



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 405 – THURSDAY 6 APRIL 2023

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

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

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary) and Ann-Marie Reynolds (Development Assessment Services)

COUNCIL REPRESENTATIVE: Nil

Meeting opened at 10.15 am and closed at 10.30 am

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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 **ALTERATIONS AND OUTBUILDING (CARPORT) ADDITIONS TO AN**
PA2023/0032 **EXISTING DWELLING-GROUP WITH REDUCED BUILDING SETBACKS TO**
THE PRIMARY STREET AND SIDE BOUNDARIES
APPLICANT **LOT 567 (80) NIGHTCLIFF ROAD, RAPID CREEK, TOWN OF NIGHTCLIFF**
 Kathopoulos Electrical and Building Contracting Pty Ltd

Michael Alakiotis (KMS Building Design (NT)) and Michael Kathopoulos (landowner) attended.

Submitter Simon Niblock sent his apology.

RESOLVED That, the Development Consent Authority vary the requirements of
20/23 Clause 5.2.4.4 (Layout of Car Parking Areas) and Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) of the NT Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 5567 (80) Nightcliff Road, Rapid Creek, Town of Nightcliff for the purpose of alterations and outbuilding (carport) additions to an existing dwelling-group with reduced building setbacks to the primary street and side boundaries, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the endorsement of plans and prior to commencement of works, amended plans to the satisfaction of the consent authority must be submitted to and approved by the consent authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans submitted with the application but modified to show:
 - (a) how the fencing proposed along the primary street boundary will not adversely impact on sightlines for drivers entering and exiting the site;
 - (b) signage and design details (including line marking) that prohibits cars from parking at the car turning bay; and
 - (c) how the proposed 1.8m high good neighbour fencing located towards the rear of the site adjacent to 'Dwelling 4' will not impact on the existing adjacent car parking space.
2. Prior to the endorsement of plans and prior to commencement of works (including site preparation), in principle approval is required to ensure sight lines are provided/maintained at the crossovers to Nightcliff Road from the City of Darwin, to the satisfaction of the consent authority.
3. Prior to the endorsement of plans and prior to the commencement of works, in principle approval is required for the crossover and driveway to the site from the City of Darwin road reserve, to the satisfaction of the consent authority.

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4. Prior to the commencement of works, the applicant is to prepare a dilapidation report covering infrastructure within the road reserve to the requirements of City of Darwin.
5. Prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into the City of Darwin stormwater drainage system shall be submitted to and approved by City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels and Council's stormwater drain connection point/s. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council's system.

GENERAL CONDITIONS

6. The works carried out under this permit shall be in accordance with the drawings endorsed as forming part of this permit.
7. The owner of the land must enter into agreements with the relevant authorities for the provision of electricity to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

Please refer to notations 1 for further information.

8. 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.
9. The kerb crossovers and driveways to the site approved by this permit are to meet the technical standards of the City of Darwin, to the satisfaction of the consent authority.
10. Upon completion of any works within or impacting upon existing road reserves, the infrastructure within the road reserve shall be rehabilitated to the standards and requirements of the City of Darwin and returned to the condition as documented in the dilapidation report.
11. 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.
12. 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 satisfaction of City of Darwin.
13. Before the use starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.

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14. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the consent authority, including that any dead, diseased or damaged plants are to be replaced.

NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section (waterdevelopment@powerwater.com.au) 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. 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.
3. The City of Darwin advises that all street trees shall be protected at all times during construction. Any tree on a footpath, which is damaged or removed during construction, shall be replaced, to the satisfaction of the General Manager Infrastructure, City of Darwin. A Tree Protection Zone (TPZ) shall be constructed for all existing trees to be retained within the development, in accordance with Australian Standards – AS 4970-2009 "Protection of Trees on Development Sites". Copies of AS 4970-2009 "Protection of Trees on Development Sites" can be obtained from the Australian Standards website.
4. 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.

REASONS FOR THE DECISION

1. Pursuant to section 51(1)(a) of the *Planning Act 1999*, the consent authority must take into consideration the planning scheme that applies to the land to which the application relates.

The NT Planning Scheme 2020 (NTPS 2020) applies to the land. The alterations to an existing dwelling-group (Dwelling 1) and carports are *Merit Assessable* under Clause 4.3 Zone LMR (Low-Medium Density Residential) and therefore, Part 2 (Strategic Framework – Darwin Mid Suburbs Area Plan 2016), the zone purpose and outcomes of Clause 4.3 Zone LMR (Low-Medium Density Residential), Clause 5.2.4 (Car Parking), Clause 5.2.6 (Landscaping), Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), Clause 5.4.6 (Private Open Space),

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Clause 5.4.7 (Communal Open Space), Clause 5.4.8 (Residential Building Design), Clause 5.4.17 (Building Articulation) need to be considered.

Clause 1.10 (Exercise of Discretion by the Consent Authority) requires the consent authority in considering an application an application for consent for a use or development identified as Merit Assessable the consent authority must take into account all of the following:

- (a) the relevant requirements, including the purpose of the requirements, as set out in Parts 5 or 6;
- (b) any Overlays and associated requirements in Part 3 that apply to the land;
- (c) the guidance provided by the relevant zone purpose and outcomes in Part 4 relevant to a variation of requirements in Parts 5 or 6; and
- (d) if an Area Plan in Part 2 applies to the land, any component relevant to a variation of requirements in Parts 5 or 6.'

Regarding the Darwin Mid Suburbs Area Plan 2016 and the zone purpose and outcomes; the Authority notes that the site is located in an area designated for 'low-medium density residential' and the works proposed are additions to an existing development and are generally in keeping with the existing residential use onsite.

The application proposes alterations to an existing dwelling-group on site as well as two carport additions with reduced setbacks to the primary street and side boundaries. Variations are sought to Clause 5.2.4.4 (Layout of Car Parking Areas) and Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures).

Clause 5.2.4.4 (Layout of Car Parking Areas)

The purpose of the clause is to "ensure that a car parking area is appropriately designed, constructed and maintained for its intended purpose".

The non-compliances identified are in relation to sub-clause 6 (setbacks and landscaping provisions of a car parking area) and sub-clause 9(b) (maximum sightlines for drivers entering and exiting a car parking area).

Administratively, the consent authority may consent to a car parking area that is not in accordance with sub-clause 6 if it is satisfied that the non-compliance will not unreasonably impact on the amenity of the surrounding locality and the consent authority may consent to a car parking area that is not in accordance with sub-clause 9 if it is satisfied that the non-compliance will not result in adverse impacts on the local road network or internal functionality of the car parking area.

The application proposes a setback variation to the car parking area along the primary street boundary of 1.4m where a 3m setback is required. In addition, no landscaping is proposed between the car parking area and the road where landscaping to a depth of 3m is required.

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The authority notes that the site was originally developed with one residential building and 3 flats under *the Town Planning Ordinance/Act 1964*. The variations sought to the setback requirements of Clause 5.2.4.4 are a result of two new car parking bays and a new turning bay being developed on site. The authority considers a variation to subclause 6 acceptable as the new parking area and turning bay will ensure vehicles can enter and exit the site in a forward gear.

The variation to allow the car parking area to be situated 1.4m from the primary street boundary is considered acceptable, the consent authority notes that while the Development Assessment Services (DAS) report indicates an opportunity to provide some landscaping between the car parking area and the primary street boundary may exist; the proposal includes an aluminium slat sliding gate which would likely be impeded by any landscaping planted between the car parking space and the primary street boundary.

The DAS report notes that as a part of the improvements to the site, a 2m high block work wall is proposed along the primary street boundary. Sub-clause 9(b) of Clause 5.2.4.4 requires access points to 'maximise sight lines for drivers entering or exiting the car parking area'.

At the hearing, Mr Michael Alakiotis (the applicant), stated that the application proposes a more formal car parking layout which will include a reversing bay to allow vehicles to enter and exit in a forward gear. The application also includes a 2m high blockwork fence which is proposed as part of the application to provide privacy to the occupants of the dwelling at the front of the property and while the fence could be changed to promote a better line of sight, Mr Alakiotis noted that the location of the car parking space adjacent to Nightcliff Road, when occupied, would likely limit sight lines of drivers entering and exiting the site. Mr Alakiotis instead proposed a mirror on each side of the entrance to enable both drivers and pedestrians to see vehicles entering and exiting the site.

The authority considers the overall height and opaque nature of the fence proposed will likely obstruct sight lines for drivers entering and exiting the site. Nevertheless, the authority notes the applicant's preference to install convex traffic safety mirrors and considers this may be a suitable alternative to maximise sight lines for drivers entering or exiting the site. As a result, a condition precedent has been included which requires the applicant to demonstrate how the 2m high block work wall proposed will not adversely impact on sightlines for drivers entering and exiting the site (potentially be the use of convex traffic safety mirrors). Noting the concerns identified in comments received from the City of Darwin, the authority requests that the applicant also seeks approval from the City of Darwin to ensure sight lines are maintained and no adverse impact on Nightcliff Road occurs. A condition precedent has therefore been included which reflects this requirement.

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The DAS report also notes other improvements to the site include a 1.8m high good neighbour fencing which is proposed at the rear of the site to separate the dwelling at the front of the property from the 'flats' at the rear. The fencing proposed appears to traverse the adjacent existing car parking space adjacent to 'Dwelling 4'. A condition precedent has therefore been included that requires amended plans to be submitted to ensure the any good neighbour fencing installed will not impact on the existing car parking spaces.

Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures)

The purpose of the clause is to "ensure that residential buildings and ancillary structures are located in a manner that: (a) is compatible with the streetscape and surrounding development including residential buildings on the same site; (b) minimises adverse effects of building massing when viewed from adjoining land and the street; (c) avoids undue overlooking of adjoining properties; and (d) facilitates breeze penetration through and between buildings".

Administratively, "The consent authority may consent to a development that is not in accordance with sub-clause 6-8 only if it is satisfied that the reduced setback is consistent with the purpose of this clause and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property".

The application proposes alterations and additions proposed to the existing dwelling-group which results in a ground level setback of 1.2m and a first level setback of 0.85m to the north-western boundary where a setback of 1.5m is required.

The authority considers a variation appropriate in this instance as it will be in line with the existing building footprint and is unlikely to impact on the amenity of the site or surrounding area. The elevation to the north-western boundary does not propose any windows or openings and building massing has been minimised through the proposed length of the building. The adjoining lot site to the north west is also a mixed use commercial development and is therefore unlikely to impact on the amenity of the adjacent site.

The application also proposes two carport additions with one carport situated at the front of the site with a setback of 1.4m to the primary street boundary where a 4.5m setback is required and one carport adjoining the south-eastern boundary with a setback of 0.9m to the south-eastern side boundary where a 1.5m setback is required.

The authority considered the proposed setback of the carport addition to the primary street boundary acceptable based on the site characteristics of the existing dwelling-group and surrounding development. The carports will result in additional car parking spaces on site (adjoining Dwelling 1) which will reduce potential on-street car parking. The open style of the carport will further reduce any potential impact through building massing.

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A 0.9m setback to the side, south-eastern setback for the other carport will ensure there is no amenity impact to the adjoining site in relation to stormwater, with the open style carport allowing for breeze penetration within the site and to adjoining sites. The authority notes as a non-habitable structure, overlooking does not need to be considered as part of the variation. The authority considers a variations to the south-eastern side boundary appropriate in this instance for the reasons outlined above.

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

The application was placed on public exhibition for a period of two weeks and due to an error in the purpose description was re-exhibited for a further two weeks. Two (2) public submissions were received under section 49(1) of the *Planning Act 1999*. The application was re-exhibited for an additional two weeks due to an error in the purpose description not including the alterations to the dwelling. No additional service authority comments or public submissions were received.

The submitters raised concern regarding the proposed 2m high block work fence and driver visibility of pedestrians and bicycle riders, particularly students riding and walking to nearby schools.

The authority carefully considered the submitters' concerns and considered these comments in making its decision. Conditions precedent have been included by the authority which require the applicant to demonstrate how the 2m high block work wall proposed will not adversely impact on sightlines for drivers entering and exiting the site, which the applicant indicated could potentially be achieved through the use of traffic safety mirrors.

Accordingly, the authority requests the applicant seeks approval from the City of Darwin to ensure sight lines are provided/maintained and no adverse impact occurs on Nightcliff Road.

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

The DAS report notes the land is considered capable of supporting the proposed development as the application is for an extension to an existing dwelling-group (Dwelling 1) and carport additions for the dwelling-group on site. The authority notes comments from the City of Darwin and Power and Water Corporation were sought in relation to the capability of the land, and no adverse comments were received.

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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 potential impact on amenity should be considered in the context of the site and the surrounding area. The development is consistent with the broader zone purpose and outcomes of Zone LMR (Low-Medium Density Residential) for a range of low rise housing, which includes ancillary structures. The works proposed do not further intensify the existing use of the site for residential purposes.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

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

SUZANNE PHILIP

Chair

11 April 2023