



City of **HOBART**

## APPLICATION UNDER HOBART INTERIM PLANNING SCHEME 2015

Type of Report:	Committee
Council:	5 February 2018
Expiry Date:	2 March 2018
Application No:	PLN-17-753
Address:	479 CHURCHILL AVENUE , SANDY BAY
Applicant:	John Bourke (Anchorage Tasmania Holdings Pty Ltd) 479 Churchill Avenue
Proposal:	Partial Demolition, Alterations and Change of Use to Multiple Dwellings
Representations:	Two (2)
Performance criteria:	General Residential Zone Development Standards Road and Railway Asset Code Parking and Access Code

---

### 1. Executive Summary

- 1.1 Planning approval is sought for Partial Demolition, Alterations and Change of Use to Multiple Dwellings.
- 1.2 More specifically the proposal includes:
  - Extension to and conversion of the existing single dwelling into three dwellings, one per each of the three levels. The dwellings will each have two bedrooms.
  - An extension to the car parking area for the lower levels to accommodate four vehicles.
  - An extension to the driveway and hardstand area on the western boundary to facilitate onsite turning.
  - Re-alignment of the driveway access to the lower level dwellings.
- 1.3 The proposal relies on performance criteria to satisfy the following standards and codes:
  - 1.3.1 General Residential Zone Development Standards - Density, Building Envelope, Private Open Space and Waste Storage
  - 1.3.2 Road and Railway Access Code - Sight Distances
  - 1.3.3 Parking and Access Code - Layout and Design of Vehicular Access and Passing Bays

- 1.4 Two (2) representations objecting to the proposal were received within the statutory advertising period between 20 December 2017 and 8 January 2018.
- 1.5 The proposal is recommended for refusal.
- 1.6 The final decision is delegated to the Council.

## 2. Site Detail

- 2.1 The proposed development site is a residential lot within the suburb of Sandy Bay. The lot is rectangularly shaped and has an area of 809m<sup>2</sup>. The existing single dwelling occupies the central part of the property. The land is moderately steep (average gradient approximately 14 degrees) and slopes downward from the property frontage with Churchill Avenue, on its southern boundary, to its rear/northern boundary. The site is surrounded by similar residential use and development, although the adjoining, similar lot to the east is vacant (please refer to below aerial imagery).



Figure 1: The location of the application site is highlighted in yellow.

## 3. Proposal

- 3.1 Planning approval is sought for partial demolition, alterations and change of use to three multiple dwellings.

3.2 More specifically the proposal is for:

- Extension to and conversion of the existing single dwelling into three dwellings, one per each of the three levels. The dwellings will each have two bedrooms.
- An extension to the car parking area for the lower levels to accommodate four vehicles.
- An extension to the driveway and hardstand area on the western site boundary to facilitate onsite turning.
- Re-alignment of the driveway access to the lower level dwellings.

## 4. Background

- 4.1 In September 2017 approval was granted under delegation for Partial Demolition, Alterations, Extension and Multiple Dwelling through planning permit PLN-17-519. This approval permits the existing dwelling to be extended and converted into two dwellings. One dwelling at first floor, and one dwelling across the lower two levels. No building or plumbing permits have been issued at the this time.
- 4.2 The current planning application seeks to build on that existing approval, by converting the lower two levels into two separate dwellings, bringing the total number of dwellings to three.
- 4.3 The applicant was advised of the recommendation for refusal at an early stage, as a consequence of the Resource Management and Planning Appeal Tribunal decision *Henry Design and Consulting v Clarence City Council & Ors [2017] TASRMPAT 11*. The applicant provided a response to that decision, and confirmed that he wished for the application to proceed to advertising and determination as proposed.
- 4.4 It is noted that the existing planning approval for two dwellings complies with the acceptable solution for density in the General Residential zone.

## 5. Concerns raised by representors

- 5.1 Two (2) representations objecting to the proposal were received within the statutory advertising period between 20 December 2017 and 8 January 2018.
- 5.2 The following table outlines the concerns raised in the representations received. Those concerns which relate to a discretion invoked by the proposal are addressed in Section 6 of this report.

Density - One representor has noted that the density proposed is greater than is provided by the acceptable solution. They have suggested that this will have a number of negative effects on surrounding dwellings.
Traffic - Representors have indicated that the development will result in an increase in traffic volumes on Churchill Avenue, in an area they have suggested is already prone to congestion and safety issues.
Car parking - One representor is concerned that the proposed number of dwellings will compound the existing lack of on-street parking spaces and problems experienced with vehicles parking over driveways in the immediate area.
Driveway - One representor is concerned that the gradient of the driveway is quite steep, and that the detailed design does not appear to include vehicle barriers. The representor is concerned for the safety of occupants of adjacent properties should a vehicle come off the driveway.
Footpath - One representor is concerned for the safety of footpath users given the width of footpath and with the increased traffic crossing it as a result of the proposed development.
Onsite car parking - One representor does not believe that sufficient car parking has been provided onsite for the proposed use of the site.
Amenity - One representor feels that the extension of the parking to the eastern boundary will cause overshadowing and a loss of sunlight to the adjacent property and will provide unreasonable visual bulk to that site.
Building envelope - One representor is concerned that there are two bedrooms proposed that will be wholly outside the building envelope. They are concerned about the amenity impacts this will have on nearby properties through visual bulk and overshadowing.

## 6. Assessment

- 6.1 The *Hobart Interim Planning Scheme 2015* is a performance based planning scheme. To meet an applicable standard, a proposal must demonstrate compliance with either an acceptable solution or a performance criterion. Where a proposal complies with a standard by relying on one or more performance criteria, the Council may approve or refuse the proposal on that basis. The ability to approve or refuse the proposal relates only to the performance criteria relied on.
- 6.2 The site is located within the General Residential Zone of the *Hobart Interim Planning Scheme 2015*.

- 6.3 The existing use is a single dwelling with approval for two multiple dwellings. The proposed use is three multiple dwellings. The existing use is a permitted use in the zone. The proposed use is a permitted use in the zone.
- 6.4 The proposal has been assessed against:
- 6.4.1 Part D - 10 General Residential Zone
  - 6.4.2 Part E - E5.0 Road and Railway Asset Code
  - 6.4.3 Part E - E6.0 Parking and Access Code
  - 6.4.3 Part E - E7.0 Stormwater Management Code
- 6.5 The proposal relies on the following performance criteria to comply with the applicable standards:
- 6.5.1 Residential Density for Multiple Dwellings - Part D 10.4.1 P1
  - 6.5.2 Setback and Building Envelope - Part D 10.4.2 P3
  - 6.5.3 Private Open Space - Part D 10.4.3 P2
  - 6.5.4 Waste Storage - Part D 10.4.8 P1
  - 6.5.5 Road and Railway Asset Code – Part E E5.6.4
  - 6.5.6 Parking and Access Code – Part E E6.7.2, E6.7.3 and E6.7.5
- 6.6 Each performance criterion is assessed below.
- 6.7 Residential Density for Multiple Dwellings Part D 10.4.1 P1
- 6.7.1 The acceptable solution at clause 10.4.1 A1 requires a maximum site area per dwelling of 325m<sup>2</sup>.
  - 6.7.2 The application proposes a site area per dwelling of 270m<sup>2</sup>, which is 55m<sup>2</sup> less per dwelling than required by the acceptable solution.
  - 6.7.3 The proposal does not comply with the acceptable solution; therefore assessment against the performance criterion is relied on.

6.7.4 The performance criterion at clause 10.4.1 P1 provides as follows:

*Multiple dwellings must only have a site area per dwelling that is less than 325m<sup>2</sup>, or that specified for the applicable density area in Table 10.4.1, if the development will not exceed the capacity of infrastructure services and:*

*(a) is compatible with the density of the surrounding area; or*

*(b) provides for a significant social or community housing benefit and is in accordance with at least one of the following:*

*(i) the site is wholly or partially within 400 m walking distance of a public transport stop;*

*(ii) the site is wholly or partially within 400 m walking distance of a business, commercial, urban mixed use, village or inner residential zone.*

6.7.5 The proposal is to convert a single dwelling into three dwellings. No information has been provided to suggest that the houses will be for a particular social or community housing purpose. The proposal is not considered to satisfy subclause (b).

6.7.6 The proposal must therefore satisfy subclause (a), and be compatible with the density of the surrounding area. The recent Resource Management and Planning Appeal Tribunal decision *Henry Design and Consulting v Clarence City Council & Ors [2017] TASRMPAT 11* has determined that to be compatible with the density of the surrounding area, the proposed site area per dwelling has to be 'in harmony with' the prevailing site area per dwelling of sites within 100m of the subject site. The table at Attachment C to this report sets out the site area per dwelling of sites within 100m of the subject site. The table also shows that the mean (average) site area per dwelling of sites within 100m of the subject site is 674m<sup>2</sup> and the median (middle point) site area per dwelling is 663m<sup>2</sup>. The proposed site area is 270m<sup>2</sup>, which is less than half the mean and median site area per dwelling of sites within 100m of the subject site.

6.7.7 The table provides a further statistical measure, the interquartile range, to help ascertain if the proposed site area per dwelling is 'in harmony with' the prevailing site area per dwelling of sites within 100m of the subject site. The interquartile range describes the middle 50% of the surrounding site areas per dwelling, and is considered to be statistically typical or representative of the density of the surrounding area. The interquartile range is between 580m<sup>2</sup> and 758m<sup>2</sup>. The proposed site area per

dwelling of 270m<sup>2</sup> falls well below the interquartile range.

6.7.8 In line with the *Henry Design* decision, given the proposed site area per dwelling is well below the interquartile range, and less than half the mean and median site area per dwelling of sites within 100m of the subject site, the proposal is not considered to be 'in harmony with' the prevailing site area per dwelling of sites within 100m of the subject site, and therefore not compatible with the density of the surrounding area. As such, it does not satisfy subclause (a) of the performance criterion, and is recommended for refusal on that basis.

## 6.8 Setback and Building Envelope Part D 10.4.2 P1

6.8.1 The acceptable solution at clause 10.4.2 A3 requires buildings to be contained within a building envelope which projects at a 45 degree angle from a height of 3m at the property boundary.

6.8.2 The proposal includes a 1m addition to the rear of the middle level of the dwelling which is approximately 1.3m above the permitted envelope at the highest point.

6.8.3 The proposal does not comply with the acceptable solution; therefore assessment against the performance criterion is relied on.

6.8.4 The performance criterion at clause 10.4.2 P3 provides as follows:

*The siting and scale of a dwelling must:*

*(a) not cause unreasonable loss of amenity by:*

*(i) reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining lot; or*

*(ii) overshadowing the private open space of a dwelling on an adjoining lot; or*

*(iii) overshadowing of an adjoining vacant lot; or*

*(iv) visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining lot; and*

*(b) provide separation between dwellings on adjoining lots that is compatible with that prevailing in the surrounding area.*

6.8.5 The protrusion beyond the permitted envelope is minor in size, and is at the northern end of the eastern side of the dwelling. As such, it will not result in significant a loss of sunlight or increase in overshadowing to the



adjacent property to the east. The extent of the protrusion outside the building envelope will not result in excessive visual bulk for the overall building facade. The separation will remain unchanged from the existing approved development on the site.

6.8.6 The proposal complies with the performance criterion.

## 6.9 Private Open Space Part D 10.4.3 P2

6.9.1 The acceptable solution at clause 10.4.3 A2 requires private open space for all dwellings with a minimum area of 60m<sup>2</sup> and a minimum dimension of 4m.

6.9.2 The proposal includes only 44.3m<sup>2</sup> of private open space, with a maximum width of 3m for unit 2.

6.9.3 The proposal does not comply with the acceptable solution; therefore assessment against the performance criterion is relied on.

6.9.4 The performance criterion at clause 10.4.3 P2 provides as follows:

*A dwelling must have private open space that:*

*(a) includes an area that is capable of serving as an extension of the dwelling for outdoor relaxation, dining, entertaining and children's play and that is:*

*(i) conveniently located in relation to a living area of the dwelling;*

*and*

*(ii) orientated to take advantage of sunlight.*

6.9.5 The proposed deck is north facing and acts as an extension to the living area, with two large stacking doors connecting the deck to the dwelling. This space is sufficient to provide for outdoor relaxation, dining, entertaining and children's play.

6.9.6 The proposal complies with the performance criterion.

## 6.10 Waste Storage for Multiple Dwellings Part D 10.4.8 P1

6.10.1 The acceptable solution at clause 10.4.8 A1 requires waste storage to be provided in an area other than in front of the dwelling/s to which it relates.

6.10.2 The proposal includes waste storage in front of the lower level dwellings

within two separate enclosures.

6.10.3 The proposal does not comply with the acceptable solution; therefore assessment against the performance criterion is relied on.

6.10.4 The performance criterion at clause 10.4.8 P1 provides as follows:

*A multiple dwelling development must provide storage, for waste and recycling bins, that is:*

*(a) capable of storing the number of bins required for the site; and  
(b) screened from the frontage and dwellings; and  
(c) if the storage area is a communal storage area, separated from dwellings on the site to minimise impacts caused by odours and noise.*

6.10.5 The proposed waste storage is in the area excavated and associated with the car ports in front of the entry to the lower dwellings. As it is contained and screened, and separated from the dwellings by the car parking area, it is considered acceptable.

6.10.6 The proposal complies with the performance criterion.

6.11 Sight Distance at Accesses, Junctions and Level Crossings Part E E5.6.4 P1

6.11.1 The acceptable solution at clause E 5.6.4 A1 requires accesses to comply with safe intersection sight distances.

6.11.2 The proposal includes inadequate intersection sight distances.

6.11.3 The proposal does not comply with the acceptable solution; therefore assessment against the performance criterion is relied on.

6.11.4 The performance criterion at clause E5.6.4 P1 provides as follows:

*The design, layout and location of an access, junction or rail level crossing must provide adequate sight distances to ensure the safe movement of vehicles, having regard to:*

*(a) the nature and frequency of the traffic generated by the use;  
(b) the frequency of use of the road or rail network;  
(c) any alternative access;  
(d) the need for the access, junction or level crossing;*

- (e) any traffic impact assessment;*
- (f) any measures to improve or maintain sight distance; and*
- (g) any written advice received from the road or rail authority.*

6.11.5 The proposal has been assessed by the Council's Development Engineer, who has advised that the design complies with the performance criteria as onsite turning is provided to enable vehicles to leave in a forward direction.

6.11.6 The proposal complies with the performance criterion.

## 6.12 Design of Vehicular Accesses Part E E6.7.2 P1

6.12.1 The acceptable solution at clause E6.7.2 A1 requires sight distances to be designed and provided to comply with the relevant Australian Standards.

6.12.2 The proposal includes insufficient sight distances.

6.12.3 The proposal does not comply with the acceptable solution; therefore assessment against the performance criterion is relied on.

6.12.4 The performance criterion at clause E6.7.2 P1 provides as follows:

*Design of vehicle access points must be safe, efficient and convenient, having regard to all of the following:*

- (a) avoidance of conflicts between users including vehicles, cyclists and pedestrians;*
- (b) avoidance of unreasonable interference with the flow of traffic on adjoining roads;*
- (c) suitability for the type and volume of traffic likely to be generated by the use or development;*
- (d) ease of accessibility and recognition for users.*

6.12.5 The proposal has been assessed by the Council's Development Engineer, who has provided the following comment:

Width:

Complies with AS2890.1.

Location:

Complies with AS2890.1 Section 3.2.3.

#### Sight distances:

From initial documentation there appeared to be a structure proposed on the highway reservation that is shown to the east of the driveway on drawing H-2092C-1 and also on drawings 5176 A09 and A07. No height or details of this structure are shown. Clarification was provided to confirm that there is no structure in the highway reservation at this location.

Pedestrian sight distances are not relevant as the 'footpath' is around 400mm wide and not defined as a property footpath, as such pedestrians should not be traversing this area.

Vehicular sight distances are challenging due to the steep nature of the driveway meaning that the topography obscures sight in the westerly direction. May be approved under Performance Criteria (subject to onsite turning being included in the design) due to the low traffic volume exiting the site, and because the width of Churchill Avenue means the distance between the Churchill Avenue through traffic path and the kerb provides some additional space in the highway reservation for a vehicle exiting the property to gain sight of traffic on Churchill Avenue. The lack of vehicles using onstreet parking in the area is also beneficial to sight distances.

#### Gradient:

Gradient of access centreline does appear to comply with Tasmanian Standard Drawing in the highway reservation, this is dealt with under clause E6.7.14.

Gradient of access centreline 25% within the property, so compliant with AS2890.1 Section 2.6.2 maximum gradient, and documentation provided by a professionally qualified person with appropriate experience that determines the inside wheel path gradient which is greater than 25% is safe. Any errant vehicle due to steep gradient would traverse into the property so no risk to the public. Approvable under Performance Criteria.

Transitions are present on the revised engineering drawings.

6.12.6 The proposal complies with the performance criterion.

#### 6.13 Vehicular Passing Areas Along an Access Part E E6.7.3 P1

6.13.1 The acceptable solution at clause E6.7.3 A1 requires passing bays to be provided every 30m along the driveway.

6.13.2 The proposal includes no passing bays.

6.13.3 The proposal does not comply with the acceptable solution; therefore assessment against the performance criterion is relied on.

6.13.4 The performance criterion at clause E6.7.3 P1 provides as follows:

*Vehicular passing areas must be provided in sufficient number, dimension and siting so that the access is safe, efficient and convenient, having regard to all of the following:*

*(a) avoidance of conflicts between users including vehicles, cyclists and pedestrians;*

*(b) avoidance of unreasonable interference with the flow of traffic on adjoining roads;*

*(c) suitability for the type and volume of traffic likely to be generated by the use or development;*

*(d) ease of accessibility and recognition for users.*

6.13.5 The proposal has been assessed by the Council's Development Engineer, who has provided the following comment:

A passing bay is not proposed at the entrance. Given the width of Churchill Avenue at this location there is scope for a through traffic path, to pass a car that has stopped to give way to an exiting car.

6.13.6 The proposal complies with the performance criterion.

#### 6.14 Layout of Parking Areas Part E E6.7.5

6.14.1 The acceptable solution at clause E6.7.5 A1 requires all vehicle parking and manoeuvring areas to be designed and constructed in accordance with the relevant Australian Standard.

6.14.2 The proposal includes gradients that exceed those provided in the Australian Standard.

6.14.3 The proposal does not comply with the/ acceptable solution; therefore assessment against the performance criterion is relied on.

6.14.4 The performance criterion at clause E6.7.5 P1 provides as follows:

*The layout of car parking spaces, access aisles, circulation roadways and ramps must be safe and must ensure ease of*

*access, egress and manoeuvring on-site.*

- 6.14.5 The proposal has been assessed by Councils Development Engineer, who has provided the following comment:

Driveway Width:

No circulation roadway required as driveway access directly to parking module. Driveway 1 shown as 3.6m minimum width. This is acceptable.

Driveway gradient:

Driveway gradient shown on drawing long section as centreline only.

Turning areas shown as 10% gradient, with 21% maximum grade for centreline down slope. Parking areas less than 5%.  
25% gradient shown just inside property boundary.

Centreline meets AS2890.1, but inside wheel path shown as maximum 32%. This is accompanied by a letter from an experienced civil engineer stating that this is considered safe. On this basis the driveway gradient is approvable under performance criteria but requires condition.

Parking space dimensions:

Approvable under performance criteria.

- 6.14.6 The proposal complies with the performance criterion.

## **7. Discussion**

- 7.1 Planning approval is sought for Partial Demolition, Alterations and Change of Use to Multiple Dwellings at 479 Churchill Avenue, Sandy Bay.
- 7.2 The application was advertised and received two (2) representations. The representations raised concerns including dwelling density, amenity, vehicle safety, car parking availability and built form.
- 7.3 The proposal has been assessed against the relevant provisions of the planning scheme, and in light of the recent *Henry Design* decision of the Resource Management and Planning Appeal Tribunal, is not considered to perform well with respect to dwelling density.

- 7.4 The applicant has addressed the density of the proposal, and responded to the *Henry Design* decision. The applicant notes that the current proposal is for one dwelling more than the existing planning approval for two dwellings on the site (PLN-17-519, refer to Background above), and that the change from two dwellings to three will be largely unnoticeable as the built form is essentially the same for the approved two dwellings as it is for the proposed three dwellings. As a consequence, the applicant is of the view that three dwellings on the site is a density compatible with that of the surrounding area, as required by the density performance criteria (clause 10.4.1 P1(a)). In response to the *Henry Design* decision, the applicant suggests that the Tribunal did not set any empirical limits, that the current proposal is factually different from the proposal in the decision, and that the proposed density sits comfortably with the surrounding area.
- 7.5 The applicant's approach to the relevant performance criteria and the *Henry Design* decision is not supported. The decision is clear that the test of compatibility required by clause 10.4.1 P1(a) is numerical, and that whether the density of the proposal is perceptible 'on the ground' is not a relevant consideration. The Tribunal held that (at 37) 'clause 10.4.1 P1 is founded on specific numerical calculations rather than any subjective concerns'. It is reiterated that the existing planning approval for two dwellings on the site still stands, and that a density of two dwellings complies with the acceptable solution for density at clause 10.4.1 A1.
- 7.6 The proposal has been assessed by Council's Development Engineer, who has raised no objection to the proposal, subject to conditions. Concerns raised in the representations about the safety of the proposed car parking arrangement would be adequately dealt with via conditions on any permit issued.
- 7.7 The proposal is recommended for refusal.

## 8. Conclusion

- 8.1 The proposed Partial Demolition, Alterations and Change of Use to Multiple Dwellings at 479 Churchill Avenue, Sandy Bay does not satisfy the relevant provisions of the *Hobart Interim Planning Scheme 2015*, and as such is recommended for refusal.

## 9. Recommendations

That: Pursuant to the *Hobart Interim Planning Scheme 2015*, the Council refuse the application for Partial Demolition, Alterations and Change of Use to Multiple Dwellings at 479 Churchill Avenue, Sandy Bay for the following reasons:

- 1 The proposal does not meet the acceptable solution or the performance criterion with respect to clause 10.4.1 A1 and P1 of the *Hobart Interim Planning Scheme 2015* because the proposed density is not compatible with the surrounding area and does not provide for a significant social or community housing benefit.





(Helen Ayers)

*As signatory to this report, I certify that, pursuant to Section 55(1) of the Local Government Act 1993, I hold no interest, as referred to in Section 49 of the Local Government Act 1993, in matters contained in this report.*



(Ben Ikin)

**Acting Manager Development Appraisal**

*As signatory to this report, I certify that, pursuant to Section 55(1) of the Local Government Act 1993, I hold no interest, as referred to in Section 49 of the Local Government Act 1993, in matters contained in this report.*

Date of Report: 12 January 2018

**Attachment(s):**

Attachment B - CPC Agenda Documents

Attachment C - Density Calculations