



## APPLICATION UNDER BATTERY POINT PLANNING SCHEME 1979

BPAC:	3 February 2015
Committee:	16 February 2015
Council:	23 February 2015
Expiry Date:	12 January 2015 (Extension granted until 23 February 2015)
Application No:	<b>PLN-14-01175-01</b>
Address:	<b>23 King Street, Sandy Bay</b>
Applicant:	Simon Murphy, 15 Freesia Crescent, Kingston
Proposal:	<b>Partial Demolition, Extension, Alterations and Partial Change of Use to Multiple Accommodation</b>
Representations:	Ten
Discretion:	Use

### Executive Summary

The applicant is proposing a partial demolition of the existing flat at 23 King Street, Sandy Bay. The application proposes to complete a significant extension to the existing flat. Once the proposed extension is complete, the dwelling will have four bedrooms, each with lockable doors. The proposed development will also have four bathrooms, with three of the bathrooms directly accessible from the private bedrooms. The proposed development will have a communal kitchen, dining and living area, bathroom and utility room. The proposed development will have two decks, which look across the rear garden of the site.

The applicant has also proposed a partial change of use of the site to 'multiple accommodation'. The proposed partial change of use applies only to the building which is the subject of the extension.

No changes are proposed to the existing car parking arrangements at the site.

The proposal invokes discretion under the *Battery Point Planning Scheme 1979* for Use and Traffic.

The application was advertised, and received ten statutory representations. All of the representations opposed the development on the grounds of impact to parking, use and residential amenity.

The proposal is considered consistent with the provisions of the *Battery Point Planning Scheme 1979*.



## Site and location

The site is located at 23 King Street, Sandy Bay. This part of King Street is characterised primarily by residential development. However, there are other uses in the vicinity including a supermarket, shops, restaurants and other community uses, such as a bowls club.



Plate 1. The existing house, flat and parking area at 23 King Street, looking south.

## Zoning

The site is located in Zone 1 – Residential of the *Battery Point Planning Scheme 1979*.

## CONSIDERATION

### Proposal

The applicant is proposing a partial demolition of the existing flat at 23 King Street, Sandy Bay. The application proposes to complete a significant extension to the existing flat. Once the proposed extension is complete, the dwelling will have four bedrooms, each with lockable doors. The proposed development will also have four bathrooms, with three of the bathrooms directly accessible from the private bedrooms. The proposed development will have a communal kitchen, dining and living area, bathroom and utility room. The proposed development will have two decks, which look across the rear garden of the site.

The applicant has also proposed a partial change of use of the site to ‘multiple accommodation’.

There are no changes proposed to the existing house on the site, with the exception of a modification to the area of the existing pergola at the rear of the site.

There are no changes proposed to the existing car parking arrangement at the site.

## Background

The Council refused an application at the site in July 2007 for ‘Demolition and Alterations, and Extensions, Change of Use from Two Dwellings to Single Dwelling’ (PLN-07-00324-01). The Council’s decision was not appealed.

The Council issued a permit in October 2005 for a new awning at the property (PLN-05-00974-01).

## Discretion

Discretion	Planning Scheme Requirement	Proposed
Use	<p>Section 3.3 of the <i>Battery Point Planning Scheme 1979</i> – Subject to the provisions of the ‘Scheme’, ‘development’ in a ‘zone’:</p> <p>a) May be carried out for ‘uses’ indicated in that ‘zone’ by the letter “p” in Table 1;</p> <p>b) Shall not be carried out for ‘uses’ indicated in that ‘zone’ by the letter “d” in Table 1 unless the ‘Council’ in its discretion gives permission for that ‘use’ under Section 3.4;</p> <p>c) Shall not be carried out for any other ‘use’ except those approved by the ‘Council’ in its discretion under Section 3.5.</p>	<p>The proposed development is considered to be in Use Class 4 ‘Multiple Accommodation’, which is marked as “d” in the Residential Zone, provided that no new buildings are proposed or likely to become necessary provided that no more than six persons are accommodated at any one time.</p>
Traffic	<p>Section C.2(a)(v) of the <i>Battery Point Planning Scheme 1979</i> – Multiple accommodation is required to provide one space per bedroom, plus one space for the existing private residence.</p>	<p>The application provides for two car parking spaces on site.</p>

## Representations

The Council received ten representations during the public advertising period. The concerns of the representors are summarised below.

Concerns Raised	Planning Response
<p>I respectfully suggest that this is an inappropriate development of this small site. The tenants will live in the backyard flat of the family home where they will share a single living space and kitchen area, in the style of back-packers' accommodation. The tenants will all have to share the backyard with the occupants of the family home where, it could reasonably be expected, any smokers will congregate. This is adverse to residential amenity, particularly adjacent families.</p> <p>would be adverse to residential amenity.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Use Class, Scheme Principles, Intent and Goals.</p> <p>It is considered that the proposed development is still essentially a residential development. The proposal affords the residents adequate and reasonable residential amenity. Furthermore, the proposed development will not adversely affect the residential amenity of neighbouring lots.</p>
<p>The developer seeks waiver of the parking requirement. Parking in King Street at certain times is at a premium, particularly because parking is only permitted on one side of the street and there are a number of driveways (including ours) on the parking side. Residential amenity would be reduced if the developer's tenants parked their cars in the street.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Traffic.</p>

<p>The developer's only off-street car parking is his driveway. Where motor vehicles of a family are involved it is possible for them to use a driveway because if a vehicle which is parked in behind another vehicle (or vehicles) needs to exit then family members can shuffle the cars into the street and then back into the driveway. However, where tenants are involved this is not practical or appropriate because individual vehicles are privately owned and operated.</p>	
<p>The reality for this developer's property is that his driveway will continue to provide suitable parking for his family but tenants would need to, and would choose to, park in the street. For the reasons set forth above this would be adverse to residential amenity.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Traffic.</p> <p>The proposed development is not considered to unreasonably affect residential amenity.</p>
<p>The application essentially seeks to increase the density of occupation at the premises to short term workers at the proponents nearby business; to create a longer stay back packers of sorts. In our view this is contrary to the goals of the planning scheme in giving private residential amenity as the first and most important consideration in change of use applications.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Use Class, Scheme Principles, Intent and Goals.</p> <p>It is considered that the proposed development is still essentially a residential development. The proposal affords the residents adequate and reasonable residential amenity. Furthermore, the proposed development will not adversely affect the residential amenity of neighbouring lots.</p>
<p>The second issue is that the proponent is essentially seeking to replicate existing accommodation businesses that are available in the nearby vicinity. There are also similar short stay accommodation options already available on Sandy Bay Road which are as close or indeed closer to the proponents business.</p>	<p>This is not a planning consideration.</p>
<p>The greater area of Sandy Bay already has one of the highest concentrations of available rental properties in Hobart and it seems entirely improbable that there is such a shortage already available rental accommodation that local business owners should feel compelled to provide their own.</p>	<p>This is not a planning consideration.</p>
<p>In addition, it is clear from the plans that the term 'extension' is loosely applied in this application and the proposed structure more or less represents a new building that is essentially only connected to the existing building by an enclosed walkway. On this basis alone this proposal should not be considered.</p>	<p>The proposed development meets the definition of 'extension', as per Section 5.2 of the <i>Battery Point Planning Scheme 1979</i>.</p>

<p>We do not accept the proponent's assumption that all occupants of the proposed addition will not have or use cars. This is completely implausible and contrary to our own observations of its current usage. The addition of at least three and potentially six (in the instance of partners) new people to the property and street will no doubt continue to impact on the availability of on street parking and the level of vehicular traffic on what is already a highly congested and highly utilised street. Add the fact the proposal provides for no additional off street parking, it is our view that the impact of the proposed application on the general amenity and safety of the street would be high.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Traffic.</p>
<p>The current occupancy however arranged already provides a large number of visitors to the property at various times during the day and evenings. The occupants already spend an inordinate amount of time smoking on the back decks of the property, talking. Adding more people in to this and creating the primary access within ear and eye shot of our rear deck, in our view, would unacceptably increase this nuisance.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Use Class, Scheme Principles, Intent and Goals and Siting.</p> <p>Section A.2(c)(i) of the <i>Battery Point Planning Scheme 1979</i> only discusses the impact to neighbouring dwellings from the location of living rooms, and makes no mention of decks.</p> <p>It is considered that the proposed development is still essentially a residential development. The proposal affords the residents adequate and reasonable residential amenity. Furthermore, the proposed development will not adversely affect the residential amenity of neighbouring lots.</p>
<p>We note that the provided diagrams and elevations do not adequately enable us to determine the finished height of the proposed building, as they do not include the existing parapet walls, which are higher than the existing dwelling. Whilst we note prior precedent for two storey property the proposed placement of the new building and its height will have a significant shading impact on our rear garden. Specifically, through the middle of the day through to the early evening.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Siting.</p> <p>The proposed development is not considered to unreasonably deprive the backyards of 'nearby lots' of sunlight.</p>

<p>Our primary concern regarding the proposed building is essentially that the access will be in direct line of sight of the rear living area of our home, where most of our habitation occurs. Our secondary concern is the height and bulk of the extension and visual impact and shading that will occur as a result. Our third concern relates to the proposed high windows that are illustrated in the supplied drawings that effectively look out to the rear of our dwelling and the subsequent impact on our privacy.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Siting.</p>
<p>It is our view that the proposal in its entirety is completely contrary to the overall intent of the planning scheme that effects King Street and that the potential negative impacts of the proposed development is such that it presents an unacceptable risk to the overall amenity of the area.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Use Class, Scheme Principles, Intent and Goals.</p> <p>It is considered that the proposed development is still essentially a residential development.</p>
<p>I object to the development, because it is inappropriate and adverse to residential amenity.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Use Class, Scheme Principles, Intent and Goals.</p>
<p>The extra four bedrooms are to be used for commercial purposes, in effect a mini backpacker's hostel.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Use Class, Scheme Principles, Intent and Goals.</p> <p>It is considered that the proposed development is still essentially a residential development, and could easily be transformed into a 'private residence' at a later date.</p>
<p>Car parking could also be a problem</p>	<p>Please refer to the Development Appraisal section of the report, particularly Traffic.</p>
<p>There are other short stay accommodation businesses that are available in the nearby vicinity.</p>	<p>This is not a relevant planning consideration.</p>
<p>King Street is a highly congested street. Additional off street parking will impact on the availability of on street parking.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Traffic.</p>
<p>The proposed building is essentially a two storey building.</p>	<p>This is correct.</p>
<p>The proposal is contrary to Section A2(c)(ii) of the <i>Battery Point Planning Scheme 1979</i> in that the backyard of 21 King Street will be unreasonably deprived of sunlight.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Siting.</p> <p>The proposed development is not considered to unreasonably deprive the backyards of 'nearby lots' of sunlight.</p>

<p>The proposal is contrary to Section 2.3(a) of the <i>Battery Point Planning Scheme 1979</i> in that it does not give first priority to residential amenity, specifically because it will overshadow the backyard of 21 King Street so as to prevent adequate sunlight reaching the backyard. The backyard of 21 King Street will be unreasonably deprived of sunlight.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Siting.</p> <p>The proposed development is not considered to unreasonably deprive the backyards of 'nearby lots' of sunlight.</p>
<p>This application is too intense a development on this property.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Use Class.</p>
<p>I oppose the granting of a dispensation in relation to parking.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Traffic.</p>
<p>I wish to object to this application on the basis that it is changing the type of building use from a family home to a multiple tenancy. This will greatly increase the number of people living in the property and will also have ramifications for parking in King Street.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Use Class and Traffic.</p>
<p>The development extends the family house to provide four bedrooms for the use of independent residents (one of these bedrooms already exists). The four bedrooms are to be used for commercial purposes and each can clearly accommodate more than one person. The developer intends the tenants to be his employees. This likely implies that their tenancy would be medium-term.</p>	<p>Noted.</p>
<p>Such a development is inappropriate for this small site and is out of scale with surrounding homes. The tenants will share a single living space and kitchen area, in the style of backpackers' accommodation. The tenants will all have to share the backyard with the occupants of the family home. Thus, it could reasonably be expected that any smokers will congregate in the backyard. This is adverse to residential amenity, particularly adjacent families.</p>	<p>Noted.</p> <p>It is considered that the proposed development is still essentially a residential development. The proposal affords the residents adequate and reasonable residential amenity. Furthermore, the proposed development will not adversely affect the residential amenity of neighbouring lots.</p>
<p>Parking in King Street particularly during working hours is at a premium and there are relatively few parking spots given parking is only permitted on one side of the street. Residential amenity would be further reduced if the developer's tenants parked their cars in the street.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Traffic.</p>

<p>The developer's only off-street car parking is his driveway. Where motor vehicles of a family are involved it is possible for them to use a driveway because if a vehicle which is parked in behind another vehicle (or vehicles) needs to exit then family members can shuffle the cars into the street and then back into the driveway. However, where tenants are involved this is not practical or appropriate because individual vehicles are privately owned and operated. The reality for this developer's property is that his driveway will continue to provide suitable parking for his family but tenants would need to, and would choose to, park in the street. For the reasons set forth above this would be adverse to residential amenity.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Traffic.</p>
<p>I object to this application based on two criteria – it is too intensive a development on a residential block/area and the parking waiver doesn't guarantee tenants and visitors will not have vehicles, congesting an already tight area.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Use Class and Traffic.</p>
<p>There is plenty of cheap flat type accommodation locally nearby that is available and ideal for the purpose of housing temporary foreign workers, complete with parking and recreational areas.</p>	<p>This is not a relevant planning consideration.</p>
<p>I object to this application on the basis that the resultant increase in density adds unacceptable risk to local amenity. I specifically oppose the granting of a dispensation in relation to parking.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Traffic.</p>
<p>The apparent intention of the development is to enable this property to be expanded in use from a home to a commercial operation for the use of independent residents. I understand that developer intends the tenants to be his employees. The four bedrooms noted in the application can clearly accommodate more than one person. The increase in the number of tenants will result an increased risk associated with vehicular traffic in a street which is already subject to excessive speed, vehicles travelling in the wrong direction and unsafe road side parking.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Use Class and Traffic.</p> <p>It is considered that the proposal, although somewhat unusual, is still considered to be largely a residential use.</p>



<p>The developer seeks waiver of the parking requirement. Parking in King Street at certain times is difficult due in part because parking is only permitted on one side of the street near the subject residence and because residents often chose to park on the roadside rather than there off street parking space. In this environment, my home is specifically disadvantaged since like no other house at this end of King Street, we have no off street parking. The local amenity would clearly be reduced if the developer's tenants parked their cars in the street and this seems highly likely if this application succeeds.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Traffic.</p>
<p>Insufficient parking – Traffic in Queen Street is already excessive. There is limited parking in King Street and in Queen Street.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Traffic.</p>
<p>Development is too intense – it will affect residential amenity of the subject property and the neighbourhood.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Use Class, Scheme Principles, Intent and Goals and Zone Building Control.</p> <p>The proposed development complies with the maximum permissible density of lots.</p>
<p>The proposal is for a boarding house. This is against the intent of the BPPS 1979 – See section 2.2. The proposal conflicts with Clause 3.1(a).</p>	<p>Please refer to the Development Appraisal section of the report, particularly Use Class, Scheme Principles, Intent and Goals.</p> <p>Section 3.1(a) of the <i>Battery Point Planning Scheme 1979</i> requires the Council to have regard to the intentions of the zoning. It is considered that an existing dwelling is being adapted, so that the area can evolve, whilst still providing a residential living environment – albeit, in a different form.</p>
<p>We object to the above application on the grounds that it is too intense a development on this property.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Use Class, Scheme Principles, Intent and Goals and Zone Building Control.</p> <p>The proposed development complies with the maximum permissible density of lots.</p>
<p>We also oppose the granting of a dispensation in relation to parking.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Traffic.</p>
<p>The four bedrooms are to be used for commercial purposes in a residential area.</p>	<p>Please refer to the Development Appraisal section of the report, particularly Use Class, Scheme Principles, Intent and Goals.</p>

## Consultation

An extension of time of an additional 42 days was sought and obtained from the applicant, in order to assess the application.

## Battery Point Advisory Committee

Clause 13.4(c) of the *Battery Point Planning Scheme 1979* states:

*The 'Council' shall refer to the 'Advisory Committee':*

- i. 'applications' for any 'development' which involves material changes to the facade of an 'existing building';*
- ii. 'application's which are the subject of written representations made during the 'specified period' from occupiers of 'nearby lots'; and*
- iii. 'permitted and discretionary applications' on land within Precinct 28 of the City of Hobart Planning Scheme 1982 that abuts land within Zone 1 - Residential of the Battery Point Planning Scheme 1979.*

The Council has received more than one statutory representation from an occupant of a 'nearby lot' during the public advertising period. As such, the application was referred to the Battery Point Advisory Committee for consideration at its meeting of 3 February 2015.

The Battery Point Advisory Committee's resolution was that the application be approved, in accordance with the officer's report.

## Delegation

As the Council has received more than three objections against the proposal, delegation is a matter for the Council.

## Appraisal

### **i. Use Class and Scheme Principles, Intent and Goals**

The application seeks approval for a partial change of use from private residence to 'multiple accommodation' to allow the dwelling to be used as a long term staff accommodation. The proposed partial change of use applies only to the building which is the subject of the proposed extension.

'Multiple Accommodation' is listed in Use Class 4, which, in the *Battery Point Planning Scheme 1979* is defined as:

*The letting in more than one tenancy of a 'dwelling', or the letting of rooms or other non-self-contained accommodation with the use of common facilities (with or without meals, room service or the like) including bedsitting rooms, rooming house, boarding house, hostel and the like, but excluding 'Use Class 1' (Private Residence), 'Use Class 5' (Visitor Accommodation) and accommodation provided in 'Use Class 2' (Residential Business).*

As the residence would not be wholly private, and individual bedrooms could be let separately, it is considered that the proposed development would not meet the definition of Private Residence. As tenancies would be more than three months, it is also considered that the proposed development would not meet the definition of Visitor Accommodation. The proposed accommodation will provide four individual bedrooms, each with a lockable door, to be let for periods of at least three months or more. The proposed accommodation will have a communal kitchen and dining area, and a communal laundry and utility room. The proposed development will have four bathrooms, with three of those bathrooms directly accessible from a private bedroom.

The proposed development is considered to meet the definition of 'multiple accommodation', which is a discretionary use in the zone. However, there is a proviso to the discretionary status which states 'where no new buildings are proposed or likely to become necessary provided that no more than six persons are accommodated at any one time'.

The application does not propose any new buildings. Instead, a significant extension is proposed to an existing building, and is required to accommodate the proposed use. The proposal indicates the development could provide accommodation for more than six people (assuming two people per room) in the extension. There is also an existing house on the site, which would increase the total occupancy of the site even further. The proposal therefore does not conform to the proviso. The *Battery Point Planning Scheme 1979* does not provide any guidance on what failing to comply with the proviso means.

It is noted that Section 13.7(a) of the *Battery Point Planning Scheme 1979* provides the Council with an overarching discretion to vary the provisions of the *Battery Point Planning Scheme 1979*. Section 13.7(a) states:

*In considering any 'application' which does not comply with the 'Scheme' the 'Council' may in its discretion vary any provision of the 'Scheme' but so as to maintain conformity with the 'tenor' of the 'Scheme'.*

In this instance it is considered that it can be used to vary the proviso that no more than six persons are accommodated at any one time on the site.

However, to satisfy the requirements of Section 13.7(a) of the *Battery Point Planning Scheme 1979*, the proposal must maintain conformity with the tenor of the *Battery Point Planning Scheme 1979*. The *Battery Point Planning Scheme 1979* defines 'tenor' as follows:

*Means the intent, goals and objectives as expressed in the 'Scheme'.*

Section 2.1 lists the Principles of the *Battery Point Planning Scheme 1979* and states:

*The Planning Scheme is intended to set standards for development in the District in the interests of conservation safety and convenience.*

*The options for development are now more divergent than at any time previously. Over the past 150 years, the District's character has developed in a consistent way. The streets were laid out, piecemeal, when almost all movement was on foot. Land was successively re-subdivided into narrow lots to minimise walking distances. Its topography and inaccessibility led to almost exclusively residential use. The residences were all single and attached houses, each with its own backyard. They were built compactly at the street frontage to maximise the open space behind.*

*Hitherto, there has been very little redevelopment. Most of the nineteenth-century houses remain. Those houses built since have followed the same use patterns (permanent residence) and the same form (house and garden). The District's historic character has lasted precisely because it is still being used in the same way: it can continue to perform the same functions, and its townscape and its future amenity both depend upon these functions being protected.*

Furthermore, Section 2.2 lists the Intent of the *Battery Point Planning Scheme 1979*. It states:

*Accordingly, in residential zones it is the intention of the 'Planning Scheme' to allow the traditional process of gradual residential evolution and intensification to continue, without allowing new forms of development to become dominant. It encourages the continued use of the existing buildings through renovation, additions and conversion to self-contained flats, and it encourages the retention of existing houses where new ones are built on available land. Demolition is to be controlled. Redevelopment is to be at the present overall density, and in the form of single or attached houses. The spread of commercial activities, and the construction of blocks of apartments, is to be prevented. Uses which would not be compatible with the maintenance of a predominately residential character are to be restricted to non-residential zones. At the same time, it is the intent of the 'Scheme' that the physical character of non-residential zones is maintained and improved. Accordingly, only those uses which can be accommodated within the existing physical framework will be encouraged.*

The Goals of the *Battery Point Planning Scheme 1979* are listed in Section 2.3, which states:

a) *Residential Amenity*

*To give the residential amenity the first priority in the development of residential zones.*

b) *Forms of Development*

*To ensure that all future development is consistent with the forms and uses historically established in the District, and is subservient to the preservation of historic townscape and architectural elements.*

c) *Public Places*

*To restrict the generation of vehicular traffic in residential zones, and to improve the pedestrian environment in the streets, parks and foreshores.*

d) *Administration*

*To define the procedures of development control in the District as they affect the 'Council', applicants and residents; to enforce effective and equitable standards; and to ensure that discretionary approvals and conditions are consistent yet flexible.*

e) *Participation*

*To keep the 'Council' and interested persons mutually informed as to developments and intentions, thus facilitating; the refinement of the schedule; the ability of the public to contribute to the solving of urban problems; the adoption of amendments as required; and the continuing review of the Scheme.*

f) *Non-Residential Development*

*To allow uses serving other localities and visitors to locate in specific areas where residential amenity and character is not adversely affected.*

g) *Crime Prevention*

*To require all use or development to:*

- i. reduce opportunities for crime to occur;*
- ii. provide safe, well designed and maintained buildings, facilities and public spaces;*
- iii. minimise the potential for vandalism and anti-social behaviour; and promote safety on neighbouring public and private land.*

In general terms it is noted that 'multiple accommodation' is a discretionary use, and it is considered that such a use is generally in conformity with the residential character of the area. However, it is considered that a private dwelling may be more in conformity with the intent of the *Battery Point Planning Scheme 1979*, than the proposed 'multiple accommodation' use.

Nevertheless, it is considered that the 'multiple accommodation' use itself does not undermine residential amenity, and is therefore in keeping with the primary goal of the *Battery Point Planning Scheme 1979*. It is also considered that the use represents 'gradual residential evolution' in Battery Point. Such accommodation provides greater options for a wider variety of people, and this is in line with the evolving character of the Battery Point area.

With respect to the number of persons to be accommodated by the proposed development, there is no guidance in the *Battery Point Planning Scheme 1979* as to why six occupants is the most suitable number. To demand only six people be accommodated by such a dwelling is considered to be arbitrary, at best.

Therefore, on balance, the proposed 'multiple accommodation' use is considered to be acceptable.

In terms of the car parking, the applicant has not proposed any additional car parking on site. For further information, please refer to Traffic Schedule section of the report, below. Accordingly, it is considered that the proposal is consistent with the Tenor of the *Battery Point Planning Scheme 1979*.

## **ii. Zone Building Controls**

Section 5.2 of the *Battery Point Planning Scheme 1979* defines 'extension' as:

*An increase in the 'floor area' without an increase in the number of dwellings on the lot.*

Currently, there is an existing house and an existing flat on the lot. The proposal seeks approval to increase the floor area of the existing flat, in order to achieve the 'multiple accommodation' use. Although a significant increase floor area is proposed, there will be no new dwellings created.

Section 5.5(b) defines the maximum permissible density of lots within the *Battery Point Planning Scheme 1979*. It states:

*A 'plot ratio' of 45% or the 'existing floor area' plus 10% or an extension of 15m<sup>2</sup> whichever is greater, provided that all other requirements of the Scheme are met.*

The proposed development will have a plot ratio of less than 45%, and will therefore comply with the relevant section, with regard to maximum permissible density.

The proposed development will be no more than two storeys at any point. Furthermore, the proposed development will retain at least 40% of the floor area of that dwelling at ground level. As such, the proposed development complies with Section 5.6 of the *Battery Point Planning Scheme 1979*.

Section 5.8 of the *Battery Point Planning Scheme 1979* lists the open space requirements of development within the area. It states:

*The 'rear area' shall comprise a minimum of 35% of the 'lot area', or the area formed by a 12 metre setback from the rear boundary (as determined by the Council) whichever is the lesser, or in the case of 'renovation', 'conversion' and 'extension', such smaller area as the 'Council' may approve.*

The proposed development has a rear setback of more than 12 metres. Furthermore, the proposed open space is considered adequate to satisfy the requirements of Section 5.8 of the *Battery Point Planning Scheme 1979*. Section 5.7 of the *Battery Point Planning Scheme 1979* does not specify any minimum setbacks from side boundaries.

## **iii. Siting Schedule**

The proposed development is consistent with the General Requirements of the Siting Schedule of the *Battery Point Planning Scheme 1979*.

It is considered that the rear area and garden will provide for areas of sunlight, privacy and access which is suitable for the occupants of the site. The area between the 'dwelling' and the street is currently used for car parking. It is proposed that this arrangement will continue. As such, the proposed development satisfies the provisions of Section A.2(a) of the *Battery Point Planning Scheme 1979*.

Section A.2(c) of the *Battery Point Planning Scheme 1979* states the following conditions shall be met:

- i. *The location and fenestration of living rooms, and the location of lighting, shall not unreasonably diminish the privacy of neighbouring backyards through noise, overlooking, overhearing, illumination and the like;*
- ii. *Backyards on 'nearby lots' shall not be unreasonably deprived of sunlight.*

It is considered that the location of the living rooms (ie, this is considered to be a room other than a bathroom, laundry, toilet, pantry, walk-in wardrobe, corridor, stair, hallway, lobby, clothes drying room or any other space of a specialised nature, which is occupied neither frequently nor for extended periods) of the extension, and the associated lighting, will not unreasonably impact upon, nor diminish the level of privacy of neighbouring backyards, through noise, overlooking, overhearing, illumination and the like.

It is important to note that there is a small potential for overlooking into the neighbouring backyards from each of the proposed decks. However, a deck is not considered a living room, and as such, is not considered when assessing the proposal against the relevant section of the *Battery Point Planning Scheme 1979*.

The applicant has submitted sun shadow diagrams as part of the documentation which forms the application. Based on these diagrams, it is considered that neighbouring backyards will still have access to plentiful sunlight, even at winter solstice. Due to the orientation of the lots, and to the proposed size and scale of the development, it is considered that the proposed development will not cause an unreasonable level of overshadowing to these backyards.

It is considered that the proposed development satisfies the general requirements of the Schedule, and the 'tenor' of the *Battery Point Planning Scheme 1979*, in relation to Siting.

#### **iv. Appearance Schedule**

It is considered that the proposed development is consistent with the General Requirements of the Schedule, as listed in Section B.1 of the *Battery Point Planning Scheme 1979*.

Section B.2(b)(iii) of the *Battery Point Planning Scheme 1979* states:

*Notwithstanding Section 5.6(a), the maximum height shall be one (1) storey where most houses on the same side of the street in the immediate vicinity are one storey;*

Furthermore, Section B.2(b)(iii) of the *Battery Point Planning Scheme 1979* states:

*Insofar as it complies with other requirements, the configuration of the building shall be such that in height and bulk, it is similar to the buildings near it.*

The proposed development is two storeys in height. Although most of the properties are single storey in King Street, and while the proposed roof pitch differs from the traditional form, as found in King Street, the proposed development is immediately adjacent to a two storey development.

As such, it can be considered that the immediate vicinity around 23 King Street does not have a consistent height, and that a two storey development is not considered to be out of context. The proposed development will have a height less than the building immediately adjacent at 25 King Street, Sandy Bay.

Section B.2(c) of the *Battery Point Planning Scheme 1979* refers to conversions or extensions to existing buildings. It states:

- iii. *Alterations visible from the street shall be kept to a minimum, and shall be in the style of the existing buildings as far as possible*
- iv. *Irreversible changes visible from the street shall be kept to a minimum; specifically to be avoided are the removal of building elements based on earlier crafts and the painting of unpainted stone or brick.*

Despite the increase in the size and the bulk of the existing building, it is considered that the proposed alterations will not be overly visible from the street. This is demonstrated in the north elevation, as submitted by the applicant (refer to Drawing No. DA 1.06, and as shown below). The area marked 'painted sheet cladding' on the diagram below will be obscured behind the existing house, and will not be visible from King Street, Sandy Bay.

It is considered that changes to the building, which are visible from the street, have been kept to a minimum in the proposed design.



It is considered that the proposed design is acceptable against the general requirements of the Schedule, the relevant provisions of the Schedule and the 'tenor' of the *Battery Point Planning Scheme 1979* in relation to Appearance.



## v. Traffic Schedule

The general requirement of the Traffic Schedule of the *Battery Point Planning Scheme 1979* states that:

*Regard shall be had to the need to minimise the impact of traffic arising from the development.*

Currently, the site provides for two parking spaces in a jockey parking arrangement, as per the Council's standards. However, the applicant has stated on the application form that there are three parking spaces existing, and three proposed. This parking caters for the existing house and the existing flat, which are both considered 'private residences'. The applicant has not proposed to provide any additional parking to cater for the proposed development.

As per the parking standards in Section C.2(a)(v) of the *Battery Point Planning Scheme 1979*, a 'private residence' is required to provide one off street parking space per dwelling. Currently, there is adequate parking available on site, in order to meet the standard. 'Multiple accommodation' is required to provide one space per bedroom. Including the existing house (or 'private residence'), the proposed development is required to provide five car parking spaces on site.

As such, the proposal invokes discretion under Section C.2(a)(v) of the *Battery Point Planning Scheme 1979*.

It is noted that there may be an increase in traffic generated by the proposed development which may affect the surrounding area. However, this impact is considered to be approximately an additional three vehicles which may utilise the King Street and Russell Crescent area for on-street parking. This impact is not considered to unreasonably impact upon existing residential amenity.

It is noted that on-street car parking in King Street is at a premium, due largely to the narrow width of the street and parking only being permitted on one side of King Street. It is also noted that 23 King Street is in close proximity to shops, supermarkets, restaurants, and plentiful public transport. It is perfectly reasonable to expect that not all occupants of the proposed development will wish to garage a vehicle at 23 King Street, as the proposed development is situated in a convenient, inner residential location. The availability (or lack thereof) of parking close by to one's house, particularly in an inner residential setting, such as this example, is not considered to constitute an unreasonable impairment to residential amenity of neighbouring lots.

Furthermore, the proposed residential dwelling which is subject to the 'multiple accommodation' use application could easily be transformed into 'private residence' at a later date. If this eventuated, the proposed dwelling would comply with the parking standard, as listed in Clause C.2(a)(v) of the *Battery Point Planning Scheme 1979*.

It is considered that the proposed discretion complies with both the general requirements of the Schedule, and the 'tenor' of the *Battery Point Planning Scheme 1979*, in relation to Traffic.

## **vi. Heritage Schedule**

The proposed development is not on a site which is listed in Schedule E of the *Battery Point Planning Scheme 1979*, nor is it adjacent to a listed site. As such, there is no discretion invoked under the Heritage Schedule of the *Battery Point Planning Scheme 1979*.

Nevertheless, the application has been referred to the Council's Cultural Heritage Officer, who has provided further comment below.

## **Referrals**

### **Development Engineer**

The application has been referred to the Council's Development Engineer, who has provided the following comments:

The development proposes flats at the rear of the site at 23 King Street. The proposed structure is to be over TasWater Sewer's Main; hence this DA was referred to TasWater to condition.

#### *Issues*

- i. The additional 4 bedrooms and 4 bathrooms at the rear of the existing house without any extra parking proposed.
- ii. The "as stated in the application form" 3 existing parking spaces and the 3 proposed spaces are not shown on the site plan.
- iii. Under the Planning Scheme Schedule K.3.3 AS3.3 states, "parking provisions can comprise one jockey space per dwelling, providing it serves the same dwelling and is not designated for visitor or disabled parking".
- iv. It is assumed that the vehicles are currently parking on the existing driveway and those parking spaces were not approved as parking spaces.

#### *Key conclusion*

- i. Only one jockey space allow for this site, which means the approved parking spaces for this site is two spaces. This will be condition if approved.
- ii. The development provided numbers of parking spaces under the requirement.

Refer to Submission to Planning Authority Notice, TW DA 2014/01073-HCC, (18 December 2014).

In a Council related engineering context, the proposal can be supported in principle subject to condition(s) and advice.

## Cultural Heritage Officer

The application has been referred to the Council's Cultural Heritage Officer, who has provided the following comments:



- i. The new extension will be slightly visible from King Street over the existing rear flat (yellow structure).
- ii. View to the rear of 23 King Street from the adjacent bowls club.

The above application proposes to extend an existing flat at the rear of a property within the Battery Point Plan Scheme 1979. The Scheme requires the following:

### 5.1 General Requirements

*In considering any 'application' for 'building' in 'Zone 1' and 'Zone 2', the 'Council' shall have regard to the need to:*

- a) *maintain and improve the existing housing stock,*
- b) *ensure the survival of the existing form and pattern of buildings in the area,*
- ...
- d) *fully protect the residential amenity of the area, and to allow only gradual change which is in keeping with the character of the area,*
- e) *protect the historic, aesthetic and townscape quality of the area and to retain the diversity of building styles.*

The new development would be largely hidden from King Street, Sandy Bay. It would be most visible to the general public from the bowl's club that is located at the rear of the property. A number of 'modern' additions have been constructed at the rear of the surrounding properties and these are also quite visible from the bowls club. The proposal satisfies the heritage provisions of the scheme.

### *Further Comments*

Following on from the original submission, revised plans have since been received which make very small alterations to the positioning and footprint of the proposed structure. Following a review of these revised plans, it is considered that the proposed alterations do not alter the original conclusions of the original heritage assessment and no alterations or confirmations by way of conditions are sought as a result.

### **vii. Discussion**

The major issues raised in the representations were parking and use, and the potential impact on the residential amenity of the King Street area.

It is considered that the proposed development may generate additional vehicle movements to and from the site, and there may be some additional pressure on parking in and around King Street, Sandy Bay. However, it is also considered the proposed development is located in an inner residential area, and that the area is well serviced with supermarkets, restaurants, shops, services, and plentiful public transport. The area is also within walking distance to Hobart CBD. As such, any residents of the proposed development may not necessarily require or choose to garage a vehicle at or around 23 King Street, Sandy Bay. Parking outside one's house is not a right, particularly in a busy, inner urban setting, such as King Street, Sandy Bay. As such, it is considered that the proposed parking arrangement will have little impact to the amenity of the residents of King Street, Sandy Bay.

With regard to the use, it is considered that 'multiple accommodation' is still essentially a residential use, as they are for tenants who will stay at the dwelling for stays of three months or more. The development simply allows for bedrooms to be leased individually. Essentially, the 'multiple accommodation' use is for a private bedroom and bathroom, with a communal living and dining area. The proposed development, if approved, could be converted back to a 'private residence' use, at very little cost.

It is considered that the proposed development is consistent with the 'tenor' of the *Battery Point Planning Scheme 1979*, and will have little impact to the residential amenity of adjoining lots.

### **viii. Conclusion**

The proposed is considered to be consistent with the relevant provisions of the *Battery Point Planning Scheme 1979*.

## Recommendation

That: A. Pursuant to Part 13.5 of the Battery Point Planning Scheme 1979, the Council approve the application for a partial demolition, extension, alterations and partial change of use to multiple accommodation at 23 King Street, Sandy Bay for the reasons outlined in the officer's report and a permit containing the following conditions be issued:

1. The use and development must be substantially in accordance with the documents and drawings that comprise the planning application No. PLN-14-01175-01 as outlined in Attachment A to the permit except where modified below.

### ***Reason for condition***

#### ***To clarify the scope of the permit.***

2. The use and development must comply with the requirements of TasWater as detailed in the form Submission to Planning Authority Notice, Reference No. TWDA 2014/01073-HCC, dated 18 December 2014, as attached to the permit.

### ***Reason for condition***

#### ***To clarify the scope of the permit.***

3. The driveway, car parking, and turning areas must be constructed prior to the new use of the building. The driveway, car parking, and turning areas must comply with the Australian/New Zealand Standard, Parking Facilities Part 1: Off-street Car Parking (AS/NZS 2890.1:2004) and the Council's standards including the following:
  - i. Parking areas must not exceed a maximum grade of 5% (1 in 20);
  - ii. Minimum width must be 3.0 metres;
  - iii. Only one jockey space allowed for the development;
  - iv. Fully dimensioned horizontal and vertical geometry (plan view);
  - v. Construction details in a typical cross-section(s) including any proposed barriers; and
  - vi. Drainage details (crossfalls, kerblines, spot levels, pits and reticulation details, pipe material, class and gradients).

Design drawings for the driveway demonstrating compliance with the above requirements must be submitted to and approved by the Council's Director Development and Environmental Services prior to the issue of any building consent (including demolition), or the commencement of works (whichever occurs first). Once approved the design drawings will form part of this permit and must be complied with.

***Reason for condition***

***In the interests of vehicle user safety and the amenity of the development.***

4. Stormwater from the proposed development must be discharged to the Council's infrastructure at the developer's cost. Prior to the issue of any building consent under the *Building Act 2000*, submit design drawings of the proposed stormwater drainage and connection to the Council's infrastructure, for the approval of the Council's Director Development and Environmental Services. Once approved the design will form part of the permit and must be complied with.

***Reason for condition***

***To ensure that stormwater from the site will be discharged to a suitable Council approved outlet and to enable the Council to update its records of private stormwater drainage provisions for the development and site.***

Prior to the issue of a building consent (including demolition) pursuant to the *Building Act 2000* or the commencement of work on site (whichever occurs first), drawings showing a screen to the height of 1.70 metres along the western edge of the western upper level deck must be submitted to and approved by the Council's Director Development and Environmental Services. Once approved the design will form part of the permit and must be complied with.

The screening must be erected prior to the use of the deck and maintained for the life of the deck.

Note: To comply with this condition the screening needs to be either translucent glazing or be no more than 25% transparent.

***Reason for condition***

***To minimise overlooking from the western upper level deck to the neighbouring property at 25 King Street, Sandy Bay.***

5. Bedrooms shall not be let for a period of three months or less.

***Reason for condition***

***To clarify the scope of the permit.***

6. A plan and/or details showing proposed external materials, finishes and colours of the walls and roof must be submitted to and approved by the Council's Director Development and Environmental Services prior to the issuing of any building consent under the *Building Act 2000*. Colours are to be demonstrated by submission of colour samples or examples. Once approved the approved colours will form part of the permit, and must be adhered to.

***Reason for condition***

***In the interest of the visual amenity of neighbouring properties, the streetscape and the locality.***

- B. The Council include the following advice to the applicant:

1. As approval is required for the use/development under the *Building Act 2000*, approval of the working drawings is required prior to the commencement of any works or the occupancy of the premises.
2. An application for a plumbing permit must be lodged in accordance with the *Building Act 2000* and *Tasmanian Plumbing Regulations 2014*, and a permit issued prior to the commencement of any plumbing work on site.
3. Soil and water management measures should be implemented on the site prior to commencement of work to prevent soil and pollutants from entering waterways or the stormwater system. 'Soil and Water Management Factsheets' published by the Department of Environment, Parks, Heritage and the Arts are available from the Council or online at [www.derwentestuary.org.au](http://www.derwentestuary.org.au).
4. Under the *Tasmanian Plumbing Code 2006* and *Building Code of Australia*, all additional footings and associated structures are required to be a minimum of 600mm clear of any private house connection drains.

5. The designer must ensure that the needs of all underground service providers, ie Aurora Energy and Telstra are catered for both in the design and construction of the works. Underground service providers should be contacted for line marking of their services and any requirements or conditions they may have prior to commencing any works onsite. Telephone 1100, Dial Before You Dig, or visit [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au) for information on the location of underground services and cables in relation to the proposed development prior to commencing any works onsite.



(Patrick Carroll)

**DEVELOPMENT APPRAISAL 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.*



(Tristan Widdowson)

**ACTING 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: 6 February 2015

Attachment(s) Attachment A – Documents and Drawings List  
Attachment B – TasWater form Reference No. TWDA 2014/01073-HCC  
Attachment C – Drawings  
Attachment D – Correspondence, Maguire Architects, 9 October 2014



**Documents and Drawings that comprise  
Planning Application Number - PLN-14-01175-01**

**DEVELOPMENT ADDRESS:**                      **23 King Street, Sandy Bay**

**LIST OF DOCUMENTATION:**

Description	Drawing Number/Revision/Author/Date, Report Author/Date, Etc	Date of Lodgement to Council
Application Form	PLN-14-01175-01	9 October 2014
Title	Vol. 119297 Fol. 1	9 October 2014
Correspondence	Project No: 1411 23 King St Drawing No: DA LET1 Revision No: Author: H. Maguire Date: 9 October 2014	9 October 2014
Plans – Cover Page	Project No: 1411 Drawing No: DA 1.00 Revision No: A Drawn by: Hugh Maguire Date of Drawing: 08/12/2014	8 December 2014
Plans – Site Plan	Project No: 1411 Drawing No: DA 1.01 Revision No: A Drawn by: Hugh Maguire Date of Drawing: 08/12/2014	8 December 2014
Plans – Existing/Demolition Plan	Project No: 1411 Drawing No: DA 1.02 Revision No: A Drawn by: Hugh Maguire Date of Drawing: 08/12/2014	8 December 2014
Plans – Proposed Ground Floor Plan	Project No: 1411 Drawing No: DA 1.03 Revision No: A Drawn by: Hugh Maguire Date of Drawing: 08/12/2014	8 December 2014
Plans – Proposed First Floor Plan	Project No: 1411 Drawing No: DA 1.04 Revision No: A Drawn by: Hugh Maguire Date of Drawing: 08/12/2014	8 December 2014
Plans – Proposed Roof Floor Plan	Project No: 1411 Drawing No: DA 1.05 Revision No: A Drawn by: Hugh Maguire Date of Drawing: 08/12/2014	8 December 2014

Plans – Proposed Sections	Project No: 1411 Drawing No: DA 1.05 Revision No: A Drawn by: Hugh Maguire Date of Drawing: 08/12/2014	8 December 2014
Plans – Proposed Elevations	Project No: 1411 Drawing No: DA 1.06 Revision No: A Drawn by: Hugh Maguire Date of Drawing: 08/12/2014	8 December 2014
Plans – Proposed 3D Perspectives	Project No: 1411 Drawing No: DA 1.07 Revision No: A Drawn by: Hugh Maguire Date of Drawing: 08/12/2014	8 December 2014
Plans – Shadow Diagrams	Project No: 1411 Drawing No: DA 1.08 Revision No: A Drawn by: Hugh Maguire Date of Drawing: 08/12/2014	8 December 2014
Plans – Site Hydraulic Plan	Project No: 1411 Drawing No: DA 7.00/RFI A Revision No: TWDA 2014/01073-HCC Drawn by: Hugh Maguire Date of Drawing: 08/12/2014	8 December 2014