



DEVELOPMENT CONSENT AUTHORITY

DARWIN DIVISION

MINUTES

MEETING NO. 427 – FRIDAY 23 AUGUST 2024

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

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

APOLOGIES: Peter Pangquee

LEAVE OF ABSENCE: None

OFFICERS PRESENT: Elya Sugg (Acting Secretary), Amit Magotra 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 **OUTBUILDING (PERGOLA) ADDITION TO AN EXISTING DWELLING-SINGLE**
PA2024/0185 **WITH A REDUCED BUILDING SETBACK TO THE PRIMARY STREET**
 BOUNDARY
APPLICANT **LOT 244 (228) CASUARINA DRIVE, NIGHTCLIFF, TOWN OF NIGHTCLIFF**
 ONE PLANNING CONSULT

Applicant: Israel Kgosiemang (One Planning Consult) attended.

Submitters in attendance: none attended.

RESOLVED That, the Development Consent Authority vary the requirements of Clause 5.4.3
53/24 (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 244 (228) Casuarina
 Drive, Nightcliff, Town of Nightcliff for the purpose of outbuilding (pergola)
 addition to an existing dwelling-single with a reduced building setback to the
 primary street boundary, subject to the following conditions:

CONDITION PRECEDENT

1. Prior to the commencement of works, a schematic plan demonstrating the on-site collection of stormwater and its discharge into City of Darwin stormwater drainage system shall be submitted to and approved by 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. The plan shall also indicate how stormwater will be collected on the site and connected underground to Council's system.

GENERAL CONDITIONS

2. The works carried out under this permit shall be in accordance with the drawings 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 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. 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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5. Any developments on or adjacent to any easements on site shall be carried out to the requirements of the Power and Water Corporation (Water Services) 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. Any damaged or removed infrastructure located in, on or over the road reserve (inclusive of pre-existing street trees), is to be repaired or replaced at either the developers or landowners' cost, to the 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 application proposes the construction of an outbuilding (pergola) structure to the primary street frontage (Casuarina Drive) with a setback of 1.45m from the boundary. The pergola will consist of two skillion roof shade structures sloping towards the centre, supported by two columns. The maximum height of the structure is 2.85m, with the lowest part being 2.4m below the ceiling.

The NT Planning Scheme 2020 (NTPS 2020) applies to the land and an ancillary outbuilding (pergola) to a dwelling-single 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, the requirements in Part 5 (Development Requirements) that are not complied with, and whether the proposal meets the purpose of the requirements, need to be considered.

The assessment carried out by the Development Assessment Services concludes that the proposed pergola structure complies with the relevant Part 5 (Development Requirements) of the NTPS 2020, except for Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures). The assessment notes that the proposed pergola structure has a front setback

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of 1.45m to the support column and 1.3m to the roof, instead of the required 4.5m to the column and 3.6m under the clause.

2. Pursuant to Clause 1.10 (Exercise of Discretion by the Consent Authority), subclause 2 of the NTPS 2020, the consent authority 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 requirements. Therefore, in this instance, the relevant requirements, including the purpose of the requirements, as set out in Clause 5.4.3 (Building Setbacks of Residential Buildings and Ancillary Structures) have been considered by the Authority as follows:

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

The purpose of Clause 5.4.3 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.*

Administratively, the consent authority may consent to a development that is not in accordance with the setback requirements (listed under sub-clause 3) 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.

Having regard to the purposes of the clause, the Authority determined that the setback proposed are appropriate in this instance because:

- (a) Compatibility of the proposal with streetscape and surrounding development including residential buildings on the same site

The proposed pergola is relatively small and sympathetic to the streetscape and surrounding developments. It is designed to enhance the outward appearance of the existing dwelling when viewed from the street. The design of the pergola structure matches the existing dwelling, which features a high ceiling and exposed eaves supported by tall columns along the street frontage. Furthermore, the structure is lower in height than the existing dwelling, and the colour of the pergola structure harmonises with the existing dwelling, making it less prominent from the street.

- (b) minimises adverse effects of building massing when viewed from adjoining land and the street

The existing dwelling is situated on a corner block with three road frontages: Casuarina Drive, Mimosa Street, and Coolibah Street. The proposed pergola is positioned on the north-western side of the lot at the intersection of Casuarina Drive and Mimosa Street. Although it doesn't comply with the setback requirement for the primary street setback

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(Casuarina Drive), the setback from the secondary street (Mimosa Street) is more than the minimum requirement of 1.5m. Additionally, the width of Mimosa Street provides separation from the existing dwelling-single located on the western side across Mimosa Street (Lot 245). When viewed from neighbouring residential buildings situated along the eastern boundary, there will be no building massing as the setback exceeds the minimum requirement. Therefore, the impact of building massing from adjoining lots will likely be minimal.

(c) avoids undue overlooking of adjoining properties

The proposed pergola is a non-habitable structure to provide shade for the outdoor area, therefore there are no overlooking issues. The existing solid fencing around the site ensures privacy from the public and surrounding residents.

(d) facilitates breeze penetration through and between buildings

The structure is open sided with two skillion roof design structures tilting towards the middle section with two support columns. The open design will not block breeze penetration through and between buildings.

At the hearing, Mr. Israel Kgosiemang from One Planning Consult (the applicant) spoke to the application providing additional context regarding the proposal.

The applicant explained that the proposed pergola is intended to provide shade for children's outdoor play area. The structure will be open-ended and subordinate to the existing two-storey dwelling on the site. Its two column design will minimize the impact of building massing. The existing landscaping and fencing along the street boundaries will provide a buffer between the site and the public. The proposed ancillary structure will complement the modern aesthetic of the dwelling and enhance the existing streetscape.

In response to the question raised by the Authority about whether the proposed pergola structure would also be used as an outdoor covered recreational space of the dwelling, Mr Kgosiemang clarified that the pergola structure's main purpose is to provide shade over the pool area. The butterfly design of the pergola structure will provide shade over the pool area for an extended period during the day and also minimises the impact of building massing from the street. The existing dwelling has a covered verandah at the front, which the family uses for recreational activities.

The Authority determined to grant a variation to Clause 5.4.3 as:

- The structure is 5.7m in length along the affected 30.8m long primary street boundary. The affected boundary of the structure extends about 18.5% of the total length of the boundary line. Furthermore, the 18.8m² structure is considered minor within an 1140m² site developed with a two storey dwelling-single. As a result, any adverse effects to the streetscape are considered to be insignificant.

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- The non-compliant setback relates only to the primary street boundary, with the remainder of the setbacks compliant with the minimum setback requirements.
- The proposed pergola is 2.9m in height that complies with the requirement under NTPS 2020. Along with the existing two-storey dwelling, it will not add significant visual impact or building massing to the site.
- The proposed pergola is an open structure with no solid walls, and will not cause issues in relation to breeze penetration.
- The proposed pergola is a non-habitable structure to provide shade for the outdoor area; therefore there are no overlooking issues. The existing solid fencing around the site ensures privacy from the public and surrounding residents.

The Administration of Clause 5.4.3 (sub-clause 3) also states that in order to grant a variation to the clause, the 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.

The Authority determined that the pergola structure is consistent with the purpose of Zone LR and satisfies the relevant zone outcomes under sub-clauses 4 and 6 of Clause 4.2, with the proposal being a low height, generally open structured development and taking into account the consideration of Clause 5.4.3 as discussed above.

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. Also, pursuant to section 51(1)(m) of the *Planning Act 1999*, the consent authority must take into consideration the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer.

The land is capable of supporting the proposed development. An ancillary outbuilding of a dwelling-single is an expected form of development within Zone LR. The land is not impacted by any overlays and no constraints have been identified that would otherwise prevent the development, The requirements of service authorities are addressed through conditions of the development permit.

4. Pursuant to section 51(1)(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.

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The application was advertised online from 8th to 26th July 2024 under the Planning Act 1999. Only one public submission was received during the exhibition period from the neighboring property owners. The submission raised concerns about obstruction of view from the submitter's veranda, domination of the foreground of the submitter's property, reduced setback and its impact on streetscape appearance, and glare from roof reflection, especially during sunset.

While the submitters did not attend the hearing, the Authority considered the written submission received during the exhibition period and the concerns raised by the submitter in the written submission.

In relation to concerns raised regarding massing and impact on streetscape, the Authority relies on its reasons listed in point (2) above, which concludes that the setback variation of the proposed pergola structure complies with the purpose of clause 5.4.3 in being compatible with the streetscape and surrounding development and distinct design that minimises the impact of building massing when viewed from the street.

In relation to the obstruction of views, the Authority noted that the planning law does not recognise the right to a view. Additionally, the NTPS 2020 and section 51(n) do not include protections for views. Regarding the glare from roof reflection, especially during sunset, the Authority considered that the butterfly design roof structure is unlikely to cause glare impacts on neighbouring properties.

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.

There is unlikely to be an adverse impact on the existing and future amenity of the area as a result of the proposed development, as discussed under the reasons listed in point (2) above. The proposed development complies with the purpose and outcomes of the zone and is considered to be generally reflective of the style of the existing dwelling on site or reasonably anticipated in the residential area.

FOR: 4

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
29 August 2024