



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING No. 412 – FRIDAY 17 NOVEMBER 2023

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

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

APOLOGIES: Mark Blackburn

LEAVE OF ABSENCE: Nil

OFFICERS PRESENT: Margaret Macintyre (Secretary), Sally Graetz, Fletcher Willis and David Burrows (Development Assessment Services)

COUNCIL REPRESENTATIVE: Apology

Meeting opened at 9.45 am and closed at 10.45 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.

The Chair, Development Consent Authority, under section 93(1) of the *Planning Act 1999*, appointed Monica Baumgartner who is a member in relation to the Batchelor Division, to act as a member for Mark Blackburn in relation to the Darwin Division from 9 November 2023 to 27 November 2023 as Mark Blackburn is prevented from performing his duties of office because of absence.

ITEM 1 **OUTBUILDING (CARPORT) ADDITION TO AN EXISTING DWELLING-SINGLE**
PA2023/0304 **WITH A REDUCED BUILDING SETBACK TO THE PRIMARY STREET**
BOUNDARY

APPLICANT **LOT 7716 (4) EUGENIA STREET, NIGHTCLIFF, TOWN OF NIGHTCLIFF**
Lara Clegg and Richard Pendle

Applicant: Richard Pendle (landowner) attended.

RESOLVED That, the Development Consent Authority vary the requirements of Clause 5.4.3
44/23 (Building Setbacks of Residential Buildings and Ancillary Structures) of the
Northern Territory Planning Scheme, and pursuant to section 53(a) of the
Planning Act 1999, consent to the application to develop Lot 7716 (4) Eugenia
Street Nightcliff, Town of Nightcliff, for the purpose of an outbuilding (carport)
addition to an existing dwelling-single with a reduced building setback to the
primary street boundary, 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 drawings 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 to the development shown on the

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endorsed plan in accordance with the authorities' requirements and relevant legislation at the time. Please refer to notations 1 for further information.

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.
7. The kerb crossovers and driveways to the site are to meet the technical standards of City of Darwin, to the satisfaction of the consent authority.
8. 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.
9. Before the use/occupation of the development starts, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the consent authority.
10. 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 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. 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.
3. 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.

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 Northern Territory Planning Scheme 2020 (NTPS2020) applies to the land and the proposed outbuilding (carport) addition to an existing dwelling-single with a reduced building setback to the primary street boundary requires consent under Clause 1.8 (When development consent

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is required). The application has become *Merit Assessable* under Clause 1.8(1)(b)(ii)(2) of the NTPS2020 as the proposal is usually a *Permitted* use in Zone LR (Low Density Residential).

The proposal complies with the relevant requirements of the planning scheme except for Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures).

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), sub-clause 5, of the Northern Territory 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 variation 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).

The proposal has been found not to be in accordance with Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), because the proposal will result in a reduced front boundary setback of 1.74m, where the NTPS 2020 requirement is 4.5m.

The consent authority noted the information presented by the applicant at the hearing, including the reasons for the placement of the structure with reduced building setbacks.

It is considered that a variation to this clause is appropriate in this instance because:

- (a) The proposal is consistent with the purpose of Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) in that:
 - the ancillary outbuilding is consistent with an anticipated form of residential development and is consistent with the existing character of the locality;
 - the non-compliant aspect of the setback relates to only 6m of the 26m length of the primary street frontage (23% of the boundary length);
 - the structure avoids undue overlooking of adjoining properties as it is located along the primary street frontage and is a non-habitable structure;
 - the structure is not expected to unduly limit breeze penetration due to the open sided design; and
 - any visual amenity impacts will be reduced with the landscape screening proposed to the property boundaries.

The proposed outbuilding (carport) addition to an existing dwelling-single with a reduced building setback to the primary street boundary is consistent with the purpose of Clause 5.4.3 in that the proposal is a form of development expected within Zone LR (Low Density Residential). Whilst the proposal has a reduced primary street frontage setback, it is considered compatible with the residential

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amenity and is sympathetic to the streetscape, scale and character of the existing and surrounding development.

- (b) The considerations listed under Clause 1.10(3) or 1.10(4) do not apply to this application because the application became Merit Assessable under Clause 1.8(1)(b)(ii)(2), and under Clause 1.10(2), the consent authority only must consider the requirements in Part 5 that are not complied with for such applications.
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 land has proven to be capable of supporting the residential development and the proposed ancillary outbuilding is not expected to impact land capability. Comments received from service authorities in relation to the application do not identify any land capability matters for consideration.

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.

Any change to land is likely to have an amenity impact; however, in this case, the amenity impact is assessed as reasonable. The development is consistent with the purpose of Zone LR (Low Density Residential) and is a form of ancillary development expected with the zone.

Whilst the proposal has a reduced primary street frontage setback, it is considered compatible with the residential amenity and is sympathetic of the streetscape, scale and character of the existing and surrounding development. Provided the development proceeds in accordance with the conditions included on the permit, the proposed development is unlikely to have amenity impacts on the surrounding area.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Consent and Development Permit

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ITEM 2
PP2017/0569

EXTENSION OF TIME FOR A PERIOD OF TWO YEARS

LOT 4873 (577) LEE POINT ROAD, LEE POINT, TOWN OF NIGHTCLIFF

APPLICANT

Cunnington Rosse Town Planning and Consulting

DAS tabled four letters of public concern addressed to the Development Consent Authority relating to the development of the site, together with a record of phone calls received from members of the public in the days prior to the hearing.

Applicant: Brad Cunnington and Alex Deutrom (Cunnington Rosse Town Planning and Consulting) and James Wallace (DHA) attended.

Interested Parties in attendance:

Ian Redmond, Gayle Laidlaw and David Percival (Friends of Lee Point), Nicholas Kirlew (PLan: The Planning Action Network Inc), Jess Black (Environment Centre NT), Jan Thomas, Christine Cox, Natasha MacFarlane (ABC News), Lauren Moss and a gentleman who attended once the hearing had commenced.

Jess Black tabled a letter of concern from Dr Amanda Lilleyman.

RESOLVED
45/23

That, pursuant to section 59(3) of the *Planning Act 1999*, the Development Consent Authority consent to the application to extend the base period of Development Permit DP18/0409C by a period of two years, to 20 October 2025.

REASONS FOR THE DECISION

1. Section 59 of the *Planning Act 1999* enables a person to apply to the consent authority, at any time before the permit lapses, for an extension of the period of the permit. The base period of development permit DP18/0409C is valid until 30 November 2023 and an application to extend the period was lodged with the consent authority on 26 October 2023.
2. The consent authority noted the nature of the application under Section 59, making it clear that the application in no way amounts to a development application under Section 46, and, therefore, there are no rights to make submissions under Section 49 and the matters listed in section 51(1) are not applicable. On receipt of an application the consent authority may extend the period of the permit as it thinks fit, or refuse to extend the period of the permit. The *Planning Act 1999* does not provide specific matters to be taken into account to extend the period of a permit. Furthermore, no reasons are required to be given in the event the consent authority makes a determination in accordance with the application. In this instance the application sought an extension of the period for two years, and this request is consented to by the consent authority. Therefore reasons for the decision are not required under the *Planning Act 1999*. However, in acknowledgement of the letters of public concern, phone calls received and comments made at the meeting by

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members of the public, the consent authority has decided to record its reasons for decision.

3. In determining the application the consent authority considered that, while Section 59 provides no general guidelines or “tests” to guide an assessment of an extension application, the nature of the power to extend is limited to considerations relevant to that question only i.e. in all the relevant circumstances, should the applicant be allowed a further period of time for implementation of the planning permit? As with all planning decisions, it is important that each proposal is assessed on the merits of the individual circumstances, but, in considering what amounts to relevant considerations, the consent authority acknowledged the guidelines provided in *Kantor v. Murrindindi Shire Council* 18 AATR 285. Generally referred to as the ‘Kantor test’, an assessment of the following informed the determination: a) Whether there has been a change of planning policy; b) Whether the land owner is seeking to warehouse the permit; c) Any intervening circumstances which bear upon the grant or refusal of the extension request; d) The lapse of time between the permit and the request; e) Whether the time limit imposed was adequate; f) The economic burden imposed on the land owner by the permit; and g) The probability of a permit issuing should a fresh application be made. While acknowledging that the “Kantor test” is not exhaustive and other factors may be relevant, the consent authority considered that it is clear that such factors should focus on the reasons for delay and the impact of refusing to extend a validly granted permit.

The land owner demonstrated the actions taken and significant financial investment made to progress the subdivision. It does not appear that the land owner is warehousing the permit given the extent of preparations undertaken.

Whilst the original application was assessed under the Northern Territory Planning Scheme 2007, with the Northern Territory Planning Scheme 2020 now relevant, the residential subdivision clauses and Planning Principles for the Lee Point Area Plan which originally applied remain largely unchanged. There is a high probability that if a fresh application was made for the development, a development permit would be issued.

The supporting material provided by the land owner identifies that the application under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* as an intervening circumstance and states that it was not reasonably foreseeable by the land owner and beyond their control. This point is acknowledged by the consent authority and it notes that it is sensible to pause works to allow this separate application to be dealt with following the necessary processes. It is therefore reasonable to grant an extension to the base period of the permit whilst this matter is afoot.

The consent authority noted the letters of public concern, telephone calls and comments made by interested parties at the meeting. While there is no right for third parties to make submissions in respect of an application

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for extension of time, the consent authority acknowledged the deeply held concerns of members of the public and permitted comments from the floor, to the extent to which they were relevant to the matter before them. The consent authority indicated that, while matters such as complaints under Part 7 of the *Planning Act 1999* or an application under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* may be relevant to explain the applicant's delay in commencing work under the permit, they were not otherwise matters to be determined by the consent authority on this application. Having considered the matters raised by the applicant and noting the public comments, the consent authority was satisfied that it was appropriate to grant the extension of time as applied for.

FOR: 5

AGAINST: 0

ABSTAIN: 0

ACTION: Extension of Time

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

SUZANNE PHILIP

Chair

24 November 2023