



DEVELOPMENT CONSENT AUTHORITY

PALMERSTON DIVISION

MINUTES

MEETING No. 219 – WEDNESDAY 17 APRIL 2019

**BOULEVARD ROOM
QUEST PALMERSTON
18 THE BOULEVARD
PALMERSTON**

MEMBERS PRESENT: Suzanne Philip (Chair), Steve Ward, Trevor Dalton, Sarah Henderson and Ben Giesecke

APOLOGIES: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Ann-Marie Dooley and Sally Graetz (Development Assessment Services)

COUNCIL REPRESENTATIVE: Rebecca de Vries

Meeting opened at 10.00 am and closed at 10.50 am

THE MINUTES RECORD OF THE EVIDENTIARY STAGE AND THE DELIBERATIVE STAGE ARE RECORDED SEPARATELY. THESE MINUTES RECORD THE DELIBERATIVE STAGE. THE TWO STAGES ARE GENERALLY HELD AT DIFFERENT TIMES DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.

ITEM 1 **CHANGE OF USE FROM WAREHOUSE TO LEISURE AND RECREATION
(UNIT 7)**
PA2019/0071 **SECTION 3842 (35) MARJORIE STREET, HUNDRED OF BAGOT**
APPLICANT **PENNIE AND MICHAEL ROCHFORD**

Mr Michael and Ms Pennie Rochford attended.

RESOLVED That, pursuant to section 53(a) of the *Planning Act 1999*, the Development Consent Authority consent to the application to develop Section 3842 (35) Marjorie Street, Hundred of Bagot for the purpose of a change of use from warehouse to leisure and recreation (unit 7), subject to the following conditions:

CONDITION PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works (including site preparation), amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with *the plans submitted with the application* but modified to show all existing and proposed vehicle parking on the site (including a total of at least 27 bays) that complies with the requirement of Clauses 6.5.1 (Parking Requirements) and 6.5.3 (Parking Layout) of the NT Planning Scheme.

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. Before the use 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 spaces, access lanes and driveways must be kept available for these purposes at all times.

4. The owner of the land must enter into agreements with the relevant authorities for the provision of electricity facilities to the development shown on the endorsed plan in accordance with the authority's requirements and relevant legislation at the time.

5. The use may operate only between the hours of 5:00am to 7:30am and 4:30pm and 8:30pm Monday to Friday. Saturday and Sunday use is unrestricted.

NOTE:

1. The Northern Territory Environment Protection Authority has advised that the proponent must comply with their General Environment Duty provided by section 12 of the *Waste Management and Pollution Control Act 1998*.

REASONS FOR DECISION

1. Pursuant to section 51(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 subject site is Section 3842 (35) Marjorie Street, Hundred of Bagot.

The application is for a change of use from warehouse to leisure and recreation and relates specifically to unit 7.

The site is within Zone GI (General Industry) of the Northern Territory Planning Scheme (the Scheme).

The very specific nature of use proposed, being to operate boxing classes during restricted hours from within the unit in this location, is considered generally compatible with the zone and uses reasonably expected within it.

The Authority noted the recommendation provided in the Development Assessment Services report ('DAS report') and considered that the additional information provided at the meeting by the proponents was sufficient to persuade it of the appropriateness of the development. The proponent's acceptance of the Authority's suggested restrictions in relation to operating hours provided further assurances that the use could occur without limiting existing and future operation of the site and surrounding land in Zone GI.

The Authority noted that other divisions of the Development Consent Authority had made similar conclusions in relation to other 'leisure and recreation' proposals in industrial and service commercial areas, noting particularly that finding an appropriate location for such developments can be challenging due to their specific nature.

In relation to the performance criteria under Part 4 of the Scheme, the Authority noted the findings within the DAS report, including that the requirements of Clauses 6.1 (General Height Control) and 9.1.1 (Industrial Setbacks) were not applicable to this application as no physical change to the building was proposed. The Authority acknowledged that Clauses 6.5.1 (Parking Requirements) and 6.5.3 (Parking Layout) were however applicable given the change in use and changes proposed to the parking layout.

In relation to Clause 6.5.1 (Parking Layout) specifically, the change in use of unit 7 results in an increased calculated parking demand of 10 bays.

Based on a previous Compliance Check application completed by DAS, the site is considered to have an existing parking demand of 17 bays (based on 1 bay for every 100m² under classification of 'warehouse'). The Compliance Check plans show 18 bays as being provided.

The submitted plans showed a total of 21 car parking bays, which included the existing 18 bays as per the Compliance Check plans plus an additional bay and 2 bays to be constructed. The Authority noted that the permitted nature of the use meant that it was not uncommon for slight changes to occur to sites, especially parking, during the course of the development without consent being required, which would explain the discrepancy.

The Authority noted the advice that two separate site visits had identified that the site was actually provided with at least 27 bays, despite the submitted plans showing fewer.

In acknowledgement of the above evidence, the Authority determined that adequate car parking, as per the requirements of Clause 6.5.1, was provided on the site.

To ensure that the car parking arrangements are appropriately formalised, the Authority required the submission of amended plans that show a total of at least 27 car parking spaces in an arrangement consistent with the requirements of Clause 6.5.3 (Parking Layout). Condition precedent 1 deals with this matter.

2. Pursuant to section 51(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 Authority acknowledged that the change has the potential to impact on the existing and future amenity of the area. In relation to this use however, and the specific nature of the approved operations and restrictions imposed by the permit, any potential amenity impact was considered reasonable and within what could be expected.

Amended plans are required to show the current and proposed vehicle parking layout to ensure that existing and proposed parking is formalised. Ensuring that adequate vehicle parking is provided will further ensure no unreasonable amenity impact. Condition precedent 1 and standard condition 3 deal with this matter.

3. Pursuant to section 51(m) of the *Planning Act 1999*, the consent authority must take into consideration the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

The application was publicly exhibited and referred to relevant service authorities/agencies for comment.

The City of Palmerston advised that it objected to the granting of a development permit until car parking requirements were confirmed and the operating hours restricted. It advised however that it could support the proposal if these matters were addressed.

As per reason 1, the Authority was convinced by the additional information provided that adequate car parking was provided and could comply with the requirements of the Scheme. This was considered to address the Council's primary concern regarding car parking.

The Authority accepted the Council's advice and considered that restricting the hours of operation was appropriate and imposed condition 5 as a result. Condition 5 restricts operations from 5:00am to 7:30am and 4:30pm to 8:30pm. Use of the site on Saturday and Sunday is not restricted by the approval on the basis that usual Saturday and Sunday trade for surrounding businesses/uses would typically result in less demand on vehicle parking and any noise would be less likely to have an impact.

The Authority acknowledged the advice of the Department of Environment and Natural Resources (DENR), especially in relation to responsibilities under the *Environmental Assessment Act 1982* and *Waste Management and Pollution Control Act 1998*.

Having considered DENR's advice, the nature of the use, site and zoning, and following discussion of the issue of 'reverse sensitivity' with the proponent at the meeting, the Authority were satisfied that the use could be managed in such a way to avoid unreasonable environmental impacts and that the proponent was aware of the implications of the change of use.

The Authority noted the further advice of other service authority's and considered that any requirements could be addressed through standard conditions of approval.

4. Pursuant to section 51(p) of the *Planning Act 1999*, the consent authority must take into consideration the public interest.

The Authority acknowledged the importance of preservation and protection of existing Zone GI land. It considered that the specific nature of the use and added restrictions imposed by the approval resulted in a development that was appropriate to the site and zone.

It further noted that establishment of the use, which will occur primarily outside of normal business hours, may be a positive addition to the area. In particular, the increased activity may provide additional surveillance opportunities after most other business in the area has ceased. This was viewed generally as being within the public interest.

5. Classes may only operate from the site between the hours of 5:00 am to 7:30 am and 4:30pm to 8:30pm Monday to Friday, with use on Saturday and Sunday unrestricted. Restriction of the hours of operation, as outlined in the application and as recommended by the City of Palmerston, will ensure appropriate car parking is available and that any negative impacts associated with the use and location are minimised.

ACTION: Notice of Consent and Development Permit

ITEM 2	BUILDING SETBACK PLAN (ZUCCOLI STAGE 3A)
PA2019/0075	LOTS 14844 – 14853 (30, 32, 34, 36, 38, 40, 42-44, 46) BLUEGRASS STREET, LOTS 14854 – 14887 (40, 42-73, 75) BLOODWOOD STREET, TOWN OF PALMERSTON
APPLICANT	JUNE D'ROZARIO & ASSOCIATES PTY LTD

Ms June D'Rozario (June D'Rozario & Associated) and Mr Hermanus Louw attended.

RESOLVED	That, the Development Consent Authority vary the requirements of Clause 7.3.3 (Reduced Setbacks for Single Dwellings on Lots less than 600m ² but not less than 300m ²) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the <i>Planning Act 1999</i> , consent to the application to develop Lots 14844 – 14853 (30, 32, 34, 36, 38, 40, 42-44, 46) Bluegrass Street and Lots 14854 – 14887 (40, 42-73, 75) Bloodwood Street, Town of Palmerston for the purpose of a building setback plan (Zuccoli Stage 3A), subject to the following conditions:
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GENERAL CONDITIONS

1. Works carried out under this permit shall be in accordance with drawing 2019/0075/01 endorsed as forming part of this permit.
2. The owner/developer shall demonstrate to the satisfaction of the consent authority how potential purchasers will be informed about the side setback plan as it applies to each lot.

NOTE:

1. This development permit does not grant "building approval" for the proposed structure. The Building Code of Australia requires that certain structures within 900mm of a boundary meets minimum fire resistance level requirements and you are advised to contact a registered private Building Certifier to ensure that you have attained all necessary approvals before commencing demolition or construction works.

REASONS FOR THE DECISION

1. Pursuant to section 51(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 establishment of a building setback plan for Zuccoli Stage 3A ('Zuccoli Aspire').

The application relates to Lots 14844 – 14853 (30, 32, 34, 36, 38, 40, 42-44, 46) Bluegrass Street and Lots 14854 – 14887 (40, 42-73, 75) Bloodwood Street, Town of Palmerston ('the site').

At the time the application was considered, the site was within Zone FD (Future Development) of the NT Planning Scheme. Zone FD is an interim zone designed to facilitate future development. The site has existing subdivision approval, with subdivision works completed and land titles issued.

The Authority noted that the land was intended to undergo a 'zone normalisation' process to amend the zone from Zone FD, now that subdivision works were complete, to the designated Zone MD (Multiple

Dwelling). It acknowledged the advice of Development Assessment Services at the meeting that this was due to occur in the days following.

Establishment of a building setback plan, that is consistent with the subdivision layout approved and finalised, will facilitate integrated residential development of each lot. The Authority considered that the building setback plan was therefore consistent with the purpose of Zone MD, which is to provide for a range of housing options to a maximum height of two storeys above ground level.

A variation to the requirements of Clause 7.3.3 (Reduced Setbacks for Single Dwellings on Lots less than 600m² but not less than 300m²) was sought for 38 of the 44 residential lots to allow side setbacks of 300mm instead of the zero setback permitted. The purpose of this clause is to allow single dwellings on lots less than 600m² but not less than 300m² to maximise design opportunities without unduly impacting on adjacent development.

The Authority acknowledged the justification put forward in the application including that:

- The setback is consistent with the use of common building boundaries in circumstances similar to those in other similar developments. Similar side setbacks were approved in Stage 1 of Zuccoli Aspire
- The setback provides a pragmatic solution for local builders who have found it impractical to build to a boundary with no gap between the external wall and side boundary
- The setback provides for access for termite treatment, and
- There are no lots in the subdivision where common building boundaries abut each other, such that the minimum distance between dwellings on adjoining sites will be 1.8m.

The Authority further acknowledged the Authority's previous acceptance of altered building setbacks in situations such as this. In those decisions, the Authority relied upon the advice from pest control and building industry professionals, which indicated that the requirements for a dwelling to have its external wall built to the boundary with no gap may result in inadequate or impractical termite protection, inadequate or impractical weather proofing, and uncertainty for homeowners to adequately insure properties built to the boundary with no gap.

Further to this, the approach was considered consistent with Practice Direction No. 1 issued by the Authority on 21 October 2015 in relation to the Palmerston area specifically. The Practice Direction allows a 300mm gap to be considered as complying with clause 7.3.3 for sites located within the boundaries of Zuccoli Stage 2A and 2B specifically, and not adjacent to a site already approved with a zero setback. While the Practice Direction does not apply in this situation, consenting to setbacks comparable to those permitted under the document enables a more integrated subdivision/development pattern for the later stages, such as Stage 3A which is the subject of this application.

The circumstances of the Zuccoli subdivision were considered to differ from other recently developed and developing subdivisions in the Palmerston area, which justify the variation sought in this case by demonstrating its specific nature and particular application. The use of

building envelope plans in other suburbs typically provide guidance on determining the primary and secondary streets, establishing additional setback requirements and providing further guidance in respect to other design features specific to the subdivision (e.g. preferred location of garages, location of private open space etc.).

Condition 2 of the approval requires the developer to demonstrate how all potential purchasers will be informed of the building setback plan. The Authority considered that this was consistent with the way other approvals for building setback plans in Zuccoli have been dealt with. Additionally, the Authority noted that the setback plan associated with this application would also be published on the DCA's website meaning that the plan would be publicly available.

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

The Authority noted that one public submission was received in relation to the application from Plan: the Planning Action Network Inc.

The submitter did not support the proposal on the basis that the lots were too small for comfortable living, especially in the tropics, and that the houses were too close together for natural cooling. It further believed that there was insufficient information provided to demonstrate how the development would enhance the locality in terms of green spaces, natural bushland and water features, and it considered the road reserves to be too narrow. Finally, Plan suggested that it was strongly concerned that the development was proposed in an area which is zoned FD (Future Development) and that the NT Planning Scheme classifies this zone to be used as an interim zone and is not appropriate for present development.

The application proposed a building setback plan only. The Stage 3A subdivision formed part of an application considered and approved by the DCA in February 2017. While the building setback plan will guide eventual development, there is no physical development associated with the application and the subdivision design has been approved, finalised and land titles issued. While the Authority acknowledged the submitters concerns regarding the subdivision design, the subdivision has been approved, works completed and land titles issued.

In relation to the current zone, while no Planning Scheme Amendment has been exhibited under Part 2, Division 3, the Authority understands that zone normalisation is anticipated to be formalised and that the zoning will align with the zones designated as part of earlier planning approvals. The Authority considered that this addresses the issue of zone classification raised in the submission.

3. Pursuant to section 51(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 Authority acknowledges that any change to land is likely to impact the amenity of an area however, as the setbacks proposed in this application are consistent with those approved elsewhere in the suburb

and that the design enables an integrated design approach for each lot, no unreasonable amenity impact is expected.

ACTION: Notice of Consent and Development Permit

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

SUZANNE PHILIP

Chair

18 April 2019