



City of **HOBART**

APPLICATION UNDER HOBART INTERIM PLANNING SCHEME 2015

Type of Report: Committee
Council: 7 May 2018
Expiry Date: 3 June 2018
Application No: PLN-18-119
Address: 19 ELPHINSTONE ROAD , MOUNT STUART
Applicant: Jane Yarham
19 Elphinstone Road
Proposal: Partial Change of Use to Visitor Accommodation
Representations: Five (5)
Performance criteria: Parking and Access Code - Number of Onsite Car Parking Spaces

1. Executive Summary

- 1.1 Planning approval is sought for partial change of use to visitor accommodation at 19 Elphinstone Road, Mount Stuart.
- 1.2 More specifically the proposal includes the conversion of the existing two flats at the rear of the property from dwellings to visitor accommodation, with no onsite parking for the use. Each visitor accommodation unit is approximately 24sqm in floor area.
- 1.3 The proposal relies on performance criteria to satisfy the following standards and codes:
 - 1.3.1 Parking and Access Code - Number of Onsite Car Parking Spaces
- 1.4 Five (5) representations objecting to the proposal were received within the statutory advertising period between 23 March to 9 April 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 site is 19 Elphinstone Road, Mount Stuart, CT146663/1 which is 711 sqm in area. The site contains an existing larger dwelling fronting Elphinstone Road, with two smaller dwellings behind.

The rear of the site benefits from a right of carriageway off McTavish Avenue. The northern rear corner of the site also has a small burdening easement in the form of a right of footway for the owners of 6 McTavish Avenue for them to gain pedestrian access to the rear of their property.

There is a footway on the site's north west side boundary. The site does not have a legal right to use this footway.

Refer figures below.



Figure 1. 19 Elphinstone Road is in the General Residential Zone of the *Hobart Interim Planning Scheme 2015*.



Figure 2. 19 Elphinstone Road (Geocortex 2016).



Figure 3. 19 Elphinstone Road (Geocortex 2016) annotated by planner - purple shows approximate extent of footway; red shows approximate extent of right of carriageway. 19 Elphinstone Road benefits from the right of carriageway, but has no legal right to use the footway.



Figure 4. Context of 19 Elphinstone Road with regard to access to the lot for visitors from Elphinstone Road and McTavish Avenue.

3. Proposal

- 3.1 Planning approval is sought for partial change of use to visitor accommodation at 19 Elphinstone Road, Mount Stuart, CT146663/1.

- 3.2 More specifically the proposal includes the conversion of the two 24sqm floor area dwellings at the rear of the property from dwellings to visitor accommodation. Each unit would have a bedroom / living space, bathroom and kitchen facilities, with no onsite parking for this use.

The original submitted floor plan (submitted 5 March 2018) showed on-site car parking spaces. A subsequent document (email) submitted 15 March 2018 and included in the advertised documents declared there would be no car parking on the site for the proposed use.

The existing dwelling at the front of the lot would remain as a dwelling, with two onsite car parking spaces.

- 3.3 A Building Self Assessment form was also submitted.

4. Background

- 4.1 One of the representors has sought and provided legal advice regarding the rights of way issues raised by them and other representors.
- 4.2 Enforcement action in relation to the car parking space at the rear of the site was undertaken by the Council, following a complaint in 2013. Unfortunately, the Council did not finalise the action within the statutory required two year time period, and as a consequence is now legally barred from doing so.

5. Concerns raised by representors

- 5.1 Five (5) representations objecting to the proposal were received within the statutory advertising period between 23 March to 9 April 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.

Questions why original parking from when flats added not to be used for this use. Where will visitors be instructed to park?

Parking in Elphinstone Road is already at a premium with on-going danger at the junction of Mt Stuart Road. Parking for residents on McTavish Avenue is already at capacity - it services professional rooms (Calvary Consulting Suites) near Elizabeth Street, and commuter parking.

Elphinstone Road allows for cars to travel at faster speeds; local residents prefer the relative safety of parking on-street in McTavish Ave.

(Planner's note: One representor has provided images of on-street parking situation.)

Increase in parking congestion in local streets is restricting current property owners' access to their own properties.

There are two other Air BnB properties already in McTavish Avenue.

Concerned about access to right of way for surrounding neighbours. Alleges that this access has been denied by subject property owner and partner.

Existing access issues have serious residential amenity impacts on neighbours, concerned these issues would be exacerbated by proposed use.

Concerned about illegal works / building for car parking spaces on the site over the past few years; advised Hobart City Council, no response.

<p>Current owners have removed privacy screening and vegetation from outside of the units, has created privacy issue for neighbouring property. Tolerable for longer term rental arrangement but not for the proposed use - request screening be installed if approved.</p> <p>Concerned this has not been properly assessed, amenity of neighbours compromised.</p> <p><i>(Planner's note: This statement made before planning assessment done.)</i></p>
<p>Existing flats are close to residences on McTavish Avenue. Concerned the use would create traffic, social and community problems.</p>
<p>Raises issues regarding footpath / right of way access to the units, and the claim of ownership by owner of 19 Elphinstone Road.</p> <p>Concerned users of visitor accommodation would impact on others use of right of way.</p> <p>Concerned right of way could become a parking lot for visitors.</p> <p>The Council Parking Operations Unit informed a neighbour (August 2017) that private rights of way are a civil matter between the occupants of the affected properties, and that the Council is unable to issue infringement notices or intervene in situations such as this.</p> <p>Information provided to clarify rights of use for the easement 'Footway 2.44 Wide' on the north western side of the subject lot. Contends owners of subject property do not have any right to use this easement either as footway or for vehicular access.</p> <p><i>(Planner's note: This issue is acknowledged however not addressed in this planning assessment as it is a matter to be resolved under civil law.)</i></p>
<p>Questions whether original car parking space for Unit 1 is available currently to tenant.</p>

Increased foot and vehicular traffic in right of way - potential increased noise - visitors to the state frequently arrive and depart according to flight times which can be very early and late; increased risk to young children.

Suggests use discretion is invoked under Planning Directive No.2 - Exemption and Standards for Visitor Accommodation on Planning Schemes.

(Planner's note: See clause 6.3 for explanation.)

Information provided about development on subject lot for car parking spaces at the rear of the property without Council approval. Also impact of this structure on another right of footway area of the subject title for pedestrian access to the rear of an adjacent lot, now blocked.

(Planner's note: This issue is acknowledged however not addressed in this planning assessment, as it is a separate enforcement matter.)

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 'residential' (three multiple dwellings). The proposed use is dwelling and two visitor accommodation units.

The existing use 'residential' (multiple dwellings) is a permitted use, and the proposed partial change of use to visitor accommodation is also a permitted use in the zone pursuant to the Use Table 10.2.

Under the State Government's *Interim Planning Directive No.2 Exemption and Standards for Visitor Accommodation in Planning Schemes* (the Directive),

clause 3.1, the definition of Visitor Accommodation is:

use of land for providing short or medium term accommodation, for persons away from their normal place of residence, on a commercial basis. Examples include a backpackers hostel, bed and breakfast establishment, camping and caravan park, holiday cabin, holiday unit, motel, overnight camping area, residential hotel and serviced apartment.

The proposal doesn't meet the exemption for visitor accommodation in the Directive because the two dwellings to be converted to visitor accommodation are not used by the owner or occupier as their main place of residence.

Clause 3.1(c) of the Directive then provides that in the General Residential Zone, visitor accommodation is a permitted use. The proposal also meets the acceptable solution with respect to the visitor accommodation use as set out in clause 3.1(d) of the Directive, because the proposed visitor accommodation units would be contained in an existing building and the total floor area would be 48 sqm. The acceptable solution states:

Visitor Accommodation:

- (a) guests are accommodated in existing buildings; and*
- (b) has a gross floor area of not more than 300m².*

6.4 The proposal has been assessed against:

6.4.1 D10.0 General Residential Zone

6.4.2 E6.0 Parking and Access Code

6.4.3 Interim Planning Directive No.2 Exemption and Standards for Visitor Accommodation in Planning Schemes

6.5 The proposal relies on the following performance criteria to comply with the applicable standards:

6.5.1 E6.6.1 Number of Car Parking Spaces P1

6.6 Each performance criterion is assessed below.

6.7 E6.6.1 Number of Car Parking Spaces P1

6.7.1 The acceptable solution at clause E6.6.1 A1 requires the number of onsite car parking spaces must be no less than and no greater than the

number specified in Table E6.1, which would be one space per unit (two total), as well as retaining two spaces for the existing dwelling on the site.

- 6.7.2 The proposal retains two car parking spaces for the existing dwelling, but provides no onsite car parking for the proposed visitor accommodation use.
- 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 E6.6.1 P1 (relevant portions) provides as follows:

The number of on-site car parking spaces must be sufficient to meet the reasonable needs of users, having regard to all of the following:

(a) car parking demand;

(b) the availability of on-street and public car parking in the locality;

(c) the availability and frequency of public transport within a 400m walking distance of the site;

(d) the availability and likely use of other modes of transport;

(e) the availability and suitability of alternative arrangements for car parking provision;

...

(g) any car parking deficiency or surplus associated with the existing use of the land;

... .

- 6.7.5 The proposal fails to provide onsite car parking for the visitor accommodation use and is therefore deficient by two car parking spaces.

The Council's Manager Traffic Engineering has supported the proposal. In summary the officer supports the two car parking space discretion on the basis that the existing house has two onsite car parking spaces for its use, and that there is opportunity for on-street parking in both McTavish Avenue and Elphinstone Road. The officer indicates that parking availability in McTavish Avenue is in relatively high demand during business hours however, there is generally parking available in close proximity to this address in Elphinstone Road at most times of the day.

It is noted further that the site is located in close proximity to the services and amenities of North Hobart, and is within walking distance of good

public transport links on Elizabeth Street. In combination with the small size of the proposed visitor accommodation units, the proposal may attract customers who will not need their own vehicle.

The objective of E6.6.1 is to ensure that:

(a) there is enough car parking to meet the reasonable needs of all users of a use or development, taking into account the level of parking available on or outside of the land and the access afforded by other modes of transport.

(b) a use or development does not detract from the amenity of users or the locality by:

(i) preventing regular parking overspill;

(ii) minimising the impact of car parking on heritage and local character.

6.7.6 The proposal complies with the performance criterion.

7. Discussion

7.1 Planning approval is sought for partial change of use to visitor accommodation at 19 Elphinstone Road, Mount Stuart.

7.2 The application was advertised and received five (5) representations. The representations raised concerns including that the proposed use would rely on visitors parking in the nearby streets which are already over capacity for on-street parking, that the proposal would result in unlawful use of the right of way and right of footway, that the proposed use would have a detrimental impact on residential amenity, and that the proposal fails to comply with the performance criterion for the visitor accommodation use.

While the issues surrounding the use of the rights of footway and carriageway are acknowledged, they are civil matters to be resolved between the affected parties, and are not matters that can be resolved through the planning process.

It is reiterated that the proposed visitor accommodation use is a permitted use in the General Residential Zone, and that it complies with the acceptable solution as set out in the State Government's Interim Planning Directive No. 2.

The proposal is only discretionary on the basis of not providing two onsite car parking spaces for the visitor accommodation units. The parking shortfall is considered acceptable given the size of the proposed units and their location close to North Hobart and Elizabeth Street, and has been supported by the Council's Manager Traffic Engineering.

7.3 The proposal has been assessed against the relevant provisions of the planning scheme and is considered to perform acceptably.

7.4 The proposal is recommended for approval.

8. Conclusion

8.1 The proposed partial change of use to visitor accommodation at 19 Elphinstone Road, 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 visitor accommodation at 19 Elphinstone Road, Mount Stuart, for the reasons outlined in the officer's report and a permit containing the following conditions be issued:

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The use and/or development must be substantially in accordance with the documents and drawings that comprise PLN-18-119 - 19 ELPHINSTONE ROAD MOUNT STUART TAS 7000 - Final Planning Documents except where modified below.

Reason for condition

To clarify the scope of the permit.

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.

RIGHT OF WAY

The private right of way must not be reduced, restricted or impeded in any way, and all beneficiaries must have complete and unrestricted access at all times.

You should inform yourself as to your rights and responsibilities in respect to the private right of way particularly reducing, restricting or impeding the right at any time.

NOISE REGULATIONS

Click [here](#) for information with respect to noise nuisances in residential areas.

VISITOR ACCOMMODATION

No parking of vehicles on site by users of the visitor accommodation is approved by this planning permit.

No signage is approved by this planning permit. If signage is required, prior to installing it you must consult with the Council to determine whether a planning permit is required.

You should consult with your insurance provider to ensure appropriate insurance coverage.

More information on visitor accommodation can be found [here](#).



(Michelle Foale)

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.



(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: 13 April 2018

Attachment(s):

Attachment B - CPC Agenda Documents