

Type of Report: Committee
Council: 23 April 2018
Expiry Date: 28 April 2018
Application No: PLN-18-33
Address: 1 / 1 UNA STREET , MOUNT STUART
Applicant: Rob and Anne Windsor
51 Carlton Beach Rd
Proposal: Partial Change of Use to Multiple Dwelling
Representations: Twenty Three (23)
Performance criteria: General Residential Zone Development Standards - Private Open Space and Sunlight for Dwellings

1. Executive Summary

- 1.1 Planning approval is sought for partial change of use to multiple dwelling at 1/1 Una Street, Mount Stuart.
- 1.2 More specifically the proposal includes:
- Retrospective approval for a one bedroom multiple dwelling at lower ground/basement level within strata lot one;
 - Provision of one car parking space for the proposed multiple dwelling within the existing garage at lower ground/basement level within strata lot one;
 - Relocation of one car parking space for the existing visitor accommodation use from the existing garage within strata lot one to common land; and
 - An area of private open space for the proposed multiple dwelling on common land.
- 1.3 The proposal relies on performance criteria to satisfy the following standards and codes:
- 1.3.1 General Residential Zone Development Standards - Private Open Space and Sunlight for Dwellings
- 1.4 Twenty Three (23) representations objecting to the proposal were received within the statutory advertising period between 13 to 27 February 2018.

- 1.5 The proposal is recommended for approval subject to conditions.
- 1.6 The final decision is delegated to the Council.

2. Site Detail

- 2.1 The circa 760sqm subject site is located in an established residential area, and contains a two storey building.
- 2.2 The site is subject to a strata plan, with the building split into two lots. Strata lot one is at the rear or north eastern end of the building, and strata lot two is at the front or south western end of the building. The proposed multiple dwelling would be within strata lot one, at lower ground or basement level. This lot has an existing approved visitor accommodation unit at ground level, and a garage at lower ground or basement level. Strata lot two contains an existing dwelling also with a garage at lower ground or basement level. The area around the building is common land.



Fig. 1 - the subject site is bordered in blue

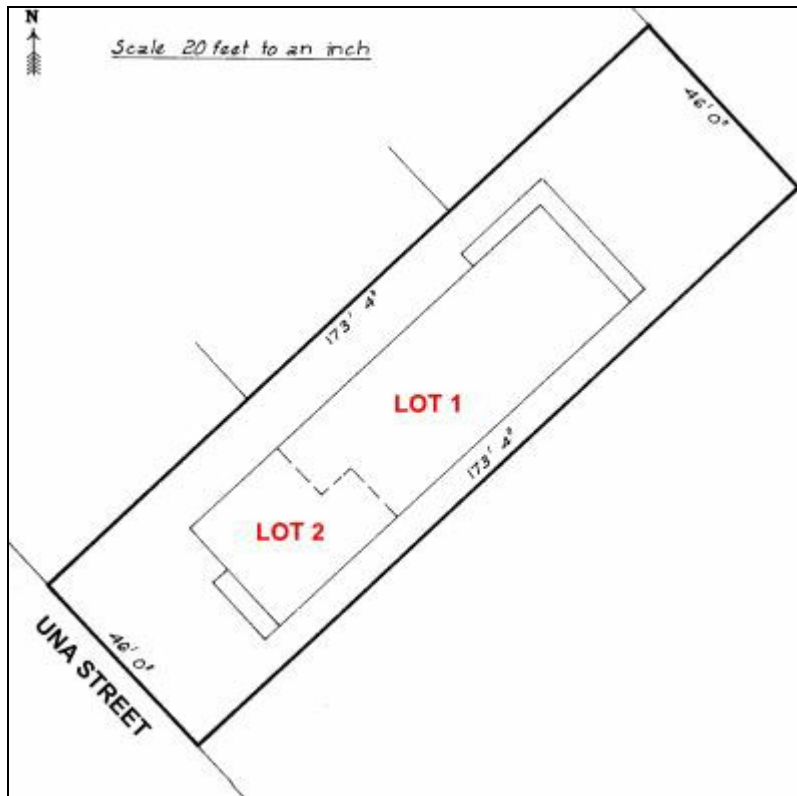


Fig. 2 - strata site plan (showing the building and surrounding common land)

3. Proposal

- 3.1 Planning approval is sought for partial change of use to multiple dwelling at 1/1 Una Street, Mount Stuart.
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 - Provision of one car parking space for the proposed multiple dwelling within the existing garage at lower ground/basement level within strata lot one;
 - Relocation of one car parking space for the existing visitor accommodation use from the existing garage within strata lot one to common land; and
 - An area of private open space for the proposed multiple dwelling on common land.

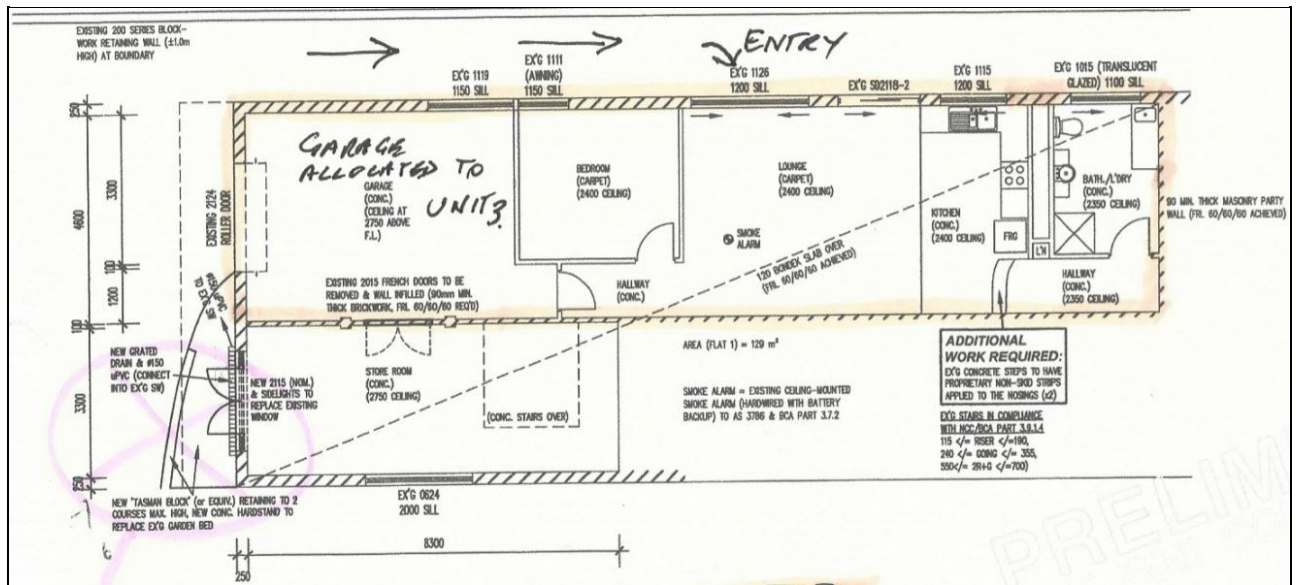


Fig. 3 - existing (unapproved) floor plan of the proposed dwelling. Access to the proposed dwelling is via the existing driveway.

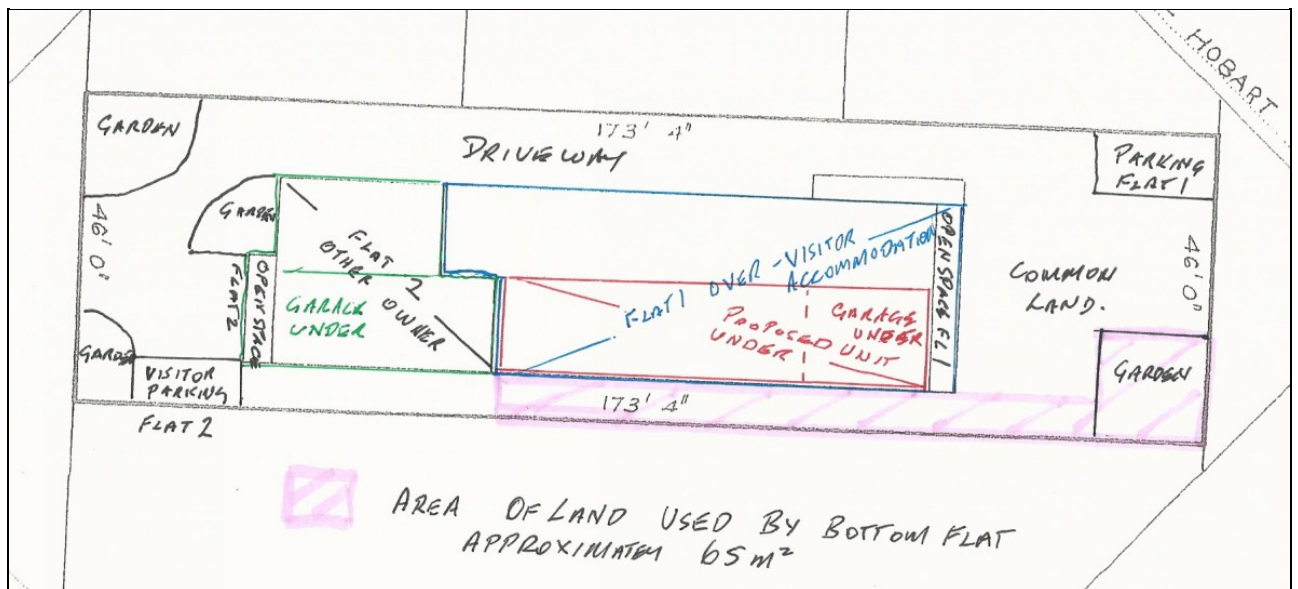


Fig. 4 - proposed site plan. Portion of the building which is bordered in blue and red is owned by the applicant. Una Street is on the left hand side of the image.



Fig. 5 - the above photo shows the entrance to the one bedroom unit and basement garage which is not owned by the applicant. The visitor car park is to the right of the photo. The driveway on the left of the photo leads to the rear of the site and entrance to the proposed multiple dwelling and majority of the on-site parking and open space.



Fig. 6 - the above photo is of the subject site taken at the rear of the building showing the garage to be allocated to the proposed multiple dwelling. The entrance to the proposed multiple dwelling is on the left. The first floor balcony is allocated to the existing visitor accommodation owned by the applicant. The private open space (on the common land) which is currently used by the occupants of the proposed (ground floor) multiple dwelling is shown in the foreground of the photo.



Fig. 7 - existing (unsealed) car parking area on common land providing car parking for three cars (as marked on site).

4. Background

- 4.1 Flat 1/1 Una Street (strata lot one) obtained approval for visitor accommodation under PLN-16-00154-01.

The current application is applying for retrospective approval for the one bedroom, lower ground floor multiple dwelling contained within strata lot one. If approved, 1/1 Una Street will contain a multiple dwelling at lower ground floor/basement level and a visitor accommodation unit at ground floor. Flat 2/1 Una Street (strata lot two) contains an existing dwelling.

The current application was submitted in response to enforcement proceedings being instigated (ENF-16-00644-01).

- 4.2 The Council's records indicate that plans for a single dwelling at 1 Una Street were submitted in 1963 and approved in 1964.

Planning approval was granted by Council on 27 September 1967 for the conversion of the existing single dwelling at 1 Una Street into two flats, by creating a flat in the basement.

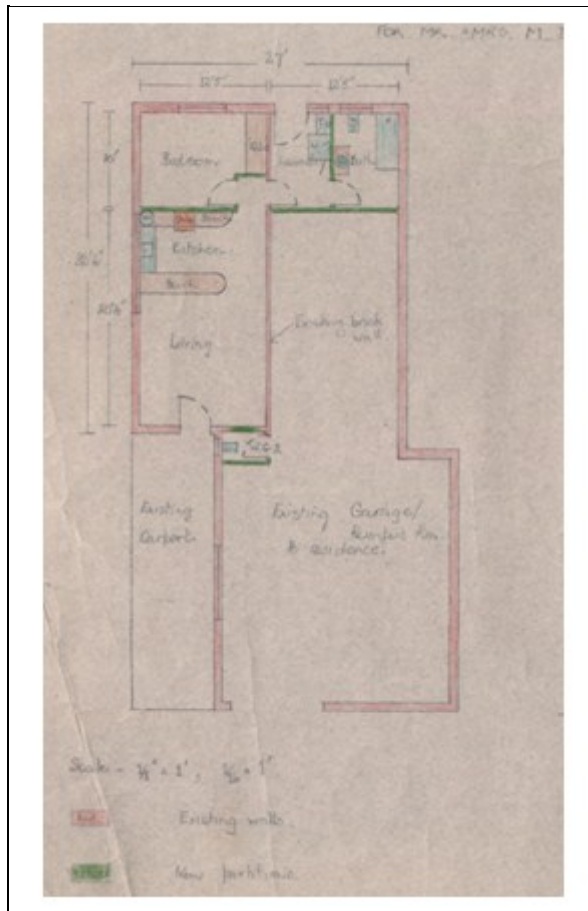


Fig. 8 - approved floor plan of the lower ground floor dwelling (the subject of this application) approved on 27 September 1967 (obtained from Digital Physical File DA67493 1 Una Street Alterations Digitized file from TAHO 67493 5/4/2016 at 11.56am)

However, there is a note on the Council's property file dated 2 November 1967 from the original owner/builder which states:

"we have decided that in the case of the addition and alteration of 1 Una St to form two flats we do not wish notice to be given"

Planning Approval was subsequently granted on 10 November 1971 for a house and unit, with building approval granted on 7 January 1972. The approved plans below (shown in figure 9) reflect the current (approved) layout of the property, with a one bedroom dwelling at ground floor level and a garage at lower ground/basement level forming strata lot two (not owned by the applicant), and a four bedroom dwelling (now visitor accommodation unit) at ground floor level with a garage and storage at lower ground/basement level at the rear of the building forming strata lot one (the lot subject of the current application).

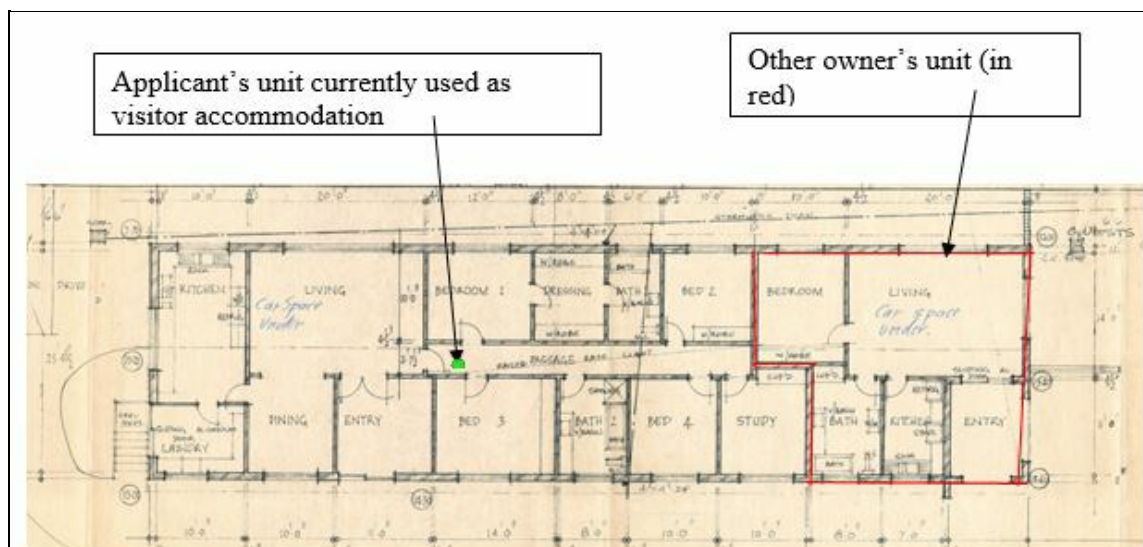


Fig. 9 - existing (and approved) ground floor plan.

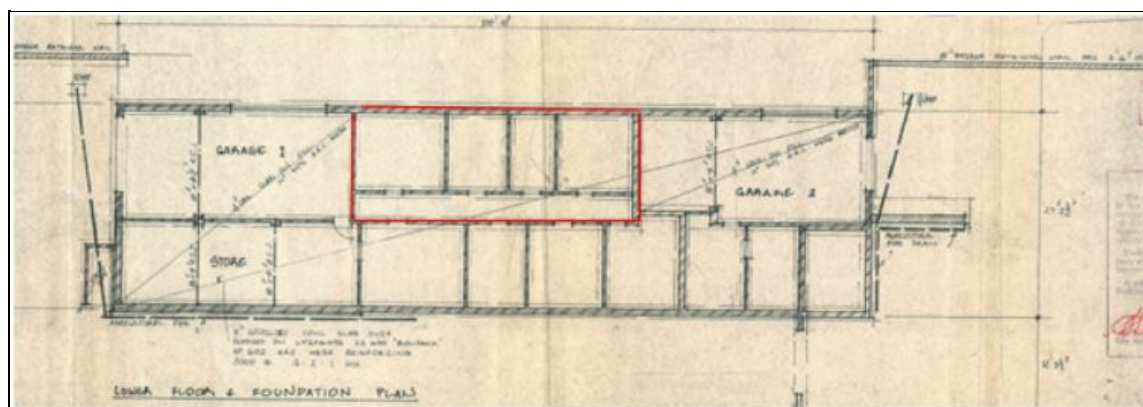


Fig. 10 - the lower ground/basement floor plan which was approved on 27 September 1967. The proposed unit which is the subject of this application is shown in red.

5. Concerns raised by representors

- 5.1 Twenty three (23) representations objecting to the proposal were received within the statutory advertising period between 13-27 February 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.

We object to the proposal as it will increase motor vehicle traffic and exacerbate the limited parking street spaces available to the residents and visitors.

<p>The previous owner (who built the property) in 1970 utilised proposed flat 3 as a primitive form of accommodation but it was unfit for habitation and after a short period moved out. It could not be described in any shape or form as a 'unit'. Any existing use rights would have been abandoned and no substantive records kept by the landowners that intend on relying on existing/continuing use right that apply to the land.</p>
<p>I purchased my property in 2008 (before the applicant) and since the applicant has changed the use of these units to visitor accommodation there has been an increase in motor vehicle usage resulting in parking problems within the Una Street property and increasing street parking problems in Una Street.</p>
<p>Una Street is relatively narrow and steep which has very limited onstreet parking spaces for visitors and residents. Increasingly police are called to attend for wrongful and illegal parking on either side of the street and often motor vehicles are damaged. Over the years the residents have discussed these problems.</p>
<p>The increase in motor vehicle usage would exacerbate the inherent danger and safety to users/residents in Una Street. Over the years I have noticed that the limited parking spaces are used by daily commuters in addition to the residents. The egress and ingress to the property by motor vehicles is difficult and in recent times I have encountered considerable problems in parking my vehicle on the property.</p>
<p>Mr Windsor proposes an additional garage on the lower corner of the ground floor. Access to the proposed garage will cause inherent problems with the existing proposed visitor car parking as well as having to manoeuvre a vehicle virtually effecting a sharp 360 degrees turn in to the proposed corner garage.</p>
<p>I purchased the unit to live in long term and enjoy the rear open space provided which is on common land. The proposal intends to take possession of this area and will prevent my use of this area of common property.</p>

<p>The applicants continue to provide misleading and deceptive information to the Council to acquire retrospective change of use. Any reasonable discussion with the applicant concerning the use results in abuse and conflict.</p>
<p>I reject the applicant's assertion within the documentation submitted, including a misleading photo which states that <i>"it is worth noting that in the seven years we have owned the property there has not been a problem with the parking"</i>. Mr Windsor has often raised complaints with me about the problems he encounters and difficulty with parking.</p> <p>I have enclosed a photo of the very small visitor parking 'spot' between the building and Una Street which is inherently unsafe and small.</p>
<p>The records of the Body Corporate clearly show that the applicant has continued to exhibit conduct to mislead and represent the true position of the problems with parking and their attempt to usurp the limited area of common area for their own benefit.</p> <p>I believe and have been informed by the applicant that their intentions are to further develop the property as visitor accommodation for their own benefit.</p>

I object to the proposal for the following reasons, as it will impact on my tenants and I, as an owner of an adjacent property.

The proposal will impact on my tenants in that there are no restrictions on the number of cars that the short term tenants will be allowed to park at the rear of the premises that will cause complications to my tenants.

No restriction on guests coming and going at any time of the night, therefore free to come and go as they please and not accountable for noise made after hours causing nuisance to my tenants and myself.

Guests will not be liable for damage to the common area and as per body corporate rules, I would have to contribute to the repair of any damage caused.

If a change of use from long term to short term is granted it would have a significant impact on my tenant's ability to park their car at the rear of the premises.

If the owners of Unit 1 were permitted to change the use of the premises from a long term residential to short term stay, it would impact on my ability to retain long term tenants.

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 visitor accommodation and single dwelling. The proposal is for an additional dwelling, therefore the uses on site would be visitor accommodation and two multiple dwellings. The existing uses are permitted uses in the zone. The proposed uses are permitted uses in the zone.
- 6.4 The proposal has been assessed against:

- 6.4.1 Part D - 10 General Residential Zone
- 6.4.2 E6.0 Parking and Access Code
- 6.5 The proposal relies on the following performance criteria to comply with the applicable standards:
 - 6.5.1 Private Open Space – Part D 10.4.3 P1 and P2
 - 6.5.2 Sunlight Part D10.4.4 P1
- 6.6 Each performance criterion is assessed below.
- 6.7 Private Open Space Part D 10.4.3 P1 and P2
 - 6.7.1 The acceptable solution at clause 10.4.3 A1 requires each multiple dwelling to have an area of private open space that is 60sqm in area, and for the exclusive use of the occupants of the dwelling.

The acceptable solution at clause 10.4.3 A2 further stipulates that for each multiple dwelling a minimum of 24sqm of private open space is provided. In addition, the acceptable solution requires that the minimum dimension of the area of private open space must be 4m, must be directly accessible from or adjacent to a habitable room, and must not be located between the dwelling and the frontage.
 - 6.7.2 The strata title arrangement is such that only a 1.5m by 4m (6sqm) area of private open space is available for the exclusive use of the occupants of the existing dwelling on strata lot one. The remainder of the site surrounding the building is in common land, and as a consequence, it cannot be for the exclusive use of either of the dwellings (existing or proposed) but can be used by both.
 - 6.7.3 The proposal does not comply with the acceptable solutions; therefore assessment against the performance criteria is relied on.
 - 6.7.4 P1

Dwellings must have:

(a) private open space that is of a size and dimensions that are appropriate for the size of the dwelling and is able to accommodate:

- (i) outdoor recreational space consistent with the projected requirements of the occupants and, for multiple dwellings, take into account any communal open space provided for this purpose within the development; and*
- (ii) operational needs, such as clothes drying and storage; and*
- (b) reasonable space for the planting of gardens and landscaping.*

P2

The performance criterion at clause 10.4.3P2 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.*

- 6.7.5 The existing (approved) situation on the site is one dwelling and one visitor accommodation unit. The proposal is for a second dwelling.

The visitor accommodation use does not require the provision of any private open space.

There is one main area of private open space on the site. An area of approximately 6m by 5m (30sqm) in the north east corner of the site, which can be seen in Figure 1 above and Figure 11 below. This 30sqm area of private open space is on common land so is not exclusively for the use of the existing dwelling, but is also not able to be directly allocated to the proposed dwelling. In essence it needs to be shared between both dwellings.

The existing dwelling also has, within its strata lot boundary, a verandah/landing area of approximately 1.5m by 4m (6sqm). This is for the exclusive use of the existing dwelling. Refer Figure 5 above.

The proposed dwelling also has direct access to a small area of outdoor space adjacent to the dwelling's front door, which opens directly into the lounge room. Refer to Figure 12 below. However this is also on common land so in theory would be available to the existing dwelling too, although in practice it is unlikely that the existing dwelling would use it, given it is directly adjacent to the proposed dwelling's front door.

Consequently, the question is whether the shared 30sqm of private open space in the north east corner of the site, and the two smaller areas of private open space adjacent to each dwelling, are sufficient. It is noted that the existing and proposed dwellings are one bedroom in size, and so demand for private open space will be modest. The 30sqm of private open space in the north eastern corner of the site is not insubstantial and would allow for things like relaxation, dining, child's play and entertaining to take place, although potentially not by both dwellings at the same time. It is also noted that there is quite a lot of other common land, albeit mostly sealed, but it would nevertheless still provide some ability for occupants of both dwellings to utilise it for other outdoor recreational and operational needs like clothes drying, barbecuing, raised garden beds, etc. It is also noted that there is a small area of public open space, connecting Una Street and Lower Jordan Hill Road, which is around 30m from the site, and would provide further outdoor recreational opportunities.

On balance, the amount of open space available on site to the existing and proposed dwelling is considered acceptable.

6.7.6 The proposal complies with the performance criteria.



Fig. 11 - proposed area of private open space allocated for the proposed dwelling.



Fig. 12 - seating area directly outside lounge of the proposed dwelling.

6.8 Sunlight for Dwellings Part D 10.4.4 P1

6.8.1 The acceptable solution at clause 10.4.4 requires that a dwelling has at least one habitable room in which there is a window which faces between 30 degrees west of north and 30 degrees east of north.

6.8.2 The proposal includes a new multiple dwelling. All windows within the proposed ground floor dwelling face south.

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 10.4.4 P1 provides as follows:

A dwelling must be sited and designed so as to allow sunlight to enter at least one habitable room (other than a bedroom).

6.8.5 It is acknowledged that the orientation of the windows of the proposed

dwelling is not ideal for good solar access. However, the proposed dwelling is on the lower level of an existing building, and has an existing garage on its eastern side. There is essentially no scope to improve the orientation of the windows to improve the dwelling's solar access, and clearly there is no ability to change the orientation of the dwelling on the site, or the location of the garage, to help improve the solar access of the dwelling. The site is elevated and is oriented slightly to the east of south, and similarly the building is oriented slightly to the east of south and the dwelling is towards the eastern end of the building, so there is the possibility that some morning sun would enter the windows of the dwelling. Although not ideal, it is not considered that refusal of the proposal due to what is largely an existing and unalterable situation, is justified.

6.8.6 The proposal complies with the performance criterion.

7. Discussion

- 7.1 Planning approval is sought for Partial Change of Use to Multiple Dwelling at 1/1 Una Street.
- 7.2 The application was advertised and received twenty three (23) representations. The majority of representations raised concerns solely in relation to the increase in motor vehicle traffic resulting from the proposed one bedroom multiple dwelling and it exacerbating the limited on street parking spaces available to residents and visitors. One representation also raised a number of civil issues relating to the strata title and private open space allocated to the proposed multiple dwelling being contained upon the common land.
- 7.4 The proposal has been assessed against the relevant provisions of the planning scheme and is considered to perform well. It is noted that the proposal complies with the permitted density standard, with two dwellings on a circa 760sqm site each having a more than 325sqm site area per dwelling. A visitor accommodation unit is not a dwelling for the purposes of determining density.

- 7.5 The proposal has been assessed by other Council officers, including the Council's Development Engineer. While parking is not a discretion, all representations raised this as an issue of concern. Council's Development Engineer stated that the submitted plans indicate that car parking requirements specific to the existing and proposed uses were wholly contained within the site, namely:

For flat 1 (existing visitor accommodation, strata lot one), one car park within the existing garage (under).

For flat 2 (existing dwelling on strata lot two), one car park within the existing garage (under).

For proposed flat 3 (proposed dwelling on strata lot one), one car park within the existing hard stand (common land) area at the rear of the property.

One visitor car parking space located in front of flat 2 (within property boundary).

No car parking is proposed within the Highway Reservation and four proposed car parking spaces onsite would not be considered excessive from a traffic perspective.

- 7.5 The proposal is recommended for approval.

8. Conclusion

- 8.1 The proposed Partial Change of Use to Multiple Dwelling at 1/1 Una Street, Mount Stuart satisfies the relevant provisions of the *Hobart Interim Planning Scheme 2015*, and as such is recommended for approval.

9. Recommendations

That: Pursuant to the *Hobart Interim Planning Scheme 2015*, the Council approve the application for Partial Change of Use to Multiple Dwelling at 1/1 Una Street, Mount Stuart for the reasons outlined in the officer's report and a permit containing the following conditions be issued:

GEN

The use and/or development must be substantially in accordance with the documents and drawings that comprise PLN-18-33 - 1/1 UNA STREET MOUNT STUART TAS 7000 - Final Planning Documents except where modified below.

Reason for condition

To clarify the scope of the permit.

ENG 4

The parking module (car parking spaces and manoeuvring area) approved by this permit must be constructed to a sealed standard (spray seal, asphalt, concrete, pavers or equivalent council approved) and surface drained to council stormwater system prior to the commencement of use.

Reason for condition

To ensure the safety of users of the access driveway and parking module, and that it does not detract from the amenity of users, adjoining occupiers or the environment by preventing dust, mud and sediment transport.

ADVICE

The following advice is provided to you to assist in the implementation of the planning permit that has been issued subject to the conditions above. The advice is not exhaustive and you must inform yourself of any other legislation, by-laws, regulations, codes or standards that will apply to your development under which you may need to obtain an approval. Visit the Council's [website](#) for further information.

Prior to any commencement of work on the site or commencement of use the following additional permits/approval may be required from the Hobart City Council.

BUILDING PERMIT

You may need building approval in accordance with the *Building Act 2016*. Click [here](#) for more information.

This is a Discretionary Planning Permit issued in accordance with section 57 of the *Land Use Planning and Approvals Act 1993*.

PLUMBING PERMIT

You may need plumbing approval in accordance with the *Building Act 2016*, *Building Regulations 2016* and the National Construction Code. Click [here](#) for more information.

STRATA AMENDMENT

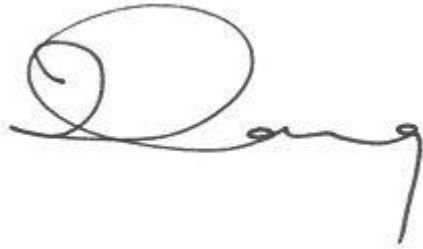
You will be required to amend the strata plan pursuant to the provisions of the *Strata Titles Act 1998* in order to reflect the completed development works. Click [here](#) for more information.

FEES AND CHARGES

Click [here](#) for information on the Council's fees and charges.

DIAL BEFORE YOU DIG

Click [here](#) for dial before you dig information.



(Deanne Lang)

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)

Senior Statutory Planner

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: 11 April 2018

Attachment(s):

Attachment B - CPC Agenda Documents