

Development Consent Authority

Northern Territory



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Dear Mr Cunningham

NOTICE OF CONSENT (SECTION 53B OF THE PLANNING ACT 1999) LOT 9742 & 9743 (107 & 115) DICK WARD DRIVE, COCONUT GROVE, TOWN OF NIGHTCLIFF

The Development Consent Authority has determined in accordance with section 53(a) of the *Planning Act 1999* to grant consent to the proposed development to use and develop the abovementioned land for the purpose of community centre within land subject to storm surge, subject to the conditions specified on the attached Development Permit DP24/0106.

Reasons for the Determination

1. The present application relates to Lot 9742 and Lot 9743 (107 and 115) Dick Ward Drive, Coconut Grove, Town of Nightcliff (the site). The application proposes the construction and use of a portion of the subject land for the purpose of a community centre to be owned and operated by the St Vincent De Paul Society, replacing an existing day support services facility located at 2 Westralia Street, Stuart Park (Ozanam House). The site has a combined area of 7.83 hectares, with Lot 9743 having an area of 6.43 hectares and Lot 9742 an area of 1.4 hectares; is located wholly within Zone CP (Community Purposes); and is wholly affected by overlays CNV (Clearing of Native Vegetation), LPA (Land in Proximity to Airports) and LSSS (Land Subject to Storm Surge). Lot 9742 (107) Dick Ward Drive contains the existing Bakhita Centre, Crises and Emergency Accommodation, offices and depot for the St Vincent de Paul Society (NT). Vehicle access and food preparation for the proposed community centre would be located on this allotment. Lot 9743 (115) Dick Ward Drive is vacant. A substantive portion of the development is proposed within this allotment. The applicant's Statement of Effect specifies that the "proposed Coconut Grove facility will be a temporary facility as St Vincent De Paul NT work with the Northern Territory Government to identify a new permanent facility location".
2. 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 proposes a community centre on Lots 9742 and 9743 Town of Nightcliff, to which the Northern Territory Planning Scheme 2020 (NTPS 2020) applies.

Part 4 of the NTPS 2020 establishes the relevant zones and assessment tables. Clause 4 provides that the process to determine the assessment category and relevant requirements

is to:

- a) establish which definition in Schedule 2 applies to the use or development;
- b) refer to the relevant zone map to identify the zone applicable to the site of the use or development, any relevant overlays or applicable components of the strategic framework;
- c) refer to the assessment table to identify:
 - i. the assessment category applicable to the development;
 - ii. Any Overlays applicable to the site; and
 - iii. Development Requirements relevant to the defined use.

A community centre is defined in Schedule 2 as *a building or part of a building used for providing artistic, social or cultural facilities and community support services to the public and may include where ancillary an office or the preparation and provision of food and drink.*

The Authority questioned whether, given the definition contemplates a building or part of a building, the proposal could be considered as a community centre as it consists of an L-shaped configuration of demountable buildings with a 12m by 12m open sided area, covered by a dome, for provision of meals. Mr Cunningham noted that, notwithstanding the multiple demountable structures, the proposal met the definition in Schedule 2 of the NTPS 2020 as it would operate as a single facility. The Authority accepted that the grouping of the demountables and other structures could be viewed as a building for the purposes of the definition due to their clear physical connections and the interrelation of their proposed uses.

The Authority noted that the subject land is within Zone CP (Community Purpose) and that the zone's purpose *to provide community services and facilities*. Further, a community centre is a *Permitted* use in that zone. The Authority acknowledged Mr Cunningham's proposition that the proposed development only requires a Development Permit due to its location within Overlay LPA (Land in Proximity to Airports) and Overlay LSSS (Land Subject to Storm Surge). As a result, NTPS 2020 Clause 1.8 (When development consent is required) dictates that the proposal is *Merit Assessable* under Clause 1.8(1)(b)(ii)(1). Therefore the zone purpose and outcomes of Clause 4.22 Zone CP (Community Purpose), the purpose and requirements of Clause 3.2 (CNV – Clearance of Native Vegetation), Clause 3.5 (LPA – Land in Proximity to Airports), Clause 3.7 (LSSS – Land Subject to Storm Surge), Clause 5.2.1 (General Height Control), Clause 5.2.4 (Car Parking), Clause 5.2.5 (Loading Bays), Clause 5.2.6 (Landscaping), Clause 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR), Clause 5.5.15 (General Building and Site Design), and Clause 5.8.7 (Demountable Structures), need to be considered.

These clauses have been considered and it is found that the proposal complies with the relevant Part 5 requirements of the Planning Scheme. However, the use and development of land within Clause 3.5 (LPA – Land in Proximity to Airports) and Clause 3.7 (LSSS – Land Subject to Storm Surge) requires consent.

At the hearing, Mr Brad Cunningham of Cunningham Rosse Town Planning and Consulting, and Mr Rob Lutter of the St Vincent de Paul Society NT, represented as the applicant and provided an outline of the proposed development. The applicant noted the community interest, the benefits of the site's access to existing community service providers, and indicated that the applicant had no concerns regarding the contents, recommendation and recommended conditions of the report prepared by Development Assessment Services (DAS).

Mr Lutter provided background information on the reasons for the proposal and the operations of the proposed community centre, clarifying that the intent was to relocate those services currently being provided by the St Vincent de Paul Society at 2 Westralia Street, Stuart Park (Ozanam House) to the proposed site, due to the age and deterioration

of the current building. Mr Lutter clarified that the proposal was not intended to expand or extend the current services. However, the inclusion of an on-site waiting area at the proposed site was something that was not available at Ozanam House. Mr Lutter stated that the relocation of the 'op shop,' currently located at 2 Westralia Street, Stuart Park was not part of this proposal, and that no 'culturally appropriate camping' was proposed within this application or on the proposed site.

In considering the nature of the proposal, the Authority disagreed with the DAS report's interpretation that the proposed community centre did not amount to a public building. The Authority considers a community centre to be a public building that provides community services by virtue of its definition in Schedule 2 of the NT Planning Scheme 2020. The relevant definition for *community centre means a building... used for providing... community support services to the public...*

The implications of this are discussed below.

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 application 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).

As noted previously, no variations are required to the Part 5 requirements of the NTPS 2020. However, the requirements set out in Part 3 must be considered, including, Clause 3.5 (LPA – Land in Proximity to Airports) and Clause 3.7 (LSSS – Land Subject to Storm Surge), because the proposal will result in the use and development of land within Zone CP, a Primary Storm Surge Area (PSSA) and between the Australian Noise Exposure Forecast (ANEF) 20-unit value and 30-unit value contour line for the Darwin International Airport. In considering the suitability of the proposed use on the site, the Authority noted that the Statement of Effect and the DAS Report identify that "the proposed Coconut Grove facility will be a temporary facility as St Vincent De Paul NT work with the Northern Territory Government to identify a new permanent facility location." The Authority considers that the temporary nature of the proposed facility is an important factor in determining its appropriateness within these overlays

The proposal is considered appropriate in this instance because:

- (a) The proposal may be considered as consistent with the purpose of Clause 3.5 (LPA – Land in Proximity to Airports) in that it will be temporary. Consequently, taking into account the time limit proposed, the proposal will retain the non-urban character of the land, will not jeopardise the curfew free operation of the Territory's airports, and will not prejudice the safety and efficiency of the Territory's airports.' Further, subject to the building's compliance with AS2021-2015 'Acoustics – Aircraft noise intrusion – Building siting and construction,' and noting the temporary nature of the use, the proposal may be taken to minimise the detrimental effects of aircraft noise on people who reside or work in the vicinity of an airport. This proposal results in a community centre located between the Australian Noise Exposure Forecast (ANEF) 20-unit value and 30-unit value contour line for the Darwin International Airport.

At the hearing, Mr Cunningham, acknowledged that based on the most current Aircraft Noise Exposure Forecast (ANEF) 2043, the proposed site is located between contours 20 and 25, and that the application is required to consider the site's acceptability based on the 'Building Site Acceptability Based on ANEF Zones' (Table 2.1) in AS 2021 – 2000, pursuant to sub-clause 3 of Clause 3.5 (LPA – Land in Proximity to Airports). Mr Cunningham, referred to Table 2.1 in AS 2021 – 2000 and its 7 building types listed. The 3 categories that could be assigned to these building types are *acceptable*,

conditionally acceptable, and unacceptable. He acknowledged that given the proposed community centre was to provide services for the public that the building type of *public building* immediately comes up. However, Mr Cunnington opined that there is no corresponding development type that responds to the land use as a community centre.

The development type of *public building* is *conditionally acceptable* between ANEF contours 20 and 30, pursuant to Table 2.1 in AS2021 - 2000. Subsequently, the maximum aircraft noise levels for the relevant aircraft and the required noise reduction should be determined from the procedure of Clause 3.1 and 3.2, and the aircraft noise attenuation to be expected from the proposed construction should be determined in accordance with Clause 3.3, pursuant to AS2021 - 2000.

Mr Cunnington, noted that Table 3.3 in AS 2021 - 2000 expands on some of those building types, describing the indoor sound design levels for 'churches and religious activities,' 'theatres,' 'cinemas,' 'recording studios,' 'court houses,' 'libraries' and 'galleries,' under the building type of public building. He considered these land uses to be particularly sensitive to noise. Mr Cunnington stated that there are no similar sensitive land uses or areas within the proposed community, except for the office and medical room that were considered no more or less sensitive than that expected within the broader building type of a *commercial building*. *Commercial building* is assigned as acceptable below ANEF contours 25, pursuant to Table 2.1 .of AS 2021 - 2000. Subsequently, Mr Cunnington did not consider the categorisation of *public building* to be appropriate for the proposed community centre.

The Authority noted the Department of Defence comments and recommendation that a condition of approval be included to ensure the development is constructed in compliance with the indoor design sound levels for determination of aircraft noise reduction as outlined in AS2021-2015 Acoustics – Aircraft noise intrusion – Building siting and Construction. The applicant was questioned as to how the inclusion of a condition aircraft noise attenuation might affect the proposed community centre. Mr Cunnington, requested that if the Authority placed such a condition on a Development Permit then it should refer to Australian Standards and not to upgrading the structures. Mr Cunnington indicated that there were questions about whether the uses within the proposed community centre actually need any acoustic attenuation, pursuant to Table 3.3 of the Australian Standards.

The Authority reiterates that a community centre is a *public building* by virtue of its definition in Schedule 2 of the NT Planning Scheme 2020. The relevant definition for *community centre* means a building... used for providing... community support services to the public...

The Authority considers that, as a *public building*, the proposed community centre, located between the 20-unit value and the 30-unit value contour of the Darwin International Airport, is *conditionally acceptable*, pursuant to 'Building Site Acceptability Based on Australian Noise Exposure Forecast (ANEF) Zones' (Table 2.1) in AS 2021 – 2000. Therefore, aircraft noise levels and aircraft noise reduction measures required by AS2021-2015 'Acoustics – Aircraft noise intrusion – Building siting and construction,' pursuant to Clause 3.5 (LPA – Land in Proximity to Airports) are applicable, and the Authority determined to include a condition on the Development Permit.

- b) The proposal is situated within a Primary Storm Surge Area (PSSA), and subject to Clause 3.7 (LSSS – Land Subject to Storm Surge). The purpose of Clause 3.7 is to - *Identify areas with a known risk of inundation from primary or secondary storm surges and ensure that development in these areas demonstrates adequate measures to minimise the associated the risk to people, damage to property and costs to the general community caused by storm surge.*

Relevantly, the Clause requires that development in the PSSA should be limited to uses such as open space, recreation, non-essential public facilities (wastewater treatment works excepted) and short-stay tourist camping/ caravan areas (Subclause 8), but, residential uses, strategic and community services (such as power generation, defence installations, schools, hospitals, public shelters and major transport links) should be avoided (Subclause 10). The consent authority is given power in Subclause 3 to consent to a use or development within the PSSA that is not in accordance with sub-clauses 8-10, only if it is satisfied that the application demonstrates that there is no increased risk to people and property, including adjoining property.

The Authority noted the comments of the applicant that the proposed community centre should be considered as a *non-essential public facility* and that the proposed development would not operate in any way as a public shelter. During an extreme weather event the services would either become mobile or the services would be provided elsewhere. Further, the proposal had addressed the risk to people by constructing the buildings above the anticipated water level for a PSSA and with structural integrity capable of withstanding the 'lateral loads' (i.e. waves) anticipated in the event of a storm surge, including in ground concrete footings.

The Authority considers that a community centre provides community services by virtue of its definition in Schedule 2 of the NT Planning Scheme 2020. The relevant definition for *community centre means a building... used for providing... community support services...*

By providing community services, the proposed community centre *should be avoided in the* (Primary Storm Surge Area) PSSA *and the* (Secondary Storm Surge Area) SSSA, pursuant to sub-clause 10 of Clause 3.7 (LSSSS – Land Subject to Storm Surge). This does not prohibit the use of the land for a community centre within Overlay LSSS, However, the Authority must be satisfied that the applicant demonstrates that there is no increased risk to people and property, including adjoining property.

While noting that the proposed community centre will be raised above the anticipated primary storm surge level and is not intended to be operated during Cyclone Warnings, the Authority considers the ongoing/permanent use of the site for a community centre to be unacceptable due to its location within a PSSA and is only justified by the temporary nature of the proposal. The Authority also noted the concerns of submitters that the community centre may attract more people to camp out in the storm surge area to take advantage of its facilities and increase the number of vulnerable people subject to the risk of storm surge.

The Authority noted the applicant's intention for the proposal to be temporary, and its benefits being collocation with existing services provided by the St Vincent de Paul Society. The application had indicated an intended 3 year time limit, as stated within the Statement of Effect and at the hearing. However, the Authority determined that concerns regarding safety, amenity and land suitability indicated that conditional approval, with a 2 year time limit, would be more appropriate. A time limit of 2 years would provide some oversight to ensure that the procurement of a permanent site was progressing and that the monitoring of amenity and safety could occur. Subsequently, the Authority determined to approve the application, subject to conditions, including a time limit of 2 years.

The Authority, having considered the matters listed under Clause 1.10(3), has determined that the proposal complies with all relevant requirements of Part 5 of the NT Planning Scheme 2020, and, further that, subject to adherence to AS 2021 – 2000 and a time limit being conditioned, as identified above, the requirements of Clause 3.5 (LPA – Land in Proximity to Airports) and Clause 3.7 (LSSS – Land Subject to Storm

Surge) can be met.

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

The application was advertised between 13 February 2024 and 08 March 2024, 90 public submissions were received during the exhibition period under Section 49 of the *Planning Act 1999* with respect to the proposal. A further 5 late submissions were received post public exhibition period between 09 March 2024 and 09 April 2024.

Of the total submissions received within the exhibition period, 82 submitters expressed an objection to the application and 8 submitters expressed support for the proposal. 1 of the objecting submitters was in the form of a petition with 20 signatures. Of the 5 late submissions, 4 submitters expressed objections and 1 expressed support for the community centre's relocation.

The applicant provided a written response to the issues raised by the submitters and issues identified in the technical assessment. The applicant's response was circulated to the submitters prior to the meeting.

The meeting was well attended by concerned submitters, many of whom spoke to their concerns. The Authority noted that some submitters had raised a lack of consultation in respect of the proposal but advised that the *Planning Act 1999* and NT Planning Scheme 2020 do not require public consultation other than the public notice requirements stipulated in Part 5 Division 2 of the *Planning Act 1999* and that had been complied with.

The main comments and concerns were identified as:

1. The site's location within land subject to storm surge;
2. Increased anti-social behaviour, crime and loss of safety;
3. Traffic conflicts;
4. Timeframes and alternative locations;
5. Incompatibility with surrounding uses;
6. Lack of consultation;
7. Insufficient management;
8. Environmental impacts including the removal of vegetation;
9. Light spill and glare;
10. Other planning considerations; and
11. Other considerations.

At the hearing, Mr Lutter of the St Vincent de Paul Society advised that community services had been provided at the site for over 70 years. The proposed site was considered to be better located with existing services provided by both the St Vincent de Paul Society and other service providers. A video was shown that included interviews with some of the current participants and staff at Ozanam House.

In addition to the written submission, the Authority heard from submitters present at the hearing.

Paul Masten raised concerns about the proposed community centre's intention to be temporary, asking if the St Vincent de Paul Society had refused offers of other sites. Mr Masten was concerned that the dispersal of participants may not occur after the proposed community centre closes. Furthermore, Mr Masten was concerned about the proposed community centre attracting vulnerable people to access services within land subject to storm surge. Mr Masten believed that the proposed community centre would increase the number of homeless people 'sleeping rough' or camping in the locality. The remainder of Mr Masten's concerns referred to increased anti-social behaviour, referring to experiences

witnessed at Ozanam House in Stuart Park, including concerns around access to alcohol and alleged drug distribution, increased traffic, and anti-social behaviour around school children using the bus system. Other concerns include raised insurance premiums, noting that issues were already occurring within the area. Mr Masten requested that the St Vincent de Paul Society not move to a temporary site, but rather wait until a more permanent solution is procured.

Rodger Dee noted the fear and concerns raised within the 90 submissions, and mentioned that he once owned a supermarket at Stuart Park. Mr Dee believed that the amenity impact ought to be based on the effect on amenity at the 'Stuart Park facility,' seeking a detailed analysis of the incidents that the police had had to respond to within a 3km radius of Ozanam House, Stuart Park, considering it premature to assess the effects of amenity without such data or analysis. Mr Dee considered it naïve to believe that people would only use the facility and move back to their locality, and referred to obstacles that the site presents including access to only one bus route and one access road, and was concerned about the inundation of streets with participants from the proposed community centre. Mr Dee believed that a person who is dependent on transport services will likely resolve to relocate to the area rather than enduring such travel distances and is concerned about the large areas around the site being used for 'sleeping rough' and camping. Mr Dee was also concerned about access to alcohol and that the on-site waiting area may be used inappropriately. Mr Dee requested that mobile services be used. Mr Dee, tabled an additional submission with dot points from his verbal submission.

Chris Tilley raised that there were many flaws with the DAS report. Of particular concern was the insinuation that the Overlay LSSS – Land Subject to Storm Surge could be varied. Ms. Tilley raised concerns about degradation of the amenity. Ms. Tilley requested that the St Vincent de Paul Society work more with the Northern Territory Government to secure a more permanent site rather than developing the proposed community centre for a temporary period.

Marguerite Bowen has property in proximity to both the proposed site and the current site of Ozanam House in Stuart Park. Ms. Bowen's concerns refer to the security and safety and a decrease in value of property. Marguerite Bowen indicated that the situation in Stuart Park was "not very happy." Other concerns related to anti-social behaviour including defecating in public areas and alcohol abuse. Ms. Bowen's main concern regarded how the St Vincent de Paul Society could compel people to vacate the site once it has closed at 2:30pm.

Dana Prochazka's main concern was flooding, noting that there had been flooding in the area (Bagot Road) recently. Ms. Prochazka believed that water drains through the site and questioned what the applicant would do to improve drainage.

Carolyn Marriot lives in Coconut Grove and expressed extreme concern about the proposed community centre. Ms. Marriot raised concern about transporting meals from Bakhita facility to the proposed community centre.

Margaret Clinch from PAn: the Planning Action Network considered this application to be an area of great concern. Ms. Clinch did not believe that the St Vincent de Paul Society could work effectively. Ms. Clinch believed that the application would introduce another culture into Coconut Grove. Ms. Clinch referred to the over 80 submissions as being an indication that the proposed community centre was not wanted at the proposed site and that any proposed development should be consistent with the area. Ms. Clinch believed that safety was an important part of amenity and that businesses in the area should be afraid of anti-social behaviour, crime and loss of safety. Ms. Clinch raised concerns about 'rough sleeping' and camping in the area and was concerned that the burden being placed on Larrakia Nation was unfeasible. Ms. Clinch referred to issues being raised at Ozanam House in Stuart Park regarding 'rough sleeping.' Ms. Clinch believed that Dick Ward Drive

is a long, narrow road and can be dangerous. Ms. Clinch requested that the proposed community centre be located at Boulter Road.

Theresa O'hehir had previously volunteered at Bagot Community, and noted that the homeless are often homeless because they are 'kicked off' community. Ms. O'hehir raised concern that the proposed community centre was focused too much on the inside of the proposed site and not on the surrounding area. Ms. O'hehir raised concern that many businesses would suffer and people will not feel safe in their own home questioning which service providers the St Vincent de Paul Society would refer intoxicated peoples to. Ms. O'hehir believed that the St Vincent de Paul Society's duty of care should go beyond the boundary of the site.

Michael Madden noted previous changes to the character of the area, including increased traffic, and believed that the area is very sensitive to change. Mr Madden believed that the character and the amenity of the area is fragile due to its small size, and that this made the proposed community centre incompatible.

Maria Okwa, owner of Beija Flor Florist in Coconut Grove, has a team of florists who have already expressed concern. Ms. Okwa raised concerns about a loss of character/amenity in the area, and that the current community of Coconut Grove is being overlooked by the proposed community centre. Ms. Okwa raised concern about a loss of safety for both existing residents, and considered the closure of the proposed community centre during extreme weather events to be illogical.

Melissa Pritchard, owner of Ruby G's in Coconut Grove, had worked for the Bakhita Centre previously. However, Ms. Pritchard had not been spoken to by the St Vincent de Paul Society and believed it would have been nice for the applicant to come and talk to the businesses in the area prior to applying for the proposed development. Ms. Pritchard expressed a fear of losing business, including fears that prospective clients may become afraid of attending the café due to an increase in anti-social behaviour. In particular she raised concerns about what the participants will do after the waiting area closes at 2:30pm. Ms. Pritchard was supportive of the work that St Vincent de Paul does within the community but remained deeply concerned about the impact that the proposed community centre might have on this area.

Robert Rappa noted the great response to the proposal by the community and indicated that there was a greater petition that was not submitted due to it not being provided within the exhibition period. Mr Rappa recognised and appreciated the services that the St Vincent de Paul Society provided and indicated that they had volunteered for them in the past. Mr Rappa indicated that a lot of the concerns raised are already occurring at Ozanam House in Stuart Park and suggested that the applicant had done a great job within the proposed site but had not addressed the concerns raised outside the site. Mr Rappa wanted to know where the people would go after the gate closed and raised concerns of 'rough sleeping' and camping around the proposed site. Mr Rappa noted that the applicant intended to increase services around the proposed site and asked why these support services had not been increased around the existing Ozanam House in Stuart Park. Mr Rappa was concerned that once the Development Permit was signed there would be no option to review.

Joanne Lee, resident at Nation Crescent raised concern about the pressure on bus route 4 and believed that not all the participants will be transported by support services.

Peter McMillan from NT Shelter supported the services of the St Vincent de Pauls Society, and found it heartening to hear the lengths that the applicant is going to, to address the issues experienced at Stuart Park. Mr McMillan did not share concerns about people 'sleeping rough' and camping in the area. However, Mr McMillan stated that we won't know what will happen until the proposed community centre commences.

Fred Docking, from the Salvation Army, noted that there was a lot of fear about the proposed community centre but believed that the greater fear was not trying and felt that the St Vincent de Paul Society would take on board the concerns raised by the people in the room. Mr Docking noted information about Social Impact and Pro-social values, referring to experiences of reduced anti-social behaviour where community services were provided. Mr Docking also noted that the proposed community centre's location could serve as a cyclone warning mechanism for participants that may not have access to knowledge of disasters.

At the hearing, the applicant responded to the submitters' verbal presentations. Addressing concerns about flooding, Mr Cunningham referred to a civil design plan submitted within the application that addressed/accommodated any increased overland flow. This work was considered very minimal given the form of the proposed development.

In response to concerns about food preparation, Mr Cunningham, clarified that the Bakhita Centre has food certificates and that food will not be brought down the footpath.

With respect to increased traffic and transportation, the applicant clarified that that the experience of Ozanam House in Stuart Park had shown the St Vincent de Paul Society that participants come from a wide range of areas. Some of those participants are in Stuart Park and some of those participants are in Coconut Grove. The applicant expects that the new location will make it more accessible to people in other suburbs. However, the applicant accepted that some participants will remain in Coconut Grove. The applicant indicated that no guarantees could be given that absolutely everybody leaves Coconut Grove.

The Authority asked the applicant whether the participants currently attending Ozanam House in Stuart Park, would travel/relocate to Coconut Grove, and what services would be provide to facilitate their return to where they were residing. Mr Lutter advised that the people currently attending Ozanam House in Stuart Park would travel to the proposed community centre in Coconut Grove, if approved. Mr Lutter indicated that the proposed site was potentially more central to participants. He indicated that their participants are spread out everywhere.

The Authority questioned how the St Vincent de Paul Society will be able to 'evict' participants from the waiting area after 2:30pm. The applicant referred to their work with other service providers, in particular Larakia Nation, to ensure that participants were transported to their accommodation after the proposed community centre closes.

Mr Cunningham acknowledged that the submitters valued the character and amenity of Coconut Grove, but expressed that this could equally be the case in other urban areas. He explained, in this instance, that the applicant has relied upon land already zoned for community purposes and noted that whilst this does not make the land immediately suitable, it does provide guidance on what types of uses can be reasonably anticipated within the area. Mr Cunningham believed that amenity is required to consider values, but it must also be contextual in relation to what would be reasonable and that the Authority needed to be clear on what aspects of amenity needed to be considered. The applicant advised that there was only so much certainty they could provide. However, the applicant also has the right to rely upon the purpose of the zone to which the site applies.

Mr Cunningham stated that the Primary Storm Surge Area (PSSA) ends at the boundary of Dick Ward Drive. Therefore a clear and limited provision of community services should be appropriate.

The Authority queried whether the applicant saw this site as suitable for the long term use as a community centre. Mr Cunningham stated that whilst the proposal is intended as temporary, the application had not relied upon the proposed community centre being

temporary in addressing the requirements of the NT Planning Scheme 2020 and *Planning Act 1999*.

The Authority questioned the applicant on whether they could accept a temporary time frame. The applicant indicated that the proposal is intended to be a 3 year facility. Mr Cunnington indicated that the 3 year timeframe could be accepted. However, the applicant wanted to be clear that there may be a need for variations.

The Authority has taken all comments and submissions into account and carefully considered the deeply held concerns of the submitters as well as the applicant's response. Concerns relating to compliance with aspects of the NTPS 2020, Service Authority issues and the general question of amenity under Section 51(1)(n) of The *Planning Act 1999* are addressed elsewhere in this determination, but it is clear that one of the primary concerns of submitters is that the proposal will result in increased anti-social behaviour, crime and general loss of safety for the residents, workers and business operators of the area. The Authority notes that this application is expressed to be a replacement for an existing day support services facility located at 2 Westralia Street, Stuart Park (Ozanam House). Much of the concern in relation to the proposal is founded on the perceived negative amenity impacts of the current operation of Ozanam House on the Stuart Park locality. However the Authority must consider the proposed facility in relation to the site at Coconut Grove. The site is fundamentally different, being much larger in area and providing a dedicated waiting area. The hours and days of operation are limited and other uses present at the Stuart Park site such as the Op Shop will not be operated at Coconut Grove. The applicant has outlined various operational measures that they believe will help ameliorate problems with people lingering in the adjacent areas. The NT police were circulated with the proposal and responded that "NT Police is supportive of and works collaboratively with, any organisation / facility that strives to assist those who are homeless" and that "The move from Westralia St to Coconut Grove for Ozanam House will inevitably see similar numbers of homeless people attending the new facility."

The Authority acknowledges the concerns of the submitters that there may be "flow on" effects from the proposal that may result in greater levels of anti-social behaviour, crime and a lack of safety in the locality. However, such concerns are anecdotal and cannot be substantiated in relation to the proposal. The Authority is satisfied that a time limited permit of 2 years together with the other recommended conditions is a suitable temporary use of the site. Should an extension of the time limit for the use be submitted, the Authority will be in a position to judge whether impacts on the amenity of the locality have been unacceptable.

A matter raised by submitters related to the availability of third part review rights. Upon review, the application of the *Planning Act 1999* and *Planning Regulations 2020* results in no third party appeal rights being available in this instance.

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

The site has a total area of 7.83 hectares, the majority of which is vegetated and identified as land subject to storm surge. Existing development is restricted to Lot 9742 (107) Dick Ward Drive, Coconut Grove, Town of Nightcliff, and includes, supported accommodation, offices and a depot for use by the St Vincent de Paul Society. The proposed development is for a community centre within demountable structures and located in the south-eastern corner of Lot 9743 (115) Dick Ward Drive, Coconut Grove, Town of Nightcliff. The proposed development is for the provision of 'day services' for people experiencing homelessness, and is intended to be used temporarily whilst a more permanent site is procured. The proposed structures will be raised above the anticipated water level for a

Primary Storm Surge Area (PSSA), and will not operate during a cyclone warning.

Subsequently, the subject land is considered to have the capacity to support the proposed development, subject to a time limit being conditioned.

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

No opposition by the City of Darwin or Service Authorities regarding the proposed community centre was received by DAS.

At the hearing, Brian Sellers, from the City of Darwin, stated that the City had assessed the application as a service authority, and that there is no impact on Council land. Dick Ward Drive has been deemed acceptable for traffic by the City's engineers. There is a shared path on the side of the proposal and the bus shelter is owned by the Northern Territory Government.

At the hearing, the Authority questioned the applicant on comments made by the Department of Infrastructure, Planning and Logistics: Transport Safety and Services that noted that the current site of Ozanam House was serviced by seven deferent bus routes, whereas the proposed site was serviced by only one route, also noting submitters' concerns in this regard. While acknowledging that the existing site had access to more bus routes, the applicant noted that bus route 4, which passes the proposed site, is a high frequency route and that the participants of the proposed community centre are expected arrive throughout the course of the day. Mr Cunningham referred to some of the usage data for bus route 4 and considers the expected proportion of participants to use public transport to be 40%.

The Authority also questioned the capacity of buses on bus route 4 during the peak 'breakfast times.' Mr Cunningham, advised that the participants arrived in a range of modes including, public transport, walking and transport by other service providers. Mr Lutter noted the numbers of arrivals dropped from lunch. In all cases the existing bus route 4 was considered to be satisfactory to the needs of the proposed community centre.

In response to the Authority's questions about the car parking and staffing required to operate the proposed community centre, Mr Cunningham confirmed that there is expected to be 2 additional staff working at the proposed community centre and it will function with staff operating at the existing Bakhita Centre. Mr Lutter indicated that there would be 6 staff providing assistance to the operations of the proposed community centre. He also indicated that there were other parking areas within the existing Bakhita Centre to facilitate staff car parking. In addition, the proposed right of way area can facilitate mini buses so that these do not need to use Dick Ward Drive for drop off and pick up.

Michael Rotumah, CEO of Larrakia Nation Aboriginal Corporation (Larrakia Nation), confirmed that they were collaborating with the St Vincent de Paul Society, and noted that Larrakia Nation is situated on Dick Ward Drive. Michael Rotumah indicated that they are looking to provide transportation services for the proposed community centre. In response to the Authority's question of where users of the proposed community centre would be transported, Mr Rotumah advised that the participants were homeless and that there were limitations on where Larrakia Nation could transport them. In some instances, due to lack of facilities, Larrakia Nation would take them back to family members who were potentially in 'camp situations.' The Authority questioned Michael Rotumah whether, locating the proposed community centre at the proposed site, might encourage participants to 'sleep rough' or camp around Coconut Grove. Mr Rotumah, advised that the Larrakia Nation's

data indicated that different groups choose different areas and that this was not of concern. The Authority indicated that this was a significant concern for submitters.

The Authority noted the requirements of Power and Water Corporation (PWC) to provide separate connections to Lot 9743 (115) Dick Ward Drive, Coconut Grove, Town of Nightcliff, and questioned the impact that this might have on the viability of the proposal given that the proposal is intended to be temporary. Mr Cunningham indicated that the applicant was still discussing the matter with PWC. Mr Cunningham invited Hermanus Louw of Louw Group to speak to the servicing requirements. Mr Louw reiterated that they remained intent on providing services from the existing site but that there were no major costs for 'head works upgrades,' including trenching or boring in the event that a separate connection to Lot 9743 is required within the service authority comments made by PWC. Mr Cunningham added that condition 7 as per the recommendation would require the applicant to adhere to the requirements of PWC.

The Authority noted the question of cost may impact on the applicant's stated intent for the proposed community centre to be temporary, questioning whether the additional costs impacted on the viability of the site. Mr Cunningham responded that the applicant had referred to the proposed community centre as temporary as that was the applicant's intent, but the applicant did not seek to rely upon the temporary nature of the facility as accounting for any shortfalls under the planning system.

The Authority required a number of other servicing matters to be addressed through conditions of consent. These matters include submitting a waste management plan and dilapidation plan. The Authority considers that these requirements, combined with standard conditions relating to connection upgrades and the upgrade of utility services and the provision and treatment of easements, will ensure that the land is developed in accordance with its physical capabilities and ensure that utility and infrastructure requirements of the relevant agencies are appropriately addressed.

6. Pursuant to section 51(1)(n) of the *Planning Act 1999*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated.

Section 3 of the Act defines amenity *in relation to a locality or building, as meaning any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable.*

The Authority notes that it is clear from the number and content of the submissions received that there is strong community concern with respect to the impact of the proposal on the amenity of the locality. The starting point in assessing the likely impact on amenity is to establish the existing character of the area. The site is approximately 7 kilometres north of the Darwin CBD. Land adjacent the northern boundary of the site is Zoned U (Utilities). Land further north of the subject site comprises low density residential lots within Zone RR (Rural Residential) and to the immediate east (on the opposite side of Dick Ward Drive) is within Zone LMR (Low-Medium Density Residential) with residential development at low to low-medium densities. Land to the south and west is within Zone CN (Conservation) with land further south comprising the Caryota Court light industrial and leisure and recreation precinct. Immediately south of Lot 9742 is the Juninga Centre aged care facility on Lot 8630.

The concept of amenity is wide and flexible. The proposed community centre is likely to service a population that lives outside of its immediate locality. This intended community/population for the proposed community centre would include people experiencing homelessness. During the exhibition period, concerns were raised that the community/population that use the services provided by the proposed community centre may compromise qualities of the locality that make it harmonious, pleasant or enjoyable.

At the hearing, Mr Cunningham, referred to the definition of amenity as found within both the NT Planning Scheme 2020 and the *Planning Act 1999*, and noted that the NT Planning Scheme 2020 and *Planning Act 1999* requires an application to consider amenity as per Zone outcome 3(b) of Clause 4.22 Zone CP and Section 51(n) of the *Planning Act 1999* that requires development to “minimise unreasonable impacts on the amenity,” and consider the potential impact on the existing and future amenity of the area in which the land is situated. The applicant highlighted the measures in operation and building and site design/layout proposed to minimise the impact on surrounding residences. These included, the proposed waiting area and the location of the buildings away from residential areas. Mr Cunningham noted that the waiting area was a point of contrast from the existing services provided at Ozanam House, indicating that this ‘spoke to’ the suitability of the site. The landscaping seeks to reduce any loss of existing native vegetation and provide additional trees along the Dick Ward Drive frontage. Mr Cunningham, provided further detail on the lighting and noted that it would only be used when needed, and noted the operational provisions including Closed-circuit Television (CCTV). The applicant noted that there was only so much re-assurance that the applicant could provide, but wanted to stress that the St Vincent de Paul Society have considered amenity in the preparation of the application.

The Authority appreciates the concerns expressed by submitters who oppose the application but in any assessment of the amenity impacts of this proposal, a distinction must be drawn between what people perceive the impacts of this use will be, and the reality of those impacts. It is perfectly reasonable for submitters to hold the fears that they do, but the Authority must be satisfied that there is a factual or realistic basis to those concerns in order to conclude that this proposal will result in the amenity impacts alleged by the residents. On the present evidence, the Authority cannot conclude that there is a factual basis that the impact on amenity of the locality will be so adverse that the application should be refused. The Authority notes that the proposed development has endeavoured to mitigate adverse impacts on the amenity by incorporating a waiting area internal to the site that would be open prior to, and after, the operating hours of the community centre. The Authority has determined to condition any Development Permit with a 2 year time limit, due to concerns of longer term risks to safety and amenity.

While noting concerns that there may be potential impact on the existing and future amenity of the area by participants using the community centre, the application is considered to have included relevant mitigation measures to address the possible impact on the amenity of the area, subject to a condition enforcing a 2 year time limit within which to monitor the effectiveness of the proposed community centre’s mitigation measures. The Authority notes that the approval of this application is strictly time limited and if any extension of the 2 year time period is sought, the question of amenity will be reconsidered.

Right of Review

Applicants are advised that a right of review to the Northern Territory Civil and Administrative Tribunal exists under Part 9 of the *Planning Act 1999*. An application for a review under section 114 against a determination of a development application must be made within 28 days of the service of this notice.

The Northern Territory Civil and Administrative Tribunal can provide information regarding the Notice of Review form and fees payable. The address for lodgement of a Notice of Review is: Northern Territory Civil and Administrative Tribunal, PO Box 41860 CASUARINA NT 0810 or Level 1, The Met Building, 13 Scaturchio Street, CASUARINA NT 0810 (Telephone: 08 8944 8720 or Facsimile 08 8922 7201 or email AGD.ntcat@nt.gov.au).

There is no right of review by a third party under section 117 of the *Planning Act 1999* in respect of this determination as section 117(4) of the Act and regulation 14 of the Planning Regulations 2000 apply to the application.

If you have any queries in relation to this Notice of Consent or the attached Development Permit, please contact Development Assessment Services on telephone (08) 8999 6046.

Yours faithfully

Amit Magotra
Delegate
10 May 2024

Attachment

cc City of Darwin
Submitters