



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 376 – FRIDAY 18 JUNE 2021

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

MEMBERS PRESENT: Suzanne Philp (Chair), Mark Blackburn and Marion Guppy,
Peter Pangquee (Item 1 only)

APOLOGIES: Simon Niblock and Robin Knox

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Ann-Marie Reynolds and Amit
Magotra, Richard Lloyd (Item 1 only) (Development Assessment
Services)

COUNCIL REPRESENTATIVE: Cindy Robson, Conneil Brown and Brian Sellers (Item 2 only)

Meeting opened at 10.0 am and closed at 11.20 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

PA2019/0390 STAGE AND CHANGE ROOM ADDITIONS TO AN EXISTING CLUB (PINT CLUB)

APPLICANT SECTION 4276 (165) ABALA ROAD, MARRARA HUNDRED OF BAGOT
Rossi Architects

Mr Desmond Robertson (Rossi Architects) attended.

Submitter Mr Brendan Lawson and Mrs Maria Lawson attended.

**RESOLVED
55/21**

That, pursuant to section 53(a) of the *Planning Act 1999*, the Development Consent Authority consent to the application to develop Section 4276 (165) Abala Road, Hundred of Bagot for the purpose of stage and change room additions to an existing club (PINT club), subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, Council's stormwater drain connection point/s, whether easements are required for the purposes of stormwater drainage over the lots and underground connection details.
2. Prior to the commencement of works (including site preparation), the applicant is to prepare a Site Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP should specifically address the impact to Council owned public spaces and include a waste management plan for disposal of waste to Shoal Bay, traffic control for affected City of Darwin roads, haulage routes, storm water drainage & sediment control, use of City of Darwin land, and how this land will be managed during the construction phase.
3. Prior to the commencement of works (including site preparation), a Waste Management Plan demonstrating waste disposal, storage and removal in accordance with City of Darwin's Waste Management Policy 054, shall be submitted to and approved by the City of Darwin, to the satisfaction of the consent authority.
4. Prior to the commencement of works (including site preparation), the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of the City of Darwin, 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. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
7. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage and electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
8. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin to the satisfaction of the consent authority.
9. No fence, hedge, tree or other obstruction exceeding a height of 0.6m is to be planted or erected so that it would obscure sight lines at the junction of the driveway and the public street to the requirements of the City of Darwin, to the satisfaction of the consent authority.
10. Any gate over an access to a public road shall be placed on the subject site at least 4.5 metres from the face of the kerb line of the adjoining public road to the requirements of the City of Darwin, to the satisfaction of the consent authority.
11. External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land 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. 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: <https://ntepa.nt.gov.au/publications-and-advice/environmental-management>

The proponent is advised to take notice of the SCHEDULE OF ENVIRONMENTAL CONSIDERATIONS provided by DEPWS.

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

3. Any proposed works on/over City of Darwin property shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
4. Notwithstanding the approved plans, any proposed signage for the site shall be subject to a separate assessment in accordance with City of Darwin Policy Number 42 – Outdoor Advertising Signs Code.
5. The applicant is advised to adhere to the conditions of its Liquor Licence, particularly in relation to noise management.
6. Crown Land Estate of the Department of Infrastructure, Planning and Logistics advises that prior to the commencement of works, the landowner must advise Crown Land Estate that works are to commence and provide a progress report via email: CrownLand.Estate@nt.gov.au.
7. The applicant is advised that the provision of lighting at the site is required to be consistent with the CASA Manual of Standards (MOS-139) Aerodromes to minimise the potential for conflict with aircraft operations. The design of lighting is a developer responsibility and if it is later found that lights or glare endangers the safety of aircraft operations, the Department of Defence or the Civil Aviation Safety Authority may require the lighting to be extinguished or suitably modified.
8. The site is subject to the 'Defence Areas Control Regulations (DACR)'. All structures, including temporary structures, higher than 15m above ground level, including, but not limited to, additional buildings, light poles, cranes used during construction, vegetation etc., require approval from the Department of Defence.
9. The Department of Defence has advised that organic waste and/ or storage of commercial waste bins associated with the proposed development might be attractive to vermin and/or birds and will potentially increase the risk of bird strike for aircraft, therefore organic waste should be managed appropriately.
10. 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. Due to provisions in the National Construction Code (NCC), the subject lots may need to be consolidated before a building permit can be issued.

11. This permit will expire if one of the following circumstances applies:
- (a) the development *and use is/are* not started within *two* years of the date of this permit; or
 - (b) the development is not completed within *four* years of the date of this permit. The consent authority may extend the periods referred to if a request is made in writing before the permit expires.

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 NT Planning Scheme 2020 (NTPS2020) applies to the land and a club requires consent under Clause 1.8 (When development consent is required).

The application before the consent authority is for stage and change room additions to an existing club. "Club" is identified as *Merit Assessable* under Clause 4.18 – Zone OR (Organised Recreation), and therefore the zone purpose and outcomes of Clause 4.18 (Zone OR), and Clauses 5.2.1 (General Height Control), 5.2.4 (Vehicle Parking), 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 5.5.3 (Commercial and Other Development in Zones... OR...), and 5.8.3 (Club), need to be considered.

These clauses have been considered and it is found that the proposal for construction of the stage and change room additions complies with the relevant requirements of NTPS2020, noting that the proposal does not affect the NTPS2020 requirements for the existing club use.

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 received under section 50, in relation to the development application.

One public submission was made by a group of persons (12 signatories) with Mr Lawson of 13 Sunningdale Court, Marrara as representative, under section 49 of the Act in relation to the application during the exhibition period. The main issues raised in the submission relate to consistency of proposal with the purpose of Zone OR (Organised Recreation), impact on amenity, particularly from noise, and construction of the stage structure over a sewerage easement.

Mr Lawson attended the DCA hearing and essentially reiterated the concerns raised in the group submission, particularly regarding impacts on amenity from noise and deficiencies in the noise report provided as part of the development application.

The Authority notes the genuine and deeply held concerns raised by the group submission and the past noise issues with the club which resulted in enforcement action being undertaken by the NT Liquor Commission.

However, consideration of the current development application is concerned with an application for the construction of the stage structure itself, rather than the use of the club and its impacts on amenity from noise. The stage is considered compliant with the relevant provisions of NTPS2020 and does not intensify the use of the club; indeed the club could potentially hold live music events without a stage which would not require development consent. The Authority emphasises that the development of the stage structure is part of a lawful club use under the *Planning Act 1999*, with the use of the land for the club having been previously approved. The use of the club does not have direct relevance to this proposal.

Notwithstanding this, the Authority notes that the noise aspects of the existing club have been extensively considered as part of the current Liquor Licence granted for the club by the NT Liquor Commission, and a number of stringent conditions regarding noise are attached to it. The Authority also notes that the *Liquor Act 2019* contains extensive regulatory compliance measures to ensure Liquor Licence obligations are met by licence owners. It further notes that the Department of Environment, Parks and Water Security advises that the PINT Club is licensed by the Liquor Commission and as such the Commission has the responsibility to ensure the licensed activity does not adversely affect the amenity of the neighbourhood.

With this, the Authority considers that the construction of the stage and change room additions to the existing club will not, of itself, impact on amenity. The Authority further notes that the NT Liquor Commission has imposed conditions on the club's Liquor Licence intended to ensure that the amenity of the area will not be adversely affected by the use of the premises, with special conditions relating to noise management specifically imposed. The NT Liquor Commission is the enforcement agency should the licence conditions not be complied with. In order for the PINT club to continue its business, it must adhere to the Liquor Licence conditions and a note is included in the development permit advising the applicant to adhere to the conditions of its Liquor Licence, particularly in relation to noise management.

Regarding the matter of the stage structure being over a sewerage easement, the Authority notes that this has been resolved to the satisfaction of Power and Water through revised plans.

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

The application was circulated to the relevant authorities and comments received from these authorities are addressed by the inclusion of conditions and/or notations on the development permit as required. It is particularly noted that the Department of Environment, Parks and Water Security advises that the PINT Club is licensed by the Liquor Commission and as such the Commission has the responsibility

to ensure the licensed activity does not adversely affect the amenity of the neighbourhood. It is also noted that Power and Water has no objections to the revised plans for the location of the stage.

5. 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.

It is considered that the proposal, which is for the construction of a stage and change room additions to an existing club, will not have a significant impact on the amenity as it is the type of development anticipated in Zone OR (Organised Recreation), and is some distance from the nearest residential area. The use is already established and the only matter for the Authority to consider is the impact of the construction of the nominated additions to the club. In respect of the use, which is not a matter currently before the Authority, the amenity of the area will be protected through the conditions of the Liquor Licence granted for the establishment by the NT Liquor Commission (regulating noise and hours of operation in particular).

FOR: 4 **AGAINST: 0** **ABSTAIN: 0**

ACTION: Notice of Consent and Development Permit

ITEM 2

PA2021/0135

**DINING DECK ADDITION TO EXISTING FOOD PREMISES-RESTAURANT.
LOT 8657 (259) CASUARINA DRIVE, NIGHTCLIFF, TOWN OF NIGHTCLIFF**

APPLICANT

Hames Sharley

Pursuant to section 97 of the *Planning Act 1999*, Peter Pangquee a local authority member of the Darwin Division, Development Consent Authority disclosed an interest and was not present during, contributed to or took part in the deliberation or decision of the Division on Item 2.

Mr Adam Prentice (Principal NT – Hames Sharley) and Mr Joe Leith (Project Architect - Hames Sharley) attended.

Submitter:- PAn: the Planning Action Network Inc represented by Ms Margaret Clinch attended.

**RESOLVED
56/21**

That, pursuant to section 53(a) of the *Planning Act 1999*, the Development Consent Authority consent to the application to develop Lot 8657 (259) Casuarina Drive, Town of Nightcliff for the purpose of dining deck addition to an existing food premises-restaurant, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the commencement of works (including site preparation), the applicant is to prepare a Site Construction Management Plan (SCMP) to the requirements of the City of Darwin, to the satisfaction of the consent authority. The SCMP should specifically address the impact to Council owned public spaces and include a waste management plan for disposal of waste to Shoal Bay, traffic control for affected City of Darwin roads, haulage

routes, storm water drainage & sediment control, use of City of Darwin land, and how this land will be managed during the construction phase.

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, drainage, sewerage and electricity facilities to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
4. Stormwater is to be collected and discharged into the drainage network to the technical standards of and at no cost to City of Darwin to the satisfaction of the consent authority.

NOTES:

1. The development and use hereby permitted must be in accordance with Northern Territory legislation including (but not limited to) the *Building Act 1993*, the *Public and Environmental Health Act 2011* and the *Food Act 2004*.
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. Due to provisions in the National Construction Code (NCC), the subject lots may need to be consolidated before a building permit can be issued.
3. Any proposed stormwater connections to City of Darwin stormwater system shall be subject to separate application to City of Darwin and shall be carried out to the requirements and satisfaction of City of Darwin.
4. City of Darwin advises that Designs and specifications for landscaping adjacent to the development shall be submitted for approval by City of Darwin and all approved works shall be constructed at the applicant's expense, to the requirements of City of Darwin.

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 proposal seeks approval for adding a new dining deck to the existing "Nightcliff Foreshore Restaurant and Cafe". The site is Zoned OR (Organised Recreation) within the Northern Territory Planning Scheme 2020 (NTPS2020) and has an established restaurant and cafe, approved DP15/0285 and subsequent variations. The proposed dining deck is connected to the existing alfresco dining area located north of the restaurant building.

The proposed dining deck addition to an existing food premises-restaurant requires consent under Clause 1.8 (When development consent is required) of the NTPS 2020. It is identified as *Impact Assessable* under Clause 4.18 - Zone OR (Organised Recreation), and therefore the strategic framework (Part 2 of the Scheme – Darwin Mid Suburbs Area Plan 2016), zone purpose and outcomes of Clause 4.18 (Zone OR), and Clauses, 5.2.1 (General Height Control), 5.2.4.1 (Parking Requirements), 5.2.4.4 (Parking Layout), 5.2.5 (Loading Bays), 5.5.3 (Commercial and Other Development in Zones... OR...) and 5.5.11 (Food Premises), need to be considered, need to be considered.

The Authority notes that the Development Assessment Services (DAS) assessment concludes that the proposal complies with the relevant requirements of NTPS 2020. The proposed dining deck aligns with the zone purpose as it provides an ancillary commercial facility catering to the needs of the pool users and Nightcliff Foreshore visitors. The Authority further notes that the proposal does not propose to change the zoning of the land, and therefore there is no net loss of organised recreation area. The site's primary use remains for leisure and recreation (Nightcliff Swimming Pool).

At the hearing, Mr Adam Prentice (Principal NT – Hames Sharley) gave an overview and design merits of the proposal. Mr Prentice explained to the Authority that the proposed outdoor dining deck is low lying structure to be developed on a grassed area that is currently used for similar use. Mr Prentice stressed that every element of the deck is designed to blend with the existing café/restaurant and maximise the views to the foreshore.

The Authority at the hearing questioned the applicant on whether the licenced area of the existing café/restaurant would be extended to include the proposed outdoor dining deck. Mr Prentice confirmed to the Authority that the licenced area of the existing café/restaurant would be extended to include the proposed outdoor dining deck subject to approval from the relevant authority.

In response to the question raised by the Authority regarding the distance of the proposed dining deck from the walking path along the foreshore and whether any landscaping could be provided to enhance the amenity, Mr Prentice confirmed that the closest point of the proposed dining deck is approx. 2m from the walking path and is separated from the walking path by low height balustrades along the boundary of the dining deck. Mr Prentice further explained that access to the dining deck would be through the existing restaurant, and no direct access from the walkway to the dining deck is proposed. In relation to the landscaping, Mr Prentice explained that the key design element of the dining deck is to maximise the views to the foreshore, and any landscaping along the edge will obstruct the views. Mr Prentice, however, acknowledged that low height moveable planter boxes can be provided within the outdoor dining deck, which will contribute to the amenity of the patrons.

2. 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 received under section 50 in relation to the development application.

One submission was made under section 49 from Plan: the Planning Action Network Inc. in relation to the application during the exhibition period. The key issues raised in the submissions relate to the appropriateness of the proposed development in Zone OR and commercial exploitation of Zone OR.

Ms Margaret Clinch, from Plan: the Planning Action Network Inc. attended the hearing and reiterated the concerns raised in the submission. Ms Clinch stressed that the zoning of the land is Organised Recreation and should be developed for such purposes only with the exception of small 'kiosks' to support the recreation use. The proposal to expand an existing commercial use does not align with the zone purpose and is not seen as in support of the main recreation use. Furthermore, the proposed outdoor dining deck will be located over the grassed area, a key lookout point from the site and a highly useable space in the Nightcliff foreshore. Furthermore, Ms Clinch also raised concerns regarding potential competition with the commercial business on Aralia Street.

The Authority has taken all comments into account and carefully considered the concerns of the submitter. The Authority considered that the proposed dining deck aligns with the zone provision and outcomes of Zone OR due to the following:

- The existing restaurant and proposed dining deck occupy an area of 376m² constituting 2.25% of the site area. The site's primary use remains for leisure and recreation (Nightcliff Swimming Pool).
- The purpose of Zone OR is to provide for the development of community and commercial facilities for organised recreation activities (underline emphasis added). The existing restaurant and proposed extension align with the zone purpose as it provides an ancillary commercial facility catering to the needs of the pool users and Nightcliff Foreshore visitors.
- The development is not considered out of character with the existing development.
- The site of the proposed dining deck is currently used as an outdoor area associated with the restaurant. The application proposes to formalise the existing arrangements.
- The development is assessed fully compliant with the development requirements under Part 5 of the NTPS 2020.

In relation to concerns raised by Ms Clinch regarding potential competition with the commercial business on Aralia Street, the Authority considered that it is not the role of the DCA to determine the impact of a commercial use on other businesses. The application is lodged and assessed under the requirement of the *Planning Act 1999* only.

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 and Pursuant to Section 51(1)(m) of the *Planning Act 1999*, the consent authority must consider the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose.

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

4. Pursuant to section 51(1)(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 site is located in Zone OR (Organised Recreation) and forms part of the well-known Nightcliff Foreshore area. The land is currently utilised for a range of uses consistent with the zoning, including a swimming pool, car park, festivals and community events and mobile food vans/temporary and restaurant.

The assessment found that the built form of the dining deck will replicate features of the existing Foreshore Restaurant and Cafe, which was previously deemed a positive contribution to the locality. The height of the shade sails is lower than the height of the existing building and is also sympathetic to the design and style of existing buildings and structures on the site. The proposed deck addition with shade sails is not assessed as being out of character with existing development in the immediate vicinity. The siting of the dining deck is likely to have minimal noise impacts given that it faces away from nearby residences.

FOR: 3

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
2021.06.22
19:22:14
+09'30'

SUZANNE PHILIP
Chair

22 June 2021

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These minutes record persons in attendance at the meeting and the resolutions of the Development Consent Authority on applications before it. Reliance on these minutes should be limited to exclude uses of an evidentiary nature.

