



# **DEVELOPMENT CONSENT AUTHORITY**

## **DARWIN DIVISION**

### **MINUTES**

**MEETING NO. 437 – FRIDAY 7 MARCH 2025**

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

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

**APOLOGIES:** Peter Pangquee and Jimmy Bouhoris

**LEAVE OF ABSENCE:** None

**OFFICERS PRESENT:** Margaret Macintyre (Secretary), Amit Magotra and Lingyi Kong (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**  
**PA2024/0287**      **COMMUNAL SPACE ADDITIONS (VERANDAH AND ENCLOSED GYM AREA) TO AN EXISTING DWELLING-MULTIPLE WITH A REDUCED BUILDING SETBACK TO THE SIDE BOUNDARY**

**SUBJECT SITE**      **UNIT 8689 COMMON PROPERTY, ELSEY ON PARAP, (33) PARAP ROAD, PARAP, TOWN OF DARWIN**

**APPLICANT**        **ONE PLANNING CONSULT**

Applicant: Israel-Tshepo Kgoisemang (One Planning Consult) attended and tabled a photo of the side boundary next to the pool showing the area where a covered BBQ area and enclosed verandah are proposed.

Submitter Emma Clee attended.

**RESOLVED**  
**23/25**              That, pursuant to section 46(4)(b) of the *Planning Act 1999*, the Development Consent Authority defer consideration of the application to develop Unit 8689, Common Property, Elsey On Parap, (33) Parap Road, Parap, Town of Darwin for the purpose of communal space additions (verandah and enclosed gym area) to an existing dwelling-multiple with a reduced building setback to the side boundary to require the applicant to provide the following additional information that the Authority considers necessary in order to enable the proper consideration of the application:

- Provide amended plans showing a minimum setback of 2m, with landscaping buffer, between the proposed structures and the southern side boundary.

#### **REASON 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 (NTPS 2020) applies to the land. The site is located in Zone MR (Medium Density Residential) and developed with 20 x 1 and 8 x 2 bedroom dwellings in a 3 storey building including undercroft car parking.

The proposed application involves constructing a covered BBQ area, with partially enclosed verandah intended for use as a gym, which will be located along the southern side boundary. Initially, the application proposed constructing the covered BBQ area and the enclosed verandah as a single structure, with a setback of 0m from the southern side boundary. However, after receiving comments from the service authority (Power and Water Corporation) regarding potential encroachment over the easement, as well as concerns from the neighbouring property about the setback intrusion, the plans were revised. The amended site plan shows the structure in two sections: a covered BBQ area on the western side of the easement and the enclosed verandah (gym area) on the eastern side, with a setback of 0.6m from the southern side boundary.

Extensions and ancillary structures to a dwelling-group or dwelling-multiple development are permissible in Zone MR, except where a proposal does not comply with the relevant development requirements set out in Part 5 of the NTPS2020.

The Development Assessment Services (DAS) has carried out the assessment of the amended application against the relevant development requirements set out in Part 5 of the NTPS2020 and found that the proposed development does not comply with Clauses 5.2.6.1 (Landscaping in Zones other than Zone CB) and 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures).

As the proposal seeks a variation to Clauses 5.2.6.1 (Landscaping in Zones other than Zone CB) and 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures), it does not comply with Part 5 and therefore becomes *Merit Assessable* under Clause 1.8(1)(b)(ii)(2) of the NTPS2020.

For such proposal, under Clause 1.10(2) of the NTPS 2020, the Authority must consider the requirements in Part 5 that are not complied with and whether the proposal meets the purpose of the requirements; and under Clause 1.10(5) of the NTPS2020, the Authority may consent to a proposed development that is not in accordance with Part 5 of the NTPS2020 only if it is satisfied that the variation is appropriate having regard to the purpose and administration clauses of the requirement. This is discussed in detailed below.

Clause 5.2.6.1 (Landscaping in Zones other than Zone CB)

The amended application proposes a landscaping buffer of 0.6m to the southern side boundary, where subclause 7 of this clause requires landscaping at least 2m deep along the side and rear setbacks.

*Administratively, the consent authority may consent to landscaping that is not in accordance with sub-clauses 5, 6 and 7 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and is appropriate to the site having regard to the amenity of the streetscape, and the potential impact on the amenity of the locality and adjoining property.*

The purpose of Clause 5.2.6.1 (Landscaping in Zones other than Zone CB) is to *ensure appropriate landscaping that is attractive, water efficient and contributes to a safe environment, is provided to development to enhance the streetscape and overall amenity of the locality.*

The Authority noted that the proposed structures are 3m high and extend across most of the rear boundary of the backyard of Unit 7/31 Parap Road. This makes the landscaping particularly significant in minimising impacts of building massing and preserving views of residents from neighbouring properties. The Authority noted that a 0.6m setback does not provide adequate space for the establishment of effective landscaping, which is crucial to mitigate the visual impact of the building massing and to ensure the privacy of residents. As a result, the amended proposal does not adequately support the development of a visually appealing, functional, and sustainable environment as intended by the clause.

At the meeting, the applicant, Mr Kgosiemang expressed to the Authority that the client accepted a reduced setback at 1m with solid fence along the proposed structures. Mr Kgosiemang emphasised that the approved landscaping covers 38% of the site, while the proposed development will reduce the area by 1%, which will not have significant impact to the existing landscaping arrangement. Mr Kgosiemang also opined that subclause 7 of

Clause 5.2.6.1 does not apply, as the requirement has an exemption for area used for communal open space. The Authority clarified that subclause 7 is applicable to this application as the exemption refers to private open space, but not communal open space. The Authority also highlighted that the purpose of the clause emphasised the impact on the amenity of adjoining property.

Mr Kgosiemang presented a photo of the existing landscaping strip along the primary street boundary. Mr Kgosiemang stated that the front landscaping buffer is only 0.4m wide but has the potential to grow to a height 3m. Given that it is currently well maintained, it would be practical to maintain a 1m wide landscaping buffer along the side setback between Unit 7 at 31 Parap Road and the proposed structures. The Authority expressed concerns that a solid fence between the proposed development and the neighbouring property might create challenges for in maintaining the landscaping. The Authority suggested providing a landscaping buffer of at least 2m to allow sufficient space for the establishment of effective vegetation, which would enhance the amenity of the adjoining property and facilitate maintenance.

Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures)

The amended application proposes a 0.6m setback to the southern side boundary, which does not comply with the minimum setback of 3m for side lot boundaries.

*Administratively, 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.*

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 single-storey outbuilding with a height of 3m is compatible with the height of surrounding residential developments. However, it may negatively impact the view from Unit 7/31 Parap Road, considering the setback to the southern side boundary has been reduced to 0.6m compared with the 3m required. The Authority noted that a solid wall with no windows is located along the affected boundary, serving as a privacy buffer and noise barrier, which the applicant proposes to extend between two separate buildings to avoid overlooking issues and protect privacy for residents on-site and from abutting lots. The Authority determined that the construction of solid fencing is likely to reduce breeze penetration between through and between the buildings as required by sub-clause(d).

Clause 4.4 Zone MR – Medium Density Residential

The zone purpose is to provide for a range of mid-rise housing options close to community facilities, commercial uses, public transport or open space, where reticulated services can

*support medium density residential development.*

*According to Zone Outcome 5, building design, site layout and landscaping provide a sympathetic interface to the adjoining public spaces and to adjoining lots, and provides privacy and attractive outdoor spaces.*

The proposal includes the addition of a BBQ area and gym for residents of the existing serviced apartments. While these amenities offer recreational benefits, they are also likely to generate noise and raise safety concerns, potentially disrupting the privacy and comfort of residents in neighbouring properties. The increased activity levels, particularly from social gatherings at the BBQ area and exercise routines in the gym, may contribute to disturbances that affect the surrounding community. Considering that the setback and landscaping do not meet the relevant requirements under NTPS 2020, the proposal is deemed inconsistent with the zone's purpose and applicable outcomes.

At the DCA hearing, Mr Kgosiemang stated that the proposal has a reduced height from 3.8m to 3m to minimise the effects of building massing. The roof gutter is for the collection of stormwater and will not have an adverse impact regarding setbacks to the neighbouring property. The Authority emphasised that apart from the height, the major issue is the intrusion into the setback. Mr Mark Blackburn (a member of the Authority) raised the concern that the use of the proposed gym and BBQ facilities by the residents of the serviced apartments can cause a negative impact on the residents within adjoining lots due to an increase in noise. Mr Kgosiemang stated that the proposed gym and BBQ area is small in scale, operates for limited hours each day, and will not be used extensively by all residents of the serviced apartments. Ms Marion Guppy (a member of the Authority) sought clarification on why the proposed structures need to be placed in the specific area, given that there are other areas on site that are not in use. Mr Kgosiemang explained that, as the facilities are to be built within communal open space, there is limited area available on site for the development to be constructed. The northern part of the site contains the lift and stairs of the existing building, making it difficult to construct the proposed development in that area. In response to a question raised by Mr Mick Palmer (a member of the Authority) regarding the title and communal arrangement of the serviced apartments, Mr Kgosiemang stated that the title of the existing apartments has a mix of private and shared ownership. The apartments accommodate a mix of short-term and long-term residents, as well as Airbnb guests.

The Authority has considered all comments and applicant's response to the matters raised. The Authority is satisfied with the assessment of the DAS, which concludes that the proposed additions are likely to result in adverse impacts of building massing when viewed from adjoining land due to the proposed setback of 0.6m and will impact the amenity of the adjoining property. The Authority also noted the applicant's proposal to increase the proposed set-back to 1 metre but was not satisfied that such a reduced setback addressed the negative impact on the neighbouring property.

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 Clauses 5.2.6.1 and 5.4.3 as it results in building massing and impact the future amenity. Furthermore, it also does not meet the zone outcome as discussed above. The Authority noted the DAS recommendation to defer the application to provided amended plans that better respond to the requirements of the NTPS 2020.

The Chair advised the applicant that the Authority does not consider that their current proposal is an acceptable outcome as it does not fit within the NTPS 2020 requirements and that it has two options: either to reject the application or accept DAS's recommendations to defer the application requesting an amended design that better respond to the requirements of the NTPS 2020.

The Authority is mindful about the importance of setback provision and nature of the proposed facility. After careful deliberation on the matter the Authority determined to defer the application to provide amended plans showing a minimum setback of 2m, with landscaping buffer, between the proposed structures and the southern side boundary.

While the Authority determined that a reduced setback of 2m to the side boundary may be acceptable; it should neither pre-empt full consideration of the merits of an application nor pre-suppose a favourable decision by the Authority. In indicating that such a 2m setback may be sufficient, the Authority considered the necessity of communal facilities for residents while ensuring that the amenity of neighbouring properties is not compromised.

2. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent authority must take into account any submissions made under section 49, in relation to the development application.

The application was placed on public exhibition for a period of two weeks from 27 September 2024 to 11 October 2024. One public submission was received under section 49(1) of the *Planning Act 1999* from the adjoining neighbour (owner of Unit 7/31 Parap Road, Parap).

The submission raised concerns about the reduced setback of the proposed structure. It states that the design does not comply with the 3m setback requirement outlined in NTPS2020, as the gutters and eaves extend beyond the allowed limit. Additionally, a 3.8-meter concrete wall along the northern boundary of the unit is visually unappealing and may decrease property values. The submission highlights that the development negatively impacts landscaping, airflow, and safety. Furthermore, the open design of the communal space could lead to increased noise, disturbing nearby residents. The submitter also noted that the proposed structure is situated over a sewer easement, which could restrict maintenance access and require future entry through their property.

Following the exhibition, and after receiving comments from the service authority (Power and Water Corporation) regarding potential encroachment over the easement, as well as concerns from the neighbouring property about the setback intrusion, the application submitting amended plan showing that shows the structure in two sections: a covered BBQ area on the western side of the easement and the enclosed verandah (gym area) on the eastern side, with a setback of 0.6m from the southern side boundary (originally 0m).

DAS provided the updated plans to the submitter, who further commented on them. The submitter also attended the hearing to express her concerns about the revised proposal.

At the hearing, Ms Emma Clee (submitter) expressed a strong objection to the proposal, as the proposed facilities are multipurpose, and will have significant impact on landscaping, airflow, safety, privacy, property value of the property. Ms Clee stated that the limited access to the shared sewerage easement is likely to cause potential maintenance issues in the future. Ms Clee emphasised that the lack of sufficient



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communication and engagement has prevented neighbours from having a say in the proposal process. The applicant Mr Kgosiemang expressed willingness to work with the submitter on these issues and asked Ms Clee if 1m setback was negotiable. Ms Clee expressed that a setback of not less than 2m with landscaping buffer within the setback area would minimise the adverse impact on the existing and future amenity due to the proposed structure.

The Authority carefully considered the concerns raised by the submitter in the written submissions and at the hearing. The Authority determined the proposal will adversely impact on the existing and future amenity of the area as a result of its reduced setback as discussed in Reason (1) above. The Authority determined to defer the consideration of the application to provide amended plans showing a minimum setback of 2m, with landscaping buffer, between the proposed structures and the southern side boundary

3. 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.

While the proposed covered BBQ and gym facility will enhance recreational opportunities for residents of the existing multiple dwellings, the reduced building setbacks contribute to excessive building massing, impacting the visual character when viewed from adjoining properties. Additionally, the proposal is likely to result in adverse amenity impacts to the surrounding properties, especially Unit 7/31 Parap Road, where the full rear boundary will be covered by the proposed structures.

The Authority determined to defer the consideration of the application to provide the additional information mentioned in Reason (1) above. The request for additional information demonstrating better compliance with the zoning, landscaping, and setback requirements is necessary as the application does not adequately demonstrate the purpose of the clauses and the zone purpose and outcomes regarding appropriate impact on the amenity of adjoining and nearby property.

**FOR:** 4

**AGAINST:** 0

**ABSTAIN:** 0

**ACTION:** Notice of Deferral

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



Suzanne Philip

2025.03.14

13:34:50

+09'30'

**SUZANNE PHILIP**  
Chair

14 March 2025