



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING NO. 432 – FRIDAY 8 NOVEMBER 2024

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

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

APOLOGIES: Mark Blackburn

LEAVE OF ABSENCE: None

OFFICERS PRESENT: Margaret Macintyre (Secretary), Amit Magotra and Sam Pallett
(Development Assessment Services)

COUNCIL REPRESENTATIVE: Apology

Meeting opened at 10.30 am and closed at 11.00 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 **EXTENSIONS TO AN EXISTING OUTBUILDING (CARPORT) WITH A**
PA2024/0238 **REDUCED BUILDING SETBACK TO THE SIDE BOUNDARY**
LOT 3214 (74) BORELLA CIRCUIT, JINGILI, TOWN OF NIGHTCLIFF
APPLICANT Brett Hall & Claire Hall

Applicant Claire Hall attended.

RESOLVED That, pursuant to section 53(c) of the *Planning Act 1999*, the Development
81/24 Consent Authority refuse to consent to the application to develop Lot 3214 (74)
Borella Circuit, Jingili, Town of Nightcliff for the purpose of extensions to an
existing outbuilding (carport) with a reduced building setback to the side
boundary, for the following reasons:

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 (NTPS 2020) applies to the land and Lot 3214 (74) Borella Circuit, Town of Nightcliff (site), is located within Zone LR (Low-Density Residential) under the NTPS 2020. The site is a 724m² corner lot with frontage to Gum Street and Borella Circuit. The site is developed with a single storey dwelling-single, built with a parapet wall that extends above the roofline along the eastern side boundary with a 0m setback. A carport is located at the front of the dwelling-single, constructed in 2009, with support columns setback 1.5m and 2.9m from side (east) and front (Borella Circuit) boundaries. Vehicular access to the site is via Borella Circuit, which is considered a secondary street frontage.

The Authority notes the assessment of Development Assessment Services (DAS), which concludes that the building permit for the existing dwelling-single was issued on 02 August 1983 when the Darwin Town Plan 1982 (DTP 1982) was the applicable land use plan. A review of the DTP 1982 indicates there were no minimum setbacks for single dwellings in residential zone land.

The current application seeks approval to extend the existing carport roof both westward along Borella Circuit and eastward toward the neighbouring boundary. The proposed westward extension involves relocating two support columns closer to the Gum Street frontage, which will create more space for car parking. The eastward extension includes the expansion of the roof toward the side boundary, where it will connect with a proposed blockwork wall measuring 4.74m long and 2.66m to 3.7m high along the side boundary.

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The application proposes two 2.3m high wall returns extending 1.6m from the eastern boundary, positioned at the north and south ends of the existing carport. The north wall return is near the dwelling's front wall, with a 75mm separation gap, while the south wall return is at the front of the carport, facing Borella Street. Together with a blockwork boundary wall, these additions would enclose the carport on three sides, creating a secure storage space for motorcycles.

Development Assessment Services (DAS) has carried out the assessment of the application against the zone purpose and outcomes of Clause 4.2 (Zone LR – Low Density Residential) and Clauses 5.2.1 (General Height Control), 5.2.4 (Car Parking), 5.2.6 (Landscaping), 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) and 5.4.6 (Private Open Space). The assessment has found that the carport extension complies with all relevant clauses except for Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), as below:

- The 4.74m-long blockwork wall attached to the carport roof results in a 0m setback from the eastern side boundary, whereas a minimum setback of 1.5m is required; and
- The carport roof extension also results in a 0m setback from the eastern side boundary, where a minimum setback of 600mm is required.

The extensions to an existing outbuilding (carport) with a reduced building setback to the side boundary 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 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), needs to be considered.

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 2 of the NTPS 2020, in considering an application for consent for a use or development that has become *Merit Assessable* under Clause 1.8(1)(b)(ii)(2), the consent authority must consider the requirements in Part 5 that are not complied with and whether the proposal meets the purpose of the requirement (in this case Clause 5.4.3 of the Scheme); and under and under Clause 1.10(5) of the Scheme, the consent authority may consent to a proposed development that is not in accordance with Part 5 only if it is satisfied that the variation is appropriate having regard to the purpose and administration clauses of the requirement.

To establish whether the proposed variations to the eastern side boundary setback are appropriate, the Authority considered the purpose and Administration of Clause 5.4.3, as discussed below.

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.*

The relevant Administration for the clause is:

The consent authority may consent to a development that is not in accordance with subclause 5 only if it is satisfied that the reduced setback is consistent with the purpose of this clause and the zone purpose and outcomes, and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.

Each of these matters has been considered by the Authority and discussed below:

Compatibility of the proposal with streetscape and surrounding development

The Authority notes that the front support poles of the carport extension are setback 2.9m from the secondary street frontage (Borella Street), exceeding the required 1.5m setback. Additionally, the southern wall return, extends 1.6 meters from the eastern side boundary, which also meets the minimum setback requirement of 1.5m. The Authority is satisfied that the proposed carport extensions are compatible with the streetscape, as the setbacks along Borella Circuit (the secondary street) are compliant with requirements.

The Authority has noted that the DAS assessment identified several dwellings in the area that are constructed with zero setbacks from the side boundary. However, these houses do not include any outbuildings or extensions that extend beyond the primary building line toward the street front or have zero setbacks from the side boundary.

Minimises adverse effects of building massing when viewed from adjoining land and the street

While the carport extension is compatible with the streetscape, and the roof extension toward the west is compliant, the Authority notes that the proposed extension toward the east, comprising a 4.74m long and 2.6m to 3.7m high blockwork wall on the side boundary, connecting to the carport roof without any relief may impact the amenity of the adjoining property. The height and scale of the proposed wall exceed what is ordinarily expected within residential areas and may create adverse effects on building massing when viewed from adjoining land.

The Authority further notes that the application states that the dwelling-single adjoining the eastern boundary is set back 4m from the boundary line and has established landscaping that restricts views of the proposed structure. The Authority considers that using a greater side setback on the adjacent property to justify a reduced side setback for the proposed development is not appropriate, as it may limit the future development potential of the neighbouring property.

The Authority also notes that considering the parapet wall of the existing dwelling and the proposed boundary wall, their combined effect in terms of building massing on adjoining land results in over 60% of the side boundary having development with a nil setback.

Facilities breeze penetration

Enclosing one side of the carport extension will significantly limit the airflow through and between the buildings on the eastern boundary.

Ms Claire Hall (applicant and landowner) attended the hearing and spoke about the proposal. Ms Hall also explained the need to construct a blockwork wall along the eastern side boundary, attached to the carport roof extension. Ms Hall told the Authority that the key purpose of the application is to increase the width of the existing approved carport to create additional space for vehicle parking and to provide a covered, secure area for motorbike storage, as space constraints currently require storing them in the living area.

Ms Hall further explained that the carport expansion to the west would provide more space to park the vehicles. The roof extension towards the east would be attached to the new blockwork wall along the side boundary to add a secure section to store the motorbike in a weatherproof, lockable space while the rest of the carport would remain open.

Speaking about the solid blockwork wall proposed along the eastern side boundary, Ms Hall explained that the purpose is to provide better security and reduce noise from the adjoining property, which is a primary concern. The neighbouring property often has multiple cars parked outside and several dogs in the front yard. A solid wall would help mitigate the noise impacts.

The Authority asked the applicant if extending the carport west was possible without changing the eastern setback. Ms Hall clarified that extending the carport towards the west would require the removal of some large trees and would make the lounge room inaccessible.

The Authority at the hearing questioned the applicant on whether the street-facing portion of the return wall could be removed to make the structure less prominent from the street; Ms Hall explained that the purpose of the return wall is to provide structural stability to the blockwork wall. While alternative options can be considered, it would be required to achieve the purpose, which is to support the blockwork wall.

The Authority has considered all comments and carefully considered the applicant's response to the matters raised. The Authority is satisfied with the DAS assessment, which concludes that the proposed carport expansion to the east with a blockwork wall along the side boundary is likely to result in adverse building massing when viewed from adjoining land due to their large size and the proposed setback of 0m.

The Authority is not persuaded to exercise its discretion to approve a variation to the setback requirements because the proposed development does not satisfy the purpose of Clause 5.4.3 as it results in building massing.

Administration of clause

The Authority notes that the Administration of Clause 5.4.3 (sub-clause 1) states that in order to grant a variation to the clause, the consent authority needs to be satisfied that the reduced setback is consistent with the zone purpose and outcomes, and it is appropriate to the site having regard to such matters as its location, scale and impact on adjoining and nearby property.

In this regard, the site is in Zone LR (Low Density Residential), and the purpose is to - *Provide predominantly for low rise urban residential development comprising individual houses and uses compatible with **residential amenity**, in locations where full reticulated services are available.*

Zone Outcome (4) requires that - *Dwellings and outbuildings are set back in a manner sympathetic to neighbours, the streetscape and scale and character of surrounding development.*

Zone Outcome (6) requires - *Building design, site layout and landscaping provide a sympathetic interface to the adjoining public spaces and between neighbours, provides privacy and attractive outdoor spaces.*

The Authority considers that the proposal is not consistent with the purpose of the zone and does not meet the relevant zone outcomes (4) and (6), with the proposal not taking into account the impact on building massing on adjoining land as discussed under Clause 5.4.3 above.

The Authority acknowledges the applicant's need to add a secure section to store the motorbike in a weatherproof, lockable space and mitigate the noise from adjoining property; it is also mindful of the importance of setback provision and scale of the development that commensurate with the residential character. After careful deliberation on the matter the Authority determined to refuse the application as it failed to minimise the impact of building massing on adjoining land.

While the Authority determined to refuse the application, it notes that a boundary fence of similar scale would not need planning approval, and the applicant is encouraged to explore an alternate design approach that can comply with the requirements of the NTPS2020 and the requirements of the *Building Act 1983*.

The Authority notes that Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) permits a 1m setback from side and rear boundaries for outbuildings and ancillary structures, with roof eaves allowed to intrude up to 900mm into the setback, provided:

- the structure only includes openings that are either glazed in an opaque material and cannot be opened or have a sill height of 1.6m or greater;
- does not extend beyond a maximum height of 3.5m; and
- does not extend beyond a maximum length of 9m.

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- 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 proposal is for extensions to an existing outbuilding (carport) with a reduced building setback to the side boundary. Although the proposed carport extension is compliant with the setback requirements to the secondary street frontage (Borella Circuit), the extent of the proposed variation to the side setback requirement is not considered reasonable. In this case, the addition of a 2.6m – 3.7m high solid block wall, setback 0m from the side boundary, combined with the external block wall of the existing dwelling without any relief, is likely to adversely affect the neighbouring lot (Lot 3213; situated along the eastern boundary) in terms of building massing and general amenity.

FOR: 4

AGAINST: 0

ABSTAIN: 0

ACTION: Notice of Refusal

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

SUZANNE PHILIP
Chair

13 November 2024