



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 364 – FRIDAY 9 OCTOBER 2020

**BROLGA ROOM
NOVOTEL DARWIN ATRIUM
DARWIN CITY**

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

APOLOGIES: Nil

LEAVE OF ABSENCE: Nil

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

COUNCIL REPRESENTATIVE: Nil

Meeting opened at 10.30 am and closed at 11.30 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

PA2020/0254 ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING-SINGLE WITH A REDUCED FRONT SETBACK

LOT 3877 (27) LANYON TERRACE, MOIL, TOWN OF NIGHTCLIFF

APPLICANT ABP Permits Pty Ltd

Chris Lovewell (ABP Permits) attended and tabled:-

- A stormwater plan approved by City of Darwin;
- A Council road reserve dilapidation report including six photographs;
- Two photographs of the site from the construction company; and
- Email correspondence between the landowner and City of Darwin in relation to the stormwater plan and the dilapidation report.

Submitters Patrick and Amber Walton sent their apologies.

Leanne and Christopher Walton attended on behalf of submitters Patrick and Amber Walton.

**RESOLVED
179/20**

That, the Development Consent Authority vary the requirements of Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) of the Northern Territory Planning Scheme 2020, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 3877 (27) Lanyon Terrace, Town of Nightcliff for the purpose of alterations and additions to an existing dwelling-single with a reduced front setback, subject to the following conditions:

CONDITIONS PRECEDENT

1. Prior to the commencement of works (including site preparation), a schematic plan demonstrating the on-site collection of stormwater and its discharge into the local 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 surface flow direction, downpipe direction and any connection to Council connection points
2. 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

3. The works carried out under this permit shall be in accordance with the drawings numbered 2020/0254/01 to 2020/0254/05, endorsed as forming part of this permit.

4. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the relevant service authority to the satisfaction of the consent authority.
5. The owner of the land must enter into agreements with the relevant authorities for the provision of electricity services to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.
6. 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 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. Designs and specifications for landscaping of the road verges adjacent to the property 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.
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. You are also advised to engage a Northern Territory registered building certifier to ensure that the intended use of any existing buildings or structures is permitted by occupancy certification in accordance with the *Building Act 1993*.

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 applies to the land. The application revealed 2 potential non-compliances with that Scheme, both of which involved alterations and additions to an existing dwelling-single with reduced front setbacks. Such non-compliances require consent under Clause 1.8 (When development consent is required), as they are identified as *Merit Assessable* under Clause 1.8(b)(ii)(2). In this instance, because of the reduced front setback, Clause 5.4.3 (Building

Setbacks of Residential Buildings and Ancillary Structures) of the Northern Territory Planning Scheme 2020, must be considered.

2. Pursuant to subclause 2 of Clause 1.10 (Exercise of Discretion by the Consent Authority), of the NT Planning Scheme 2020, the consent authority may consent to a proposed development that is not in accordance with Part 5 of the Scheme only if it is satisfied that the variation is appropriate having regard to the purpose and administration clauses of the requirement.

The assessment identified a non-compliance in relation to part of the proposed garage and living area above it, which is proposed to be setback up to 4.8m from the primary street frontage, when the required setback under the clause (sub-clause 5), is 6m (a variation of up to 1.2m). Additionally, part of a proposed boat port structure, which is an ancillary structure without external walls, is proposed to be setback 4m from the primary street frontage, when the required setback is 4.5m (a variation of 0.5m). Those variations in front setbacks are assessed as contrary to Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), because the proposal will result in a front setback of less than 6m and 4.5m respectively.

The Authority considered the purpose set out in Clause 5.4.3 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.

It concluded that the proposed variations to this clause are appropriate in this instance because the proposal meets the purpose of Clause 5.4.3 in that:

- (a) the proposal is compatible with the streetscape and surrounding development as the alterations to the main part of the two storey house encroach into the required front setback by a small amount (up to 1.5m at the nearest point to the front boundary and the proposed boat port by 0.5m to the nearest point of the front boundary). The structures on surrounding lots are setback from the street to varying degrees with the structures on the two lots to the west of the subject site having less deep setbacks than those immediately to the east. The setbacks on the two lots immediately to the east are well vegetated. It is also noted that the plans show that there will be trees/ vegetation in the north-east corner of the site which will provide a further level of screening for the proposed development. Additionally, the dwelling is a typical elevated two storey dwelling and the proposed alterations and additions to it, while encroaching into the required front setbacks by a small amount, remain in the general style of other houses along the street.
- (b) The effects of building massing from the street will be minimal given the small amount of reduced front setback proposed.

- (c) There will be no undue overlooking of adjoining properties given the distance of the proposal to the adjoining properties, noting also that the proposal meets the required side setbacks.
- (d) The proposal facilitates breeze penetration through and between buildings particularly as the boat port is open sided and the proposal meets the required side setbacks.

It is noted that the administration of Clause 5.4.3 states that the consent authority may consent to a development that is not in accordance with Clause 5.4.3 if it is satisfied that, as well as being consistent with the purpose of Clause 5.4.3, the reduced setback is also consistent with the zone purpose and outcomes of Zone LR (Low Density Residential). In this regard, the proposal is considered consistent with the purpose and zone outcomes of Zone LR, particularly in that it is low rise residential development and is considered to be setback in a manner sympathetic to neighbours, the streetscape and scale and character of surrounding development. Additionally, the building design and site layout provide a sympathetic interface to the adjoining public spaces and between neighbours.

- 3. 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.

Two submissions were made under section 49 in relation to the application during the exhibition period. The key planning issues raised in the submissions relate to: proposed setbacks and landscaping for the proposed development.

In relation to the setbacks, the main concerns relate to the scale of the proposed setbacks resulting in encroachment on the streetscape and building massing, particularly when viewed from 25 Lanyon Terrace. The impact of breeze on 25 Lanyon Terrace is also cited as a concern. Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), provides the key matters to be considered in the assessment of setbacks, as particularly stated in the clause purpose. The Authority considered that the proposed structures have a small portion encroaching into the front setback resulting in a very limited massing effect and impact on the general amenity of the area. It is noted that the dwelling at 25 Lanyon Terrace is setback from the proposal and there will be a distance of approximately 7m between it and the elevated area of 27 Lanyon Terrace. With this and the fact that the proposed boat port will be open sided, it also considered unlikely that breezes at 25 Lanyon Terrace will be significantly impacted.

The DCA noted the concerns raised at the meeting by submitters Leanne and Christopher Walton, which essentially reiterated the matters raised in their submission to the development application. The DCA emphasised to the submitters that the portion of the proposal that encroached into the front setback (which triggered the development application), was minor.

The DCA acknowledged the submitters concerns in the event the open sided boat port is one day enclosed. The DCA noted that it must consider the proposal before it and not some future possibility. If the boat port is enclosed in the future without approval, that is matter which should be dealt with by complaint, investigation and, if necessary, enforcement action.

The DCA also noted that the submitters believed that the access to the proposed boat port was limited and this was not considered in the assessment of the proposal. The DCA found that the manoeuvrability of boat trailers is not a planning matter but one for the owner to determine. It is noted that the applicant believed that with the driveway layout as shown in the revised plans, manoeuvring boat trailers into the boat port would not be an issue.

The submitters expressed concern that the proposed landscaping will not provide suitable screening and that the owner will need to remove the plant bed in the future to build better access to the boat port.

The applicant has advised that it is proposed to modify the front landscaping to include a taller and narrower but denser arrangement. The planting will include leaving the existing lipstick palms (*Cyrtostachys renda*) and installing additional clumping palms. Golden Cane (*Dypsis lutescens*) and Areca Palm (*Chrsalidocarpus lutescens*).

The DCA noted the proposed landscaping in the revised plans submitted by the applicant (along with the matter of boat trailer manoeuvrability into the boat port). In determining whether to grant a variation to Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), the purpose of Clause 5.4.3 does not require the consideration of landscaping. However, it is a consideration of the zone outcomes for Zone LR (Low Density Residential), in that landscaping (among other things), should provide a sympathetic interface to the adjoining public spaces and between neighbours. The DCA considered that with such a small portion of the proposal encroaching into the front setback in this instance, the landscaping provision is not a major concern and that amenity impacts on the area as referred to in Section 51 (n) of the *Planning Act 1999* are minor. It noted in particular that, without the minor encroachment into the setback, consent would not be required and landscaping would not to be considered at all. As such, while the DCA noted the landscaping proposed by the applicant on the revised plans, it did not consider a consent condition requiring landscaping warranted in this instance.

It is noted that both submissions also raised the issue of works commencing before this application has been determined. The applicant has advised that the works that had commenced and were reliant on development approval have been removed.

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.

The DCA noted the applicant's request to modify the conditions precedent requested by City of Darwin in relation to stormwater and a dilapidation report included in the recommendation. The DCA determined not to alter the conditions, despite the applicant's assertion that both conditions have been met, noting that the conditions precedent will not impede the development in any way and a development permit will be issued and associated drawings endorsed regardless.

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 unlikely that the proposal will significantly impact on the amenity of the area particularly with the small degree of reduced setback proposed, the proposal's location.

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

15 October 2020