

DEVELOPMENT CONSENT AUTHORITY

PALMERSTON DIVISION

MINUTES

MEETING No. 272 – FRIDAY 14 MARCH 2025

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

MEMBERS PRESENT: Suzanne Philip (Chair), Elisha Harris, Sarah Henderson and Athina Pascoe-Bell

APOLOGIES: Trevor Dalton

LEAVE OF ABSENCE: None

OFFICERS PRESENT: Margaret Macintyre (Secretary), Ben Taylor and Daniel Herlihy (Development Assessment Services)

COUNCIL REPRESENTATIVE: Apology

Meeting opened at 10.00 am and closed at 10.55 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
PA2023/0324

SUBJECT SITE
APPLICANT

VARIATION TO CONDITION 5 OF DP23/0304 FOR THE PURPOSE OF CHANGES TO FLOOR LAYOUT INCLUDING CHANGES TO THE NORTH FACADE TO ALLOW FOR A LIFT LOBBY AREA, CHANGES TO GROUND FLOOR UNITS 1 AND 7, AND ADDITIONAL INTERNAL SERVICE DUCTS, ELECTRICAL AND MECHANICAL SERVICE CUPBOARDS AND INTERNAL ROOF ACCESS
UNIT 13888 (APARTMENT 2, 11 TARAKAN COURT, JOHNSTON) AND UNIT 13892 (COMMON PROPERTY) 11 TARAKAN COURT, JOHNSTON, TOWN OF PALMERSTON
BRUCE BALDEY

DAS tabled further information (letter and drawings) from the applicant on site landscaping, private open space dimensions and staging of the project.

Applicant: Bruce Baldey attended via MS Teams link.

RESOLVED
08/25

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to vary condition 5 of Development Permit DP23/0304 for the purpose of changes to the site plan, floor plans and elevations (including amended building footprints, floor layouts, changes to balconies, private open space, doors, windows) subject to - the applicant demonstrating that the proposed alterations to the:

- i. private open space areas (ground level and balconies)
- ii. communal open space
- iii. landscaping works

are a margin of less than 5% from the development shown on the drawings that form part of DP23/0304.

REASONS FOR DECISION

1. Section 57(3)(a) of the *Planning Act 1999* specifies that – *the consent authority, may, in writing, vary a condition of a development permit if – the proposed variation will not alter a measurable aspect of the development by a margin greater than 5%...*
2. *Section 57(3)(a) mandates the requirements that must be fulfilled to enable the consent authority to exercise power to vary permit conditions. Unless those requirements are satisfied the consent authority has no ability to vary a condition and any attempt to do so would be ultra vires. The threshold requirement under section 57(3)(a,) which enlivens the consent authority's power, is clear – any variation of a measurable aspect must not be greater than 5%. In this case the measurable aspects which are sought to be varied include the design and layout of the private open space of the dwellings. That component is considered dwelling by dwelling. Until such time as the applicant can demonstrate that the variations sought will be no greater than 5% of the measurable aspects of the development, the consent authority cannot proceed with the application.*
3. The consent authority notes:
 - i) that the drawings included with the application to vary Condition 5 of DP23/0305 (and subsequent updates provided on 10 and 11 March 2025) contain changes to the:
 - design and layout of private open space areas of dwellings.

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- communal open space area (as a result of the boundary changes proposed through Development Application PA2025/0011); and
- ii) in order to proceed with the application, the consent authority requires further information including a table, prepared by the applicant comparing the area calculations (approved and proposed) to demonstrate compliance with Section 57(3)(a) so that the measurable changes to private open space and communal open space can be established.

RESOLVED
09/25

That, pursuant to section 86(1) of the *Planning Act 1999*, the Development Consent Authority delegate to the Chair or in the Chair's absence or inability to act any one of the members of the division the power under section 57 of the *Planning Act 1999* to determine the application to vary condition 5 of Development Permit DP23/0304 for the purpose of changes to the site plan, floor plans and elevations (including amended building footprints, floor layouts, changes to balconies, private open space, doors, windows) subject to resolution 08/25 requirements being met.

FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Deferral

ITEM 2
PA2025/0011
SUBJECT SITE
APPLICANT

UNIT TITLE SCHEME SUBDIVISION TO CREATE 27 UNITS AND COMMON PROPERTY (RE-SUBDIVISION OF AN EXISTING UNIT TITLES SCHEME) IN 3 STAGES
UNIT 13888 (APARTMENT 2, 11 TARA KAN COURT, JOHNSTON) AND UNIT 13892 (COMMON PROPERTY) 11 TARA KAN COURT, JOHNSTON, TOWN OF PALMERSTON
EARL JAMES AND ASSOCIATES - DIRECTOR KEVIN DODD

DAS tabled further information from the applicant (letter dated 10 March 2025).

Applicant: Kevin Dodd (Earl James and Associates) sent his apology for the meeting.

RESOLVED
10/25

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Units 13888 and 13892 (11) Tarakan Court, Johnston, Town of Palmerston for the purpose of unit title schemes subdivision to create 27 units and common property (including re-subdivision of an existing unit titles scheme) in 3 stages for further information, being confirmation that DCA consent has been granted for changes to the design of the development referred to in Condition 5 of Development Permit DP23/0304.

REASON FOR DECISION

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

The NT Planning Scheme 2020 applies to the land which is zoned MR (Medium Density Residential).

The proposed subdivision requires consent under Clause 1.8 (When development consent is required) and sub-clause 1 of Clause 6.1. As specified in sub-clause 1(c)(ii) of

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Clause 1.8 subdivision of land other than that included at Clause 1.8(1)(b)(iii) is "Impact Assessable".

The zone purpose and outcomes of Clause 4.4 (Zone MR (Medium Density Residential)) of the NTPS2020, and requirements listed in Clause 6.6.1 (Subdivision for the Purposes of a Unit Title Scheme) are all relevant to the subject site and proposed subdivision to create a Unit Title Scheme.

Sub-clause 6 of Clause 6.6.1 specifies that *subject to sub-clauses 1, 2, 3 and 5 a subdivision to create a unit title scheme should meet the requirements of Part 5 of the planning scheme.*

Administratively, sub-clause 1 of Clause 6.6.1 specifies that - *a lawfully established development on a lot may be subdivided to create a unit title scheme only if the development has been upgraded to meet the development requirements within Part 3 and Part 5 of the planning scheme that apply to the development of the land. If it is not possible to meet the requirements the consent authority must be satisfied that the proposed upgrading is the only practicable design solution.*

Planning Act 1999 consent (DP23/0304) was issued by the Development Consent Authority in 2023 for construction of 'dwellings-multiple' on the site (13 x 3 bedroom, 12 x 2 bedroom and 2 x 1 bedrooms) in 1 x 3 storey building, at which time, the NT Planning Scheme 2020 was the relevant planning scheme in force over the land. Works associated with DP23/0304 have not yet commenced. It is noted that the UTS subdivision drawings included with Development Application PA2025/0011 show unit entitlement boundaries in some areas (eg: building footprints) that are different to the endorsed drawings for DP23/0304. In response, an application to vary the DP23/0304 has been lodged. Until such time as that application is resolved, the form of the development which is sought to be subdivided by this application cannot be certain.

The consent authority notes relevant development requirements listed in Parts 3 and Part 5 of the NTPS2020 (as in force in 2025) have been considered and it is found that subject to:

- consent being issued for changes made to the design of the buildings; and
- a Certificate of Compliance (in full) being issued for DP23/0304 (as varied),

the subdivision application complies with the relevant requirements of the NTPS2020 (noting that DP23/0304 granted variations to Clause 5.2.4.4 (Layout of Car Parking Areas), Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), Clause 5.4.7 (Communal Open Space), Clause 5.4.8.2 (Building Design for Dwelling-Multiple)).

**RESOLVED
11/25**

That, pursuant to section 86(1) of the *Planning Act 1999*, the Development Consent Authority delegate to the Chair or in the Chair's absence or inability to act any one of the members of the division the power under section 53 of the *Planning Act 1999* to determine the application to develop Units 13888 and 13892 (11) Tarakan Court, Johnston, Town of Palmerston for the purpose of unit title schemes subdivision to create 27 units and common property (including re-subdivision of an existing unit titles scheme) in 3 stages subject to:

- i. resolution 10/25 requirements being met; and
- ii. standard conditions and advisory notes being included on a Development Permit.

FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Deferral

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ITEM 3
PA2023/0255
SUBJECT SITE
APPLICANT

VARIATION TO CONDITION 4 OF DP24/0043 FOR THE PURPOSE OF AN ADDITION OF A PATH AND REDUCTION IN CAR PARKING WIDTH
LOT 11311 (5) DAVIES COURT, JOHNSTON, TOWN OF PALMERSTON
CUNNINGTON ROSSE TOWN PLANNING AND CONSULTING

Applicant: Gerard Rosse (Cunnington Rosse Town Planning and Consulting) attended.

RESOLVED 12/25

That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to vary condition 4 of Development Permit DP24/0043, for the purpose of changes to car parking layout, width of car parking spaces, building setbacks, private open space boundaries, design of shed and doors and windows of dwellings, for further information, being the provision by the applicant of updated drawings. The drawings must be to scale with dimensions and must be generally in accordance with the drawings submitted with the application material (Bookmark C of DAS agenda report to 14 March 2025 meeting) but modified to show:

- (a) adjustment to the private open space boundaries so that the changes to areas (m²) of each dwelling will be a margin less than 5% of those approved by DP24/0043.
- (b) provision of two additional car parking spaces within the car parking area at the rear of the site.

REASONS FOR THE DECISION

1. Section 57(3)(a) of the *Planning Act 1999* specifies that – *the consent authority, may, in writing, vary a condition of a development permit if – the proposed variation will not alter a measurable aspect of the development by a margin greater than 5%...*
2. Section 57(3)(a) mandates the requirements that must be fulfilled to enable the consent authority to exercise power to vary permit conditions. Unless those requirements are satisfied the consent authority has no ability to vary a condition and any attempt to do so would be ultra vires. The threshold requirement under section 57(3)(a) which enlivens the consent authority's power, is clear – any variation of a measurable aspect must not be greater than 5%. In this case the measurable aspects which are sought to be varied include the design and layout of the private open space of the dwellings. That component is considered dwelling by dwelling. Until such time as the applicant can demonstrate that the variations sought will be no greater than 5% of the measurable aspects of the development, the consent authority cannot proceed with the application.
4. The consent authority noted verbal advice from the applicant (at the 14 March 2025 open session of the meeting of the Palmerston Division) that:
 - boundaries of the private open space areas of the dwellings can be amended (from what was shown in the drawings included with the application) such that the change in individual areas will be less than 5% of what (areas and dimensions) were shown on the drawings that form part of Development Permit DP24/0043.
 - additional car parking spaces can be provided on the site, which will result in there being no margin of change (to the width of the car parking spaces within the car parking area at the rear of the site).
5. With respect to the proposed changes to the parking layout, the consent authority notes that the original development application was subject to a number of public submissions

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which raised, inter alia, concerns relating to adverse impacts to amenity from an increase of vehicle movements or traffic, and the potential for the development to generate on-street car parking issues. Council also raised specific concerns in relation to the non-compliant car parking rate and the probability of this creating on street parking issues in a cul-de-sac location. The car parking requirement of the NTPS 2020 for this dwelling-group development is 10 spaces. The DCA was prepared to approve the revised development on the basis, expressly stated –

Whilst the proposal provides for 8 oversized car parks, these have the potential to be converted to 11 regular car parking spaces, beyond what is required by the Planning Scheme.

The consent authority considers that the original permit amounted to an approval of 8 – 11 carparking spaces. The proposed reduction in the size of the carparking spaces, without provision of further car parking has the potential for adverse impacts on the current and future amenity of the locality and requires the provision of a further 2 carparking spaces if the size of the spaces is to be reduced.

RESOLVED 13/25

That, pursuant to section 86(1) of the *Planning Act 1999*, the Development Consent Authority delegate to the Chair or in the Chair's absence or inability to act any one of the members of the division the power under section 57 of the *Planning Act 1999* to determine the application to vary condition 4 of Development Permit DP24/0043, for the purpose of changes to car parking layout, width of car parking spaces, building setbacks, private open space boundaries, design of shed and doors and windows of dwellings subject to:

- i. resolution 12/25 requirements being met; and
- ii. standard conditions and advisory notes being included on the Variation of Conditions permit.

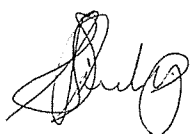
FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Deferral

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



Suzanne Philip
2025.03.20
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SUZANNE PHILIP
Chair

20 March 2025