TOWN OF PALMERSTON**

APPLICANT

Bruce Baldey

Applicant Bruce Baldey attended.

RESOLVED  
27/23

That, the Development Consent Authority vary the requirements of Clauses 5.2.4.4 Layout of car parking areas, 5.4.3 Building Setbacks of Residential Buildings and Ancillary Structures, 5.4.7 Communal Open Space, and 5.4.8.2 Building Design for Dwelling-multiple of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Units 13888 (2) & 13892 (Common Property), 11 Tarakan Court, Johnston, NT for the purpose of dwelling-multiple (13 x 3 bedroom, 12 x 2 bedroom and 2 x 1 bedrooms) in 1 x 3 storey building, subject to the following conditions:

### CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and 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, or an alternate approved connection shall be submitted to and approved by the City of Palmerston and the Land Development Unit, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.
2. Prior to the endorsement of plans and prior to the commencement of works, the applicant is to specify on the plans the specific building treatments included to achieve the maximum recommended design sound levels of the *Australian Standard AS2107-2000 Acoustics – Recommended design sound levels for reverberation times for building interiors*, to the satisfaction of the consent authority.
3. Prior to the commencement of works, in principle approval from the City of Palmerston is required for the access to the site, to the satisfaction of the consent authority.
4. Prior to the commencement of works, details of waste servicing shall be submitted to and approved by the City of Palmerston, 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 services 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.
7. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
8. All existing and proposed easements and sites for existing and required utility services must be vested in the relevant authority for which the easement or site is to be created.
9. Confirmation shall be provided to Development Assessment Services (in the form of an email addressed to the Power and Water Corporation) from a suitable qualified professional confirming that all new number labels have been correctly installed at the Customer's Metering Panel(s) and water meters (where applicable). Please provide a copy of an email addressed to both [landdevelopmentnorth@powerwater.com.au](mailto:landdevelopmentnorth@powerwater.com.au) and [powerconnections@powerwater.com.au](mailto:powerconnections@powerwater.com.au)
10. Prior to the use/occupation of the development and connection of services (i.e. power and water), the owner of the land must apply for street addressing from the Surveyor-General of the Northern Territory. This will form the legal address and will be required to be placed on the meters within the development in accordance with the allocation. An Occupancy Permit will not be able to be granted until such time as addressing is obtained."
11. 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.
12. The owner shall:
  - (a) remove disused vehicle and/ or pedestrian crossovers;
  - (b) provide footpaths/ cycleways;
  - (c) collect stormwater and discharge it to the drainage network; and
  - (d) 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.
13. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Palmerston, and Land

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Development Unit, Department of Infrastructure, Planning and Logistics, to the satisfaction of the consent authority.

14. Storage for waste disposal bins is to be provided to the requirements of City of Palmerston to the satisfaction of the consent authority.
15. 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.
16. Before the occupation of the development, the applicant is to demonstrate the building treatments to meet the maximum recommended design sound levels of the *Australian Standard AS2107-2000 Acoustics - Recommended design sound levels for reverberation times for building interiors* have been constructed, to the satisfaction of the consent authority.
17. Before the 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;
  - (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 drivewaysto the satisfaction of the consent authority.  
Car parking spaces, access lanes and driveways must be kept available for these purposes at all times.
18. 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 and from view of neighbouring or nearby developments (or developments reasonably anticipated), 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. The use of angled louvered slats for screening purposes is acceptable, however the slat screening must be designed with a panel to gap ratio, such that the condenser units are not readily visible from any angle.
19. 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.
20. All balconies are to be internally drained and discharge is to be disposed of at ground level and in a manner consistent with stormwater disposal arrangements for the site to the satisfaction of the consent authority.



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21. 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.
22. 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 Surveyor-General advises you should immediately make application for unit/street addresses to the Survey and Land Records unit on (08) 8995 5346 ([surveylandrecords@nt.gov.au](mailto:surveylandrecords@nt.gov.au)).
3. A "Permit to Work Within a Road Reserve" may be required from City of Palmerston before commencement of any work within the road reserve.
4. There are statutory obligations under the *Waste Management and Pollution Control Act 1998* (the Act), that require all persons to take all measures that are reasonable and practicable to prevent or minimise pollution or environmental harm and reduce the amount of waste. The proponent is required to comply at all times with the Act, including the General Environmental Duty under Section 12 of the Act. There is also a requirement to obtain an authorisation prior to conducting any of the activities listed in Schedule 2 of the Act. Guidelines to assist proponents to avoid environmental impacts are available on the Northern Territory Environment Protection Authority website at <http://ntepa.ntg.gov.au/waste-pollution/guidelines/guidelines>. The Act, administered by the Northern Territory Environment Protection Authority, is separate to and not reduced or affected in any way by other legislation administered by other Departments or Authorities. The Environment Operations Branch of the Environment Division may take enforcement action or issue statutory instruments should there be non-compliance with the Act.
5. All land in the Northern Territory is subject to the *Weeds Management Act 2001* (WM Act). The WM Act describes the legal requirements and responsibilities that apply to owners and occupiers of land regarding declared weeds. Section 9 general duties include the requirement to take all reasonable measures to prevent land being infested with a declared weed and to prevent a declared weed from spreading. There are additional duties including a prohibition on buying, selling, cultivating, moving or propagating any declared weed and the requirement to notify the Weed

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Management Branch of a declared weed not previously present on the land within 14 days of detection. Should you require further weed management advice contact the weed management branch by phone on (08) 8999 4567 or by email to weedinfo@nt.gov.au.

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 dwelling-multiple requires consent under Clause 1.8 (When development consent is required). It is identified as *Merit Assessable* under Clause 1.8(1)(b)(ii)(2), therefore the zone purpose and outcomes of Clause 4.4 Zone MR Medium Density Residential, and Clauses 5.2.1 General Height Control, 5.2.4 Car Parking, 5.2.6 Landscaping, 5.4.3 Building Setbacks of Residential Buildings and Ancillary Structures, 5.4.4 Extensions and Structures Ancillary to a Dwelling-group or Dwelling-Multiple Development, 5.4.6 Private Open Space, 5.4.7 Communal Open Space, 5.4.8 Residential Building Design, 5.4.17 Building Articulation, 5.4.18 Fencing, and 5.4.19 Residential Plot Ratio need to be considered.

These clauses have been considered and it is found that the proposal complies with the relevant requirements of the Planning Scheme except for Clauses 5.2.4.4 Layout of car parking areas, 5.4.3 Building Setbacks of Residential Buildings and Ancillary Structures, 5.4.7 Communal Open Space, and 5.4.8.2 Building Design for Dwelling-multiple.

The proposal is within Zone MR (Medium Density Residential), of which the purpose is to “Provide for a range of mid-rise housing options close to community facilities, commercial uses, commercial uses, public transport or open space, where reticulated services can support medium density residential development.” As a three storey residential development, the proposal is consistent with the Zone Purpose and Zone Outcome 1, which provides the land is for “Predominately medium density residential developments generally not exceeding four storeys.” The proposal achieves compliance

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with the Part 5 requirements for building height, car parking spaces, building setbacks to the residential building, private open space, building articulation and plot ratio.

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).

It is considered that a variation to the affected clauses is appropriate in this instance cause:

- (a) Clause 5.2.4.4 Layout of car parking areas  
The purpose of this clause is to, *“Ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose.”* The proposal has been found not in accordance with Clause 5.2.4.4 as the plans include a 1m setback from Lambrick Avenue to car parking spaces only, when 3m of landscaping is required. The consent authority may vary this requirement, *“...if it is satisfied that the non-compliance will not unreasonably impact on the amenity of the surrounding locality.”*

The existing unit title boundaries are noted as providing a limit to the possible extent of compliance with this requirement, establishing boundaries to areas suitable for use as driveways and car parking for each unit. As the non-compliance is behind an existing 2.5m blockwork wall, and will not be visible from the affected frontage, the consent authority determined this not result in any unreasonable impact on the amenity of the locality.

### Clause 5.4.3 Building Setbacks of Residential Buildings and Ancillary Structures

The purpose of this clause is to, *“Ensure that residential buildings and ancillary structures are located in a manner that:*

- (a) is compatible with the streetscape and surrounding development including residential buildings on the same site;*
- (b) minimises adverse effects of building massing when viewed from adjoining land and the street;*
- (c) avoids undue overlooking of adjoining properties; and*
- (d) facilitates breeze penetration through and between buildings..”*

The proposal complies with the minimum setbacks for the residential building, however does not meet the secondary street setback for the carport adjacent to Lambrick Avenue:

- 4.5m is required for residential buildings and ancillary structures, and 1.2m proposed to the carport posts; and
- 2.1m is required to the carport roof and 0.9m proposed.

The consent authority may consent to a development that is not in accordance with this requirement, only *“...if it is satisfied that the reduced*

*setback is consistent with the purpose of this clause and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.”* The site has an existing 2.5m boundary fence constructed along the Lambrick Avenue frontage, reducing direct views of the reduced setback. The carport height nearest the fence is also 2.5m in height, increasing to 3.2m towards the north. The consent authority determined that the carport is considered to be compatible with the streetscape and unlikely to result in any adverse views of building massing, noting it will be largely screened by the 2.5m boundary fence.

#### Clause 5.4.7 Communal Open Space

The purpose of this clause is to, *“Ensure that suitable areas for communal open space are provided for dwellings-multiple, residential care facilities and rooming accommodation.”* The clause requires a minimum of 15% of the site, being not less than 6m wide at any point, is to be communal open space. The Clause also requires,

*“6. Communal open space is to be designed to:*

*(a) be clearly delineated from private and public open space;*

*(b) maintain reasonable privacy of nearby dwellings;*

*(c) provide recreational facilities for occupants; address the projected needs of children;*

*(d) include landscaping and shade where located outdoors;*

*(e) minimise safety issues, including through lighting and passive surveillance;*

*(f) minimise the effects of any on-site traffic circulation and car parking areas; and*

*(g) be capable of efficient maintenance and management.*

With an overall site area of 24,900m<sup>2</sup>, the communal open space for the overall development is required to be 3,735m<sup>2</sup>. The proposal includes communal open space of 3,102m<sup>2</sup>, or 12.5% of the total site area only. Administratively, the consent authority may consent to a development not in accordance with the above requirements, *“if it is satisfied the communal open space has usable dimensions and is of a sufficient size for the development.”* The existing unit title boundaries are noted as providing a limit to the possible extent of communal open space. The site is also noted as being within close proximity to Council owned Hobart Park, which includes a playground, obstacle course, and half basketball court. Overall, the consent authority determined that the central landscaped area provides useable dimensions and is of reasonable size for the development.

#### Clause 5.4.8.2 Building Design for Dwelling-multiple.

The purpose of this clause is to, *“Promote site-responsive design of dwellings-multiple that provides a sympathetic interface with the streetscape and surrounding dwellings, is climatically appropriate and provides a pleasant living environment for the occupants.”* Unit 13 – 17 and 23 – 27 do not meet the below requirement:

*“13. Balconies are to provide at least:*

*(a) One side without an external wall; and*

*(b) One side without an external wall for more than 50% of the length of that side.”*

The consent authority may vary this requirement “...if it is satisfied that the balcony design allows for sufficient breeze penetration and limits the appearance of building massing when viewed from the public domain.” Whilst the balconies to units 14 - 16 and 24 – 26 are enclosed on either end by solid walls rather than achieving 50% open to one side, each balcony is substantially larger than the minimum 12m<sup>2</sup> private open space required, each providing 22m<sup>2</sup> overall. The design with extended “wings” either side of the central area still allow for sufficient breeze penetration within the building, as illustrated in the figure below. The building is setback 12.3m which is triple the minimum 4.5m required setback. Some articulation occurs with each corner unit balcony being setback 1m further than the central balconies.

The corner balconies to units 13, 17, 23, 27 are noted as minor non-compliance only with a 45% opening to the second side rather than the 50% required and unlikely to significantly impact breezes, with these units also including secondary balconies at each end reducing the appearance of building massing. Overall the consent authority determined that the balcony design allows for sufficient breeze penetration and sufficiently limits the appearance of building massing when viewed from the public domain.

- (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 the Clauses as identified above.
3. Pursuant to section 51(1)(j) of the *Planning Act 1999*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development.

The parcel was created as part of the broader subdivision of Johnston around 12 years ago. The land has no identifiable land capability issues that would impact on the 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.

Whilst the development will result in a change to the appearance of the site, it is consistent with that expected in Zone MR (Medium Density Residential) as a Merit Assessable development, including the overall height, scale and residential use proposed. The development is noted as being similar in scale and appearance to the existing 4 storey building within the same unit complex, albeit at a lower height. Overall the development is not anticipated to adversely impact the existing or future amenity of the area.

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FOR: 5

AGAINST: 0

ABSTAIN: 0

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

**ITEM 3**  
**PA2023/0292**

**CHANGE OF USE TO PLACE OF WORSHIP AND INDUSTRY LIGHT INCLUDING ONE NEW BUILDING ADDITION, PLUS ANCILLARY OFFICE AND SHOP (FUNERAL PARLOUR AND CREMATORIUM) LOT 8539 (19) MCCOURT ROAD, YARRAWONGA, TOWN OF PALMERSTON**

**APPLICANT**

Masterplan SA Pty Ltd

Applicant George Dakis, Mark Hogan and Sabella Fuss (MasterPlan), Robert and Michelle Murphy (operators) Marina Mossman, Lyn Hansen and Deanne Atkinson attended.

Mr Dakis tabled:-

- Dated 8.12.23 - Email from Ben Kelly in relation to the ACCA Guidelines to Environmental Emissions from Crematoria;
- Letter from Tim Barlow HCS Industrial Pty Ltd on odour emission – Human Cremator manufactured by Major Engineering, model HD90
- A map with location of a current crematorium on Amy Johnson Drive, showing setbacks from, adjoining lots.

DAS tabled:

- A late service authority comment from Mr Chis Monahan, Environmental Health, NT Health confirming no comments or requirements.

Submitters in attendance: Pamela Power, John Harrison, Gayle Miller, Gary Swift, Ian Wood, Aaron Heath and Michael Pearson.

Submitters who sent their apology Gerald Brittain.

Interested party in attendance Tegan Cann.

**RESOLVED**  
**28/23**

That, pursuant to section 53(c) of the *Planning Act 1999*, the Development Consent Authority refuse to consent to the application to develop Lot 8539 (19) McCourt Road, Yarrowonga, Town of Palmerston for the purpose of change of use to funeral parlour and crematorium including one new building addition, plus ancillary office and shop in stages for the following reasons:

### **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 was lodged as “Change of use to place of worship and industry-light (funeral parlour and crematorium) including one new building addition, plus ancillary office and shop”. The Development Assessment Services (DAS) report prepared for the Development



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Consent Authority (the consent authority) recommended that the funeral parlour use be considered as an undefined use not otherwise described in the list of defined uses in Schedule 2 of the Northern Territory Planning Scheme 2020 (NTPS 2020), and the crematorium component as industry-light, plus the ancillary uses. The consent authority considers that the definition *industry-light* does not adequately cover the proposed use which will include the temporary storage and cremation of human remains. The definition of “*industry*” in Schedule 2 of the NTPS 2020 provides -

*industry means the use of land for processes involving manufacturing, assembling, packaging, altering, repairing, renovating, finishing, cleaning, treating of waste materials, testing or analysis or dismantling of an article, goods, or material including the storage or transportation associated with any such activity;*

Further, Schedule 2 defines *industry-light* as meaning -

*an industry in which the process carried on, the machinery used and the goods and commodities carried to and from the premises on which the industry is sited are not of such a kind as are likely to adversely affect the amenity of the surrounding locality by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil or otherwise. The use may include where ancillary food premises-café/take away, office and shop;*

The consent authority considers that the proposed crematorium and mortuary use does not fall within the NTPS 2020 definition of *industry*, and, in particular, that the storage and cremation of human remains is not subsumed within “*the treating of waste materials*”. While the funeral parlour aspect of the proposed development may have elements of a place of worship as a “chapel”, the consent authority considers that the proposal, viewed as a whole, does not fall within any of the definitions prescribed by the NTPS 2020. As such the consent authority has determined the proposed development and use is undefined by the Planning Scheme and has considered the application accordingly. An undefined use is an *Impact Assessable* use in Zone SC.

At the hearing of the application, Ms Michelle Murphy (the proponent) indicated that the staging of the proposal is such that the crematorium, plus ancillary office and shop would first be constructed, followed by a secondary stage for the construction of the funeral parlour building in approximately 2 years. The consent authority notes the proposal is unique in that the first known in the Northern Territory for the establishment of a crematorium, as all other facilities (at Marrara, Holtze, and Ciccone) have been operating as funeral parlours, prior to a cremator being introduced.

In determining an impact assessable application, the Authority is required by sub-clause 4 of Clause 1.10 of Part 1 the NTPS2020 to consider the following matters -

- (a) any 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

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- the land;
- (c) the guidance provided by the relevant zone purpose and outcomes in Part 4; and
- (d) any component of the Strategic Framework relevant to the land as set out in Part 2.

The strategic framework (part 2 of the Scheme, including the Darwin Regional Land Use Plan and the Palmerston Central Area Plan), zone purpose and outcomes of Zone SC (Service Commercial) must be considered for this undefined use. Both the Darwin Regional Land Use Plan and Central Darwin Area Plan identify the intended future use of the land as service commercial.

The land is zoned SC (Service Commercial), the purpose of which is 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 funeral parlour and crematorium neither neatly align with, nor are they associated with, the retailing or commercial uses described in the zone purpose. Whilst the use may require a large floor area for the handling and storage of human remains, the consent authority determined that a funeral parlour and crematorium business would not benefit from being in a location that enables *“... convenient access by the broader regional population”*. The proposed development has a specific nature, with customers only visiting the crematorium for a very particular purpose, in respect of which, matters of geographic convenience are unlikely to impact. Further, the specific nature of the business is quite different from a retail or commercial use which may benefit from a convenient location for passing trade. Equally, in relation to the holding of funeral services as part of the funeral parlour element of the use, geographic convenience is unlikely to be of great impact.

The zone outcomes include:

1. *A diversity of service commercial activities that consist predominately of retail business activities such as showroom sales, vehicle sales and hire, and leisure and recreation.*
2. *A mix of activities such as animal boarding, industry-light, motor repair station and warehouse, which are compatible with and are of such a kind that will not adversely affect the amenity of the service commercial function of the area.*

The DAS report to the consent authority outlined that the surrounding locality includes a mix of uses, however with a focus on light industrial activities. The immediate area within a 200m radius of the site, was described as including a wide range of existing businesses including, 4WD repairs and servicing, welding equipment sales and hire, warehouses, tyre storage and installation, storage of road trains, workshops for a number of trades including plumbers, refrigeration mechanics and civil contractors, plumbers, print businesses, pool shops,



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plus small scale offices and fitness studios operating from within warehouses. The Zone SC assessment table provides a broad range of commercial and community uses such as showroom sales, shopping centre, vehicle sales and hire, leisure and recreation, bar-public, bar-small, club, food premises-café/take away, place of worship, food premises-fast foot outlet, medical clinic, office and shop, plus accommodation uses including residential care facilities, rooming accommodation, and hotel/motel. Whilst the light industrial nature of much of the existing activity in the locality is noted, the strategic intent reflects that future development is to be aligned with Zone SC. The consent authority determined that the nature of the use may be prohibitive or hindering to future development on surrounding sites in accordance with the zone intent, given its specific nature.

Due to the undefined nature of the use, there are no Part 5 requirements directly relevant to the proposal and any such requirements are at the discretion of the consent authority. While matters such as parking requirements for a place of worship may be used to guide the assessment of the proposal, the issue of appropriate buffers for the use are at the discretion of the consent authority. In considering the appropriateness of the use with respect to a *"...mix of activities... which are compatible with and are of such a kind that will not adversely affect the amenity of the service commercial function of the area..."*, information provided in the application referred to the buffer distances provided by the Australasian Cemeteries and Crematorium Association (ACCA) guidelines. The DAS report to the consent authority documented advice from the Department of Environment, Parks and Water Security (DEPWS) that in the absence of any specific separation distance from applicable Northern Territory guidelines, the ACCA guidelines *"should be the preferred guideline for use in DAS assessment"*.

Page 12 of the ACCA Guidelines states:

*"In line with other state environmental protection authority guidelines, a buffer zone of the order of 200 metres (depending on the nature of prevailing winds and the natural topography of the site) between the emission stack and neighbouring residences is desirable. In any case a buffer zone of not less than 100 metres is recommended."*

The consent authority note that submitters, DEPWS and City of Palmerston have made reference to this statement, and that the development does not comply with these guidelines as the stack will be less than 100 meters from the neighbouring developments.

At the public hearing, the applicant tabled a letter from Mr Ben Kelly, Chief Executive Officer, ACCA, explaining that the guidelines were developed in 2004, and have not been reviewed since 2009, and that the ACCA is currently updating the existing guidelines. The letter further explains that when the guideline was written, many cremators were established within the grounds of memorial parks, and that since that time, many funeral homes have established cremators within existing premises, that cremators have also seen significant advancements in

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technology, and that a modern cremator should have minimum noise and particle emissions when operating in accordance with manufacturing instructions. The letter states *“While the document in question made mention of a buffer zone which was a recommended distance and not an absolute. In all cases ACCA recommends that a business operating a cremator follows the environmental and emission regulations outlined by the state and local government in which the cremator is operating. While a buffer zone is beneficial it is not a requirement unless stipulated in the local of state regulations in the location the cremator is being built. ... the ACCA is currently updating the existing guidelines on cremation. The reference to a minimum buffer zone will be removed from the updated version.”*

The DAS report to the consent authority provided information that other jurisdictions apply a 150m separation distance from human cremation to sensitive uses, with the NT EPA *‘Guideline: Recommended Land Use Separation Distances’* defining sensitive land uses, as *“Land uses where people live or regularly spend time and which require a particular focus on protecting the health and well-being of humans and amenity values from the emissions of an activity. For example sensitive land uses may include but are not limited to residential premises, accommodation facilities such as hotels and nursing homes, hospitals, childcare centres, schools and some outdoor recreation facilities.”* The consent authority noted the level of public concern reflected in the submissions, including that workplaces are places where people *“regularly spend time”*, and that the proposal would impact surrounding businesses in that staff and visitors would be left feeling disturbed or uneasy knowing the activities which would be undertaken. These submissions demonstrated to the consent authority that surrounding businesses are sensitive to the proposed use.

Further, the tabled letter from Mr Kelly also notes that *“...a buffer zone is beneficial”*, a sentiment with which the consent authority concurs, given the sensitive nature of the use. The letter does not explicitly state that the existing guidelines have been revoked, whilst the amended guidelines are prepared. In the absence of any further guidance in respect of appropriate buffers, the consent authority considers, in this case, a buffer of at least 100 meters between the stack and neighbouring uses is appropriate.

The application outlined the distances between the proposed use and the adjacent properties, including around 10m between the buildings on the subject land to buildings on adjacent Lot 8540 to the east, and around 50m to buildings on adjacent Lot 8538 to the west. In the absence of any NT specific guidelines, the consent authority considered that the site is too small and proximate to the adjacent sites to allow for an adequate separation to the adjacent businesses given the activities proposed.

When queried at the hearing, Ms Murphy advised that the actual services of collection and delivering human remains to the site occurs from various locations and would be in an unmarked car with shielded windows, with deliveries occurring for the most part, within the

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crematorium building. Further, that human remains would be moved from a rear door to the cremation building, across to the funeral parlour, and back again, within a coffin. Human remains were not intended to be visible from neighbouring properties or outside the site.

The consent authority notes the building on Lot 8538 to the west is a 2 storey building comprising offices at the upper level. Staff on this upper level would be unduly subject to views from the upper level towards the site, including a view of the activities occurring outside buildings, being the arrival of vehicles containing human remains, and the movement of human remains within coffins between the mortuary, funeral parlour room, and of the cremator stack. While noting that, provided the cremator is operated correctly, emissions from the stack are likely to be limited to a heat haze, the consent authority acknowledged the remarks of Mr Heath, whose business operates at Lot 8538, in respect of the potential impact of such a heat haze on the sensibilities of staff working in the offices overlooking the stack. Further, the proposed hours of operation between 9am – 4pm Mondays and Fridays as described within the application are such that the delivery of human remains and cremations will occur within the business hours of adjacent uses.

2. 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 *Planning Act 1999* defines amenity, as “*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 potential impact on amenity should be considered in the context of the site and surrounds.

With regards to the risk of emissions, at the hearing, the applicant described the technology proposed in the cremator, including a dual burning system that is computer monitored, including a modern venting system, with less emissions than those from a car, with no smoke, and only “hot air” emissions. The applicant also described that the computer and sensors within the system constantly monitor the chambers, with an in-built automatic stop should the system be at risk of emissions other than “hot air”. The consent authority notes the applicant’s submissions and the material included in the application including the product information and information from HCS Industrial Pty Ltd and does not dispute the technology or information presented with regards to emissions, providing a system is appropriately installed and properly managed. The consent authority however noted the information presented by Ms Murphy that there is no regulatory authority to ensure that the cremator is operated correctly, with the industry being largely self-regulated, which does present an increased risk to emissions if compared to an industry that is regulated. The consent authority considers that the smells which would be produced, or even the sight of an escape of smoke from a cremator are so offensive to people of ordinary sensibilities that even the bare chance of such events occurring

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only rarely is a relevant consideration in relation to amenity, particularly when only minimal buffers are provided between the proposed use and neighbouring properties.

The consent authority has previously noted that adjacent businesses and workplaces would be sensitive to the proposed activities, resulting in an undue amenity impact. It is further noted that the funeral parlour component may be subjected to reverse sensitivity issues with grieving families being sensitive to noise from surrounding businesses. Whilst it is possible that the funeral parlour building may be acoustically treated to prevent noise transmission, family arriving and departing from the site will be subjected to noise from the surrounding businesses, including both by staff of those businesses and the activities which the businesses conduct. While places of worship are an impact assessable use in Zone SC, such uses generally operate outside normal business hours, making conflict with surrounding uses less probable. The DCA considers that it could not be satisfied that the future amenity of the funeral operations could be sufficiently safeguarded to avoid potential negative impacts for the operation of existing uses in the locality.

The consent authority considers that the proposed development will have unacceptable adverse impacts on the existing and future amenity of the area.

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.

38 public submissions were received during the exhibition period under section 49 of the *Planning Act 1999* with respect to the proposal. Two late submissions were also received. The submissions raised concerns including failure to meet the Australasian Cemeteries and Crematorium Association (ACCA) guidelines regarding separation distances to surrounding sites, insufficient separation to adjacent businesses, the risk of odour and dust emissions from the cremator, the impact of parking from larger funeral events, high noise levels currently experienced in Yarrowonga that are not suitable conditions for grieving people, and that the development will leave surrounding business operators feeling disturbed or uneasy. Concerns were also raised with an impact to property values, and a lack of footpaths or bus stops in the area.

At the consent authority hearing, submitters expanded upon their written submissions. The consent authority listened to views of submitters regarding the nature of surrounding businesses, such as welding and trucking companies, which would be intrusive to grieving family members, of reverse sensitivity issues, and of the uncomfortable feeling of the proposed activities occurring within immediate proximity of existing businesses. These amenity impacts are previously discussed and the consent authority considers that adverse amenity impacts are unavoidable as a result of the proposed activities.

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In addition to the matters of buffer zones and emissions as previously discussed, the consent authority noted the car parking assessment provided within the DAS report which was based on parking rates for place of worship and industry-light plus ancillary uses which were found to be suitable to apply for this undefined use. Overall a suitable amount of car parking was proposed, to accommodate the small size of funeral services intended. The consent authority notes that property values are not a relevant planning matter.

The consent authority also noted supportive comments at the hearing including with regard to improved activity on an otherwise vacant site in an area which is impacted by crime, and in supporting a small family run local business, which are not disputed.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:** Notice of Refusal

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

**SUZANNE PHILIP**  
Chair

15 December 2023