



# DEVELOPMENT CONSENT AUTHORITY

## DARWIN DIVISION

### MINUTES

**MEETING NO. 434 – FRIDAY 6 DECEMBER 2024**

**AGORA ROOM  
HUDSON BERRIMAH  
4 BERRIMAH ROAD  
BERRIMAH**

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

**APOLOGIES:** None

**LEAVE OF ABSENCE:** None

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), Madison Harvey, Kaleb Thomas and Lingyi Kong (Development Assessment Services)

**COUNCIL REPRESENTATIVE:** Apology

**Meeting opened at 10.15 am and closed at 11.45 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 TIME DURING THE MEETING AND INVITEES ARE PRESENT FOR THE EVIDENTIARY STAGE ONLY.

**ITEM 1**                    **RECONSIDERATION: ADDITION (STORAGE ROOMS WITH ABLUTIONS) TO**  
**PA2024/0126**           **AN EXISTING DWELLING-MULTIPLE WITH A REDUCED BUILDING**  
                                 **SETBACK TO THE REAR BOUNDARY**  
                                 **LOT 6079 (23) KELSEY CRESCENT, MILLNER, TOWN OF NIGHTCLIFF**  
**APPLICANT**           Goldbox

Applicant: Maria Pajarillo (Goldbox) and Hassan Islam (landowner) attended.

**RESOLVED**            That, the Development Consent Authority vary the requirements of Clause 5.4.3  
**91/24**                    (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 6079 (23) Kelsey  
                                 Crescent, Millner, Town of Nightcliff for the purpose of storage rooms with  
                                 ablutions addition to an existing dwelling-multiple with a reduced building  
                                 setback to the side and rear boundaries, subject to the following conditions:

#### **CONDITION PRECEDENT**

1. Prior to the commencement of works (including site preparation), an engineered plan completed by a suitably qualified civil engineer demonstrating the on-site collection of stormwater and its discharge into the local underground stormwater drainage system, shall be submitted to, and approved by the City of Darwin, to the satisfaction of the consent authority. The plan shall include details of site levels, and Council's stormwater drain connection point/s and connection details.

#### **GENERAL CONDITIONS**

2. The works carried out under this permit shall be in accordance with the drawings numbered 2024/0126/01 to 2024/0126/05 endorsed as forming part of this permit.
3. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, sewerage and electricity to the development shown on the endorsed plan in accordance with the authorities' requirements and relevant legislation at the time.

Please refer to notation 1 for further information.

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. 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.

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6. The storage room additions must not be used for any purpose that could be defined as a 'habitable room' as per the definition in the Northern Territory Planning Scheme 2020.

### NOTES

1. The Power and Water Corporation advises that the Water and Sewer Services Development Section ([waterdevelopment@powerwater.com.au](mailto:waterdevelopment@powerwater.com.au)) and Power Network Engineering Section ([powerdevelopment@powerwater.com.au](mailto: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. 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 NT Planning Scheme 2020 (NTPS 2020) applies to the land and addition (storage rooms with ablutions) to an existing dwelling-multiple with a reduced building setback to the rear boundary requires consent under Clause 1.8 (When development consent is required). It is identified as *Merit Assessable* under Clause 1.8 (b)(v) and Clause 1.9(1)(b) therefore the zone purpose and outcomes of Clause 4.4 (Zone MR – Medium Density Residential) and Clauses 5.2.1 (General Height Control), 5.2.4 (Car Parking), 5.2.6 (Landscaping), 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR), 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), 5.4.6 (Private Open Space), 5.4.7 (Communal Open Space), 5.4.8 (Residential Building Design), 5.4.17 (Building Articulation), 5.4.18 (Fencing) and 5.4.19 (Residential Plot Ratio), need to be considered.

The Authority notes the assessment of the Development Assessment Services (DAS), which concludes that the proposed development complies with all relevant requirements 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), subclause 5 of the NT Planning Scheme 2020, the consent authority may consent to a proposed development which is not in accordance with a

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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).
- (a) The purpose of Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) 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.*

The proposed storage room additions are seeking a variation (to sub-clause 6(a)) of 1.5 m building setback, 1.4 m roofline setback to the rear boundary, and 2.8 m setback to the western property boundary, where the NTPS 2020 requires a 3 m building setback and 2.1 m roofline setback for ancillary structures in Zone MR to the side and rear boundaries.

Administratively, under sub-clause 3, 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.

In response sub-clause (a) of the Clause purpose, it is noted that the proposed additions will not increase building height, and will include rear wall treatments. As such, they're considered to be of a similar scale that existing on-site, and that which is reasonably expected within Zone MR.

In response to sub-clause (b), the proposed additions will match the height and materials of the existing development and therefore will integrate well into the existing built form and have limited adverse visual impacts when viewed from the streetscape. The proposed additions are setback 1.5 m from the rear boundary and 2.8 m from the western side boundary which is reflective of existing development pattern on surrounding properties.

In response to sub-clause (c), it is noted that the proposal is for storage rooms at ground and first floor with an associated balcony / elevated walkway at first floor and the storage rooms will have north and east facing windows. The proposed storage rooms are not considered 'habitable' and have a minimum sill height of 1.6 metres above floor level and as such there will be no overlooking impacts. In addition, to mitigate concerns that the proposed rooms may be used for accommodation purposes, the Authority will require a permit condition requiring that the spaces must not be used for any purpose that could be defined as 'habitable room' (per the NTPS 2020).

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In response to sub-clause (d), the proposed additions will not result in an unreasonable reduction in breeze penetration around the building.

In the response to deferral, the applicant included reasons for storage additions including requiring larger storage facilities to accommodate tools, furniture, white goods and cleaning products. The Authority notes the amended plans and the reasons above and considers that the proposed additions will not have an unreasonable impact on the amenity of the surrounding properties with regard to the sites location and scale of the development.

(b) The considerations listed under Clause 1.10(3) have been given regard to and it has been found that the proposal complies with all relevant requirements of the NTPS 2020, except for Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), as identified above.

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

The application was originally advertised between 24 May and 7 June, 2024, pursuant to section 47 of the *Planning Act 1999*. The plans were amended in July and November 2024, however the changes were not considered significant enough to warrant re-exhibition of this application.

Four public submissions were received during the original exhibition period under Section 49 of the *Planning Act 1999*. The current amended application was circulated on 18 November 2024 to the members of the public who made a submission in relation to the original application, and, no additional submissions or queries were received.

The concerns raised by the public submitters particularly referenced the potential use of the additions for accommodation, and traffic impacts on the locality.

In regard to the use of the additions for accommodation, following the original deferral of the application, the amended plans removed some of the key features that raised concerns, including shower facilities from each room and a toilet from one of the rooms.

During the meeting, Mrs Pajarillo (the applicant) and Mr Islam (the landowner) indicated the following:

- The proposed storage rooms are now set back further from the property boundary, and although proposed as a two-storey development, include an external treatment to reduce the appearance of building massing
- The rooms cannot be used as a dwelling, as they will not meet applicable building codes for human habitation

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- The current tenants will not have direct access to the storage rooms
- No air conditioners will be provided for the rooms
- Although the existing laundry block will be removed as part of this development, laundry facilities have now been provided within each of the dwellings on-site.

In response to concerns raised about the usage of the rooms as a dwelling, the Authority has included a permit condition stipulating that the rooms must not be used for any purpose that could be defined as a 'habitable room' under the NTPS 2020.

The Authority notes that Schedule 2 Definitions of the NTPS 2020 provides that a **habitable room** means any room of a **dwelling** other than a bathroom, laundry, toilet, pantry, walk-in wardrobe, corridor, stair, lobby, photographic darkroom, clothes drying room or other space of a specialised nature occupied neither frequently nor for extended periods.

In regards to traffic impacts, no additional habitable floor area and no alterations to the existing car parking layout or arrangements are proposed. The Authority notes that concerns regarding traffic impacts are not considered relevant to this application.

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.

There were no issues identified with respect to the capability of the land for the proposed development. Additionally, the application was circulated to service authorities which did not identify or raise any issues of concern in relation to land capability.

5. 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.

Public submissions received raised concerns with the proposed development impact on the amenity of the surrounding area. Taking into account the nature of Zone MR (Medium Density Residential), the requirements of NTPS 2020, in particular clause 5.4.3 (Building setbacks of residential buildings and ancillary structures), and the matters raised by submitters, the Authority has concluded that the impact on amenity is consistent with reasonable expectations for a building within this locality, provided that a permit condition prohibiting the use of the additions as habitable spaces are included.

**FOR: 5**

**AGAINST: 0**

**ABSTAIN: 0**

**ACTION:** Notice of Consent and Development Permit

**ITEM 2**  
**PA2024/0327**  
**APPLICANT**

**PART CHANGE OF USE FROM COMMUNITY CENTRE TO LEISURE AND RECREATION (PILATES STUDIO)**  
**LOT 9988 (69) PROGRESS DRIVE, NIGHTCLIFF, TOWN OF NIGHTCLIFF**  
One Planning Consult

Applicant: - Israel Kgosiemang (One Planning Consult) attended.

**RESOLVED**  
**92/24**

That, the Development Consent Authority vary the requirements of Clause 5.2.4.1 (Car Parking Spaces) of the Northern Territory Planning Scheme, and pursuant to section 53(a) of the *Planning Act 1999*, consent to the application to develop Lot 9988 (69) Progress Drive, Nightcliff, Town of Nightcliff for the purpose of part change of use from community centre to leisure and recreation (Pilates studio) subject to the following conditions:

#### **GENERAL CONDITIONS**

1. The works carried out under this permit shall be in accordance with the drawings numbered 2024/0327/01 to 2024/0327/02 endorsed as forming part of this permit.
2. The use and/or development as shown on the endorsed plans must not be altered without the further consent of the consent authority.
3. The use and operation shall provide for a maximum of:
  - 12 patrons and 1 staff at any one time from Monday – Friday.
  - 16 patrons and 2 staff at any one time from Saturday – Sunday.
4. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage, and 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 and 2 for further information.

5. 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.

#### **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. Power and Water Corporation advise that prior to initial reviews and assessments being undertaken to determine Power and Water Corporations

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servicing requirements, the developer should submit an Expression of Interest (Eoi) form via email to [remotedevelopment@powerwater.com.au](mailto:remotedevelopment@powerwater.com.au)

### 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 and leisure and recreation requires consent under Clause 1.8 (When development consent is required). It is identified as Merit Assessable under Clause 1.8(1)(b)(ii)(2), therefore Clause 3.7 (Overlay LSSS – Land Subject to Storm Surge), zone purpose and outcomes of Clause 4.11 (Zone C – Commercial), Clause 5.2.1 (General Height Control), Clause 5.2.4 (Vehicle Parking), Clause 5.2.5 (Loading Bays), Clause 5.2.6 (Landscaping), Clause 5.3.7 (End of Trip Facilities in Zones HR, CB, C, SC and TC), Clause 5.5.1 (Interchangeable Use and Development), Clause 5.5.2 (Commercial Plot Ratio), Clause 5.5.3 (General Building and Site Design), and Clause 5.8.5 (Leisure and Recreation), need to be considered.

The Authority notes the assessment of the Development Assessment Services (DAS), which concludes that the proposed development complies with all relevant requirements of the NTPS 2020 except for Clause 5.2.4.1 (Car Parking Spaces).

2. 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 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 assessed against the NTPS2020 and complies with the relevant requirements of the NTPS 2020 except for Clause 5.2.4.1 (Car Parking Spaces).

The proposal includes changing part of the approved community centre to leisure and recreation (Pilates Studio). DP21/0139 approved the community centre with a rate of 5 car parking spaces for every 100m<sup>2</sup> of net floor area.

The proposed leisure and recreation (Pilates studio) use requires 31.31 (rounded up to up 32) car parking spaces, whereas the previous part of the approved community centre required 15.32 (rounded up to 16). As no changes are proposed to the car parking area, the application will now result in a shortfall of 16 car parking spaces.

*Administratively, the consent authority may consent to a use or development that is not in accordance with sub-clause 4 if it is satisfied a reduction of the number of car parking spaces is appropriate with regard to:*



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- a) *the zoning of the land, the use or development or proposed use or development of the land, and the possible future use or development of the land;*
- b) *the provision of car parking spaces in the vicinity of the land;*
- c) *the availability of public transport in the vicinity of the land; and*
- d) *the potential impact on the surrounding road network and the amenity of the locality and adjoining property;*

It is considered that a reduction to the required car parking spaces can be supported (in the context of the Administration under subclause 2) for the following reasons:

- (a) *the zoning of the land, the use or development or proposed use or development of the land and the possible future use or development of the land*

The proposal is for the part change of use from community centre to leisure and recreation (Pilates studio) within an approved commercial development. The specific nature of a Pilates Studio is such that the application of an alternative approach to car parking rather than broad leisure and recreation car parking rate is appropriate. The proposed Pilates Studio will operate sessions that are prebooked and therefore the car parking required would be based upon the average group size and running times.

The application advises that the sessions will be pre-booked with a maximum of 16 patrons per session. There is only one session held per interval at any given time, except on the weekends.

In support of the application, Mr Kgosiemang posits that the definition of *leisure and recreation* under the NTPS 2020 is broad in nature and not reflective of the anticipated operation and car parking demands for gyms and similar uses.

- (b) *the provision of car parking spaces in the vicinity of the land; and*

DP21/0139C varied DP21/0139 for the purpose of altering the floor area of the community centre, which reduced the car parking provided on-site from 90 to 88 spaces (this represented a decrease in the number of car parking spaces by 2.22%).

There are 88 car parking spaces located on the site, with the existing community centre assessed at a ratio of 5 for every 100m<sup>2</sup> of net floor area. Taking into account the decrease by 2.22% the proposed leisure and recreation (Pilates studio) would have access to 15.6 (16) car parking spaces.

The Authority notes the assessment of the DAS that found that the peak demand based on the business operation is 18 car parking spaces, which would only occur on a Saturday or Sunday, when the offices and childcare tenancies on site are closed. During after-work hours and weekends, the car parks typically used by the offices and childcare tenancies on weekdays

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become available, providing additional parking space for the proposed Pilates studio.

(c) *the availability of public transport in the vicinity of the land; or*

The site provides a clear pedestrian link to a public bus stop on Progress Drive, that is serviced by a regular bus route (number 4), that runs between the Casuarina interchange and Darwin interchange.

In addition, sufficient bicycle parking spaces are provided for all site users and shower and storage facilities are proposed within the Pilates studio itself.

(d) *the potential impact on the surrounding road network and the amenity of the locality and adjoining property;*

Given the proposed operation of the Pilates studio includes a limit on number of patrons per session and no session times overlap (except on the weekends), there is considered to be sufficient parking on the site to accommodate the technical parking space shortfall. Where there are overlap of classes on the weekend, this coincides with the office and childcare tenancies being closed, ensuring there are additional parking spaces available for patrons and staff.

To ensure that class sizes do not detrimentally affect the availability of car parking at the site for other users, the Authority has included permit conditions limiting the maximum number of patrons (clients and trainees) and staff at any one time.

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.

No land capability issues have been identified. The proposal is for change of use within an existing commercial building. The land is in Zone C (Commercial) and is considered capable of supporting the proposed development. Additionally, the Department of Environment, Parks and Water Security did not identify or raise any issues of concern in relation to land capability.

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.

It is considered unlikely that the proposal will have a significant impact on the amenity of the area particularly as it is for a part change of use within an existing commercial building. Additionally, it is considered consistent with the purpose of the zone and complies with the NTPS 2020, except in relation to the car parking shortfall, however, these are considered to be addressed as discussed above. The recommended conditions and notes for any permit

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that may be issued for the proposal will also assist in preventing any adverse impacts on amenity.

**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 December 2024