



City of **HOBART**

APPLICATION UNDER HOBART INTERIM PLANNING SCHEME 2015

Type of Report:	Committee
Council:	19 November 2018
Expiry Date:	21 November 2018
Application No:	PLN-17-1066
Address:	66 BURNETT STREET , NORTH HOBART ADJACENT ROAD RESERVE
Applicant:	(Hobart Properties & Securities by agent Ireneinc Planning) 49 Tasma Street
Proposal:	Demolition and New Building for 68 Multiple Dwellings, 22 Visitor Accommodation Units, Food Services, and Signage
Representations:	Twenty (20, with 18 opposed, two in favour)
Performance criteria:	Commercial Zone Use and Development Standards; Urban Mixed Use Zone Use and Development Standards; Potentially Contaminated Land Code; Road and Railway Assets Code; Parking and Access Code; Attenuation Code; Historic Heritage Code; and Signs Code.

1. Executive Summary

- 1.1 Planning approval is sought for demolition and a new building for 68 multiple dwellings, 22 visitor accommodation units, food services, and signage at 66 Burnett Street, North Hobart.

1.2 More specifically the proposal includes:

- Demolition of the existing buildings on the site. These buildings are generally one or two storey in height and not visible from surrounding public areas, other than from the existing vehicular access points to the site.
- Construction of a new building that would include 90 apartments to be used as either visitor accommodation or as permanent residences. A total of 22 apartments would be used for visitor accommodation. A cafe/bar/restaurant is also proposed.
- The proposed building would have a maximum of 7 storeys and a maximum height above natural ground level of 21.5m. Proposed external materials include precast concrete panel walls on the first 6 levels of the building, with lightweight cladding proposed for the top floor. Colorbond roofing is proposed.
- The ground floor (level 2) of the proposed building would have a footprint of approximately 2500m² and would occupy nearly the entire area of the lot. The first two levels of the building would be mostly car parking and associated storage and service areas. However, there would be two apartments in the northern corner of level 1 and 11 apartments and an entrance lobby/reception area on level 2. These apartments would be used for visitor accommodation.
- A further nine visitor accommodation apartments are proposed on level 3 of the building. The remainder of the apartments on this level, and on the remaining four levels of the building, would be used as permanent residences. A total of 68 residential apartments are therefore proposed in this main part of the development.
- The cafe/bar/restaurant is proposed on the ground floor of the part of the building that would occupy what is currently a lane providing vehicular access to the site from Elizabeth Street. A pedestrian access to the building and an awning over the adjacent footpath are also proposed at this point. Two single bedroom apartments are proposed above the cafe/bar/restaurant. These apartments would be used for visitor accommodation, and are part of the 11 visitor accommodation apartments on level 2. An additional two bedroom residential apartment is proposed on the top floor of this part of the development, giving it three storeys.
- Vehicular access to the development would be via Burnett Street. A shared access arrangement is proposed, that would provide both vehicular and pedestrian access to the development at this point.

- Signage is proposed on both sides of the vehicular entrance to the site. The signage would be illuminated and would identify the site address.

1.3 The proposal relies on performance criteria to satisfy the following standards and codes:

- 1.3.1 15.0 Urban Mixed Use Zone - 15.3 Use Standards and 15.4 Development Standards for Buildings and Works
- 1.3.2 23.0 Commercial Zone - 23.3 Use Standards and 23.4 Development Standards for Buildings and Works
- 1.3.3 E2.0 Potentially Contaminated Land Code: E2.5 Use Standards and E2.6 Development Standards
- 1.3.4 E5.0 Road and Railway Assets Code: E5.5 Use Standards
- 1.3.5 E6.0 Parking and Access Code: E6.6 Use Standards and E6.7 Development Standards
- 1.3.6 E7.0 Stormwater Management Code: E7.7 Stormwater Drainage and Disposal
- 1.3.7 E9.0 Attenuation Code: E9.7 Development Standards
- 1.3.8 E13.0 Historic Heritage Code: E13.8 Development Standards for Heritage Precincts and E13.10 Development Standards for Places of Archaeological Potential
- 1.3.9 E17.0 Signs Code - E17.7 Development Standards

1.4 Two (2) representations supporting the proposal and eighteen (18) representations objecting to the proposal were received within the statutory advertising period between 16 and 31 October 2018.

1.5 The proposal is recommended for refusal.

1.6 The final decision is delegated to the Council.

2. Site Detail

- 2.1 The proposed development site is a commercial property within North Hobart. The property is irregular in shape and has an area of 3014m². The property is an internal lot with access strips off Burnett Street, to the northwest, and Elizabeth Street to the southwest. The property is mostly within the Commercial Zone but the part taken up by the laneway off Elizabeth Street is within the Urban Mixed Use Zone. There are currently several conjoined commercial buildings on the eastern boundary of the site. These buildings are currently occupied by an automotive repair centre and machining workshop. The remainder of the land is taken up by car parking and driveways. The land slopes gradually downward from its frontage with Burnett Street to its southeastern boundary.
- 2.2 The land to the northeast of the site is similar commercial land. There are commercial buildings on the adjoining property to the northeast of a similar scale as those found on the site. The site is surrounded by a mix of commercial and residential development in the remaining directions. There are residences and offices to the north of the site, between it and Burnett Street. Further commercial development occurs on the opposite side of this street. The Republic Bar and Café is to the west of the site, on the corner of Burnett Street and Elizabeth Street. The relatively recently approved mixed use development at 285 Elizabeth Street, which includes food services uses on its ground floor and residential apartments on its upper level, is to the southwest of the site. The other commercial and residential development on this section of Elizabeth Street is also two storey. There are a number of residences to the southeast of the site on properties with frontage to Tasma Street, notably numbers 43, 45 and 47 which all adjoin the site's south eastern boundary.



Figure 1: aerial view of proposed development site (outlined in blue) and surrounding land (source: HCC GIS accessed 1/11/18).



Figure 2: aerial view of proposed development site (outlined in blue) and surrounding land overlaid with zoning map (key: purple: Commercial Zone; light grey: Urban Mixed Use Zone; dark red: Inner Residential Zone; light blue: General Business Zone; yellow: Utilities Zone. Source: HCC GIS accessed 1/11/18).

3. Proposal

3.1 Planning approval is sought for demolition and new building for 68 multiple dwellings, 22 visitor accommodation units, food services, and signage at 66 Burnett Street, North Hobart.

3.2 More specifically the proposal is for:

- Demolition of the existing buildings on the site. These buildings are generally one or two storey in height and not visible from surrounding public areas, other than from the existing vehicular access points to the site.
- Construction of a new building that would include 90 apartments to be used as either visitor accommodation or as permanent residences. A total of 22 apartments would be used for visitor accommodation. A cafe/bar/restaurant is also proposed.
- The proposed building would have a maximum of 7 storeys and a maximum height above natural ground level of 21.5m. Proposed external materials include precast concrete panel walls on the first 6 levels of the building, with lightweight cladding proposed for the top floor. Colorbond roofing is proposed.
- The ground floor (level 2) of the proposed building would have a footprint of approximately 2500m² and would occupy nearly the entire area of the lot. The first two levels of the building would be mostly car parking and associated storage and service areas. However, there would be two apartments in the northern corner of level 1 and 11 apartments and an entrance lobby/reception area on level 2. These apartments would be used for visitor accommodation.
- A further nine visitor accommodation apartments are proposed on level 3 of the building. The remainder of the apartments on this level, and on the remaining four levels of the building, would be used as permanent residences. A total of 68 residential apartments are therefore proposed in this main part of the development.
- The cafe/bar/restaurant is proposed on the ground floor of the part of the building that would occupy what is currently a lane providing vehicular access to the site from Elizabeth Street. A pedestrian access to the building and an awning over the adjacent footpath are also proposed at this point. Two single bedroom apartments are proposed above the cafe/bar/restaurant. These apartments would be used for visitor accommodation, and are part of the 11 visitor accommodation apartments on level 2. An additional two bedroom residential apartment is proposed on the top floor of this part of the development, giving it three storeys.
- Vehicular access to the development would be via Burnett Street. A shared access arrangement is proposed, that would provide both vehicular and pedestrian access to the development at this point.
- Signage is proposed on both sides of the vehicular entrance to the site. The signage would be illuminated and would identify the site address.

4. Background

- 4.1 The application was received in December 2017 although it was not considered valid until the General Manager's consent was received on 14 March 2018. This consent was required as the application includes an awning over a section of the Elizabeth Street road reservation.
- 4.2 Council requested additional information regarding the proposal once the application became valid. This information included clarification regarding the proposed use of the cafe/bar/restaurant, a statement of archaeological potential, details regarding proposed stormwater and traffic management arrangements, a site specific study to satisfy the requirements of the Attenuation Code, and a Contamination Management Plan for the development. Council's request was answered to its satisfaction on 4 July 2018.
- 4.3 Council received a separate application for approval for the demolition of the existing buildings on the site (PLN-18-474) on 19 July 2018. This application was considered and approved by the City Planning Committee on 10 September 2018.
- 4.4 The application was considered by Council's Urban Design Advisory Panel (UDAP) at its meeting on 15 August 2018. The minutes from this meeting are provided as Attachment D to this report. The minutes state that:
- "The panel is not satisfied that the transition in height and scale from the new building to its immediate neighbours (especially on Tasma and Elizabeth Streets) is as well handled as it could be, and is of the view that it does not satisfy the Performance Criteria under 23.4.1, P1 (b) and (d), which require the building height to 'be compatible with the scale of nearby buildings' and to 'allow for a transition in height between adjoining buildings, where appropriate'".
- 4.5 The proposal was first placed on public advertising between 30 July and 13 August 2018. Council received 33 representations regarding the proposal during this first advertising period.
- 4.6 The applicant elected to revise the proposal as a result of UDAP's above findings and the concerns raised in the representations received in the initial advertising period. Council's Cultural Heritage section also raised concern regarding the section of the proposed development that would be within the North Hobart 6 Heritage Precinct. The Elizabeth Street section of the development, including the facade, was revised as a result of these concerns. The revised proposal is the subject of this report.

4.7 The significant differences between the original proposal and the revised design include:

- a reduction in the area of the apartments proposed on the top floor of the development (apartments 7U6 and 7U7) on its south-eastern side;
- a reduction in the area of private open space provided for two apartments on the third floor of the development (apartments 3U14 and 3U15) to allow for a greater area of common garden on the top of the proposed "plinth";
- replacement of two single bedroom apartments on the top floor of the Elizabeth Street section of the development with a single two bedroom apartment to allow for changes to the Elizabeth Street facade;
- inclusion of two visitor accommodation apartments on level one of the development, to increase the total number of apartments by one;
- signage at the main entrance to the site from Burnett Street.

4.8 The revised proposal was considered by UDAP at its meeting on 23 October 2018. The minutes from this meeting are provided as Attachment F to this report. The minutes state that:

"Although the height of the proposal exceeds the maximum permitted height, the Panel finds the height acceptable because of the internal nature of the site as well as the site's proximity to the more compact urban form of Central North Hobart. There remains potential for the over-looking of adjacent Elizabeth Street properties given the significant difference in ground levels. The Panel however notes this potential is likely to remain even with a reduction in height or increased setback of the development".

5. Concerns raised by representors

5.1 Eighteen (18) representations objecting to the proposal were received within the statutory advertising period between 16 and 31 October 2018. An additional two representations were received which expressed support for the proposal. The representations in support of the proposal suggested that it is an "excellent development" and that:

"I believe this location is an excellent site for the construction of higher density housing in Hobart. I support height discretions for this development, as it is generously set back from the street and is significantly occluded by existing buildings. It is compatible with the character of the surrounding area, and increased residential density will support the vibrancy of North Hobart as a dining and entertainment precinct. It is situated immediately adjacent to arterial public transport stops and is within walking distance of the Hobart CBD, creating large potential for active transport".

" I believe that medium density housing is essential for the future of Hobart and for restoring housing affordability in our city".

- 5.2 The following dot points summarise the concerns raised in the representations received that objected to the proposal. Those concerns which relate to a discretion invoked by the proposal are addressed in Section 6 of this report.

The representations received objecting to the proposal raise concern regarding:

- The height of the proposed development, including the number of storeys proposed, and that is incompatible with the scale of nearby buildings and does not allow for a transition in height with adjoining buildings;
- Potential overshadowing, streetscape, and visual impacts as a result of the development;
- The car parking that would be provided for the proposed development, including the lack of visitor car parking spaces and that the number provided for guests and residents would be inadequate, particularly given the existing car parking deficiency in the area;
- The density of the proposed development - i.e. that too many dwelling units are proposed for the area;
- Potential overlooking and other privacy impacts upon adjoining properties as a result of the development;
- Adverse impacts upon an existing vehicular access to an adjoining property, including that the development would reduce sight distances at this access;
- The proposed access arrangements for the development and their impact upon the existing North Hobart traffic environment;
- "Why would the planning staff propose an absolute maximum of 18 metres and, at the same time, recommend to Council this new development at 21.5 metres?"
- The lack of information provided with the application;
- That the proposed "rezoning" does not take into account the broader context of the site and is not consistent with the relevant planning objectives;
- That "the Planning Scheme is deficient in not defining any future characteristics for this commercial zone or any of the surrounding zones in North Hobart" and that this deficiency allows for "a manifestly inappropriate development proposal to be submitted";
- The likelihood of success of any commercial venture located on the Elizabeth Street frontage of the site;
- The impact of the proposed development upon the heritage values of the surrounding area;
- That the proposed development is "out of character" and "not in keeping" with existing development in the surrounding area;
- That approval of the proposed development would set a precedent for future development in the area.

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 Commercial Zone and the Urban Mixed Use Zone of the *Hobart Interim Planning Scheme 2015*.

6.3 The existing use of the site is a Service industry use. The proposed uses are within the residential, visitor accommodation, and food services use classes. The existing use is a discretionary use in the Commercial Zone. The proposed residential use (multiple dwellings) is a permitted use in this zone as it would be above ground level and would therefore meet with the qualification provided within the relevant use table (section 23.2). Residential use is also permitted with the Urban Mixed Use Zone. Visitor accommodation is a discretionary use within the Commercial Zone. Food services is a permitted use within the Urban Mixed Use Zone.

6.4 Clause 8.10.2 of the planning scheme states that:

In determining an application for a permit for a discretionary use the planning authority must, in addition to the matters referred to in subclause 8.10.1, have regard to:

- (a) the purpose of the applicable zone;*
- (b) any relevant local area objective or desired future character statement for the applicable zone;*
- (c) the purpose of any applicable code; and*
- (d) the purpose of any applicable specific area plan,*

but only insofar as each such purpose, local area objective or desired future character statement is relevant to the particular discretion being exercised.

6.5 Therefore, the visitor accommodation use proposed within the Commercial Zone must be considered against the matters referred to in clause 8.10.2. This proposed use is considered to be consistent with the zone purpose statements for the Commercial Zone. Specifically, this aspect of the proposal is considered to be consistent with statement 23.1.1.3 as it would be for a non-residential use in a transition area between the Central Business Zone and an inner residential area. There are no Local Area Objectives nor Desired Future Character Statements for the Commercial Zone. The proposal is considered to meet with the purpose for the applicable codes as it complies with the planning scheme's relevant standards. Where the proposal relies upon performance criteria in order to satisfy these standards, it is supported by evidence provided by a suitably qualified person.

There is no applicable specific area plan.

6.6 The proposal has been assessed against:

- 6.6.1 Part D - 15.0 Urban Mixed Use Zone - 15.3 Use Standards and 15.4 Development Standards for Buildings and Works
- 6.6.2 Part D - 23.0 Commercial Zone - 23.3 Use Standards and 23.4 Development Standards for Buildings and Works
- 6.6.3 Part E - E2.0 Potentially Contaminated Land Code - E2.5 Use Standards and E2.6 Development Standards
- 6.6.4 Part E - E6.0 Parking and Access Code - E6.6 Use Standards and E6.7 Development Standards
- 6.6.5 Part E - E7.0 Stormwater Management Code - E7.7 Development Standards
- 6.6.6 Part E - E9.0 Attenuation Code - E9.7 Development Standards
- 6.6.7 Part E - E13.0 Historic Heritage Code - E13.8 Development Standards for Heritage Precincts and E13.10 Development Standards for Places of Archaeological Potential
- 6.6.8 Part E - E17.0 Signs Code - E17.6 Use Standards and E17.7 Development Standards

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

6.7.1 15.0 Urban Mixed Use Zone:

- 15.3.1 Non-Residential Use P1*
- 15.4.8 Residential Amenity P1 and P4*
- 15.4.4 Passive Surveillance*

6.7.2 23.0 Commercial Zone:

- 23.3.1 Hours of Operation P1*
- 23.3.3 External Lighting P1*
- 23.4.1 Building Height P1*

6.7.3 E2.0 Potentially Contaminated Land Code:

E2.5 Use Standards P1

E2.6.2 Excavation P1

6.7.4 E6.0 Parking and Access Code:

E6.6.1 Number of Car Parking Spaces P1

E6.7.2 Design of Vehicular Accesses P1

E6.7.3 Vehicular Passing Areas Along an Access P1

E6.7.8 Landscaping of Parking Areas P1

E6.7.13 Facilities for Commercial Vehicles P1

6.7.5 E7.0 Stormwater Management Code:

E7.7.1 Stormwater Drainage and Disposal P2

6.7.6 E9.0 Attenuation Code:

E9.7.2 Development for Sensitive Use in Proximity to Use with Potential to Cause Environmental Harm P1

6.7.7 E13.0 Historic Heritage Code:

E13.8.2 Buildings and Works other than Demolition in a Heritage Precinct P1

E13.10.1 Building, Works and Demolition at a Place of Archaeological Potential P1

6.7.8 E17.0 Signs Code:

E17.7.1 Standards for Signs P1

6.8 Each relevant performance criterion is assessed below.

6.9 15.0 Urban Mixed Use Zone - *15.3.1 Non-Residential Use P1*

6.9.1 The acceptable solution A1 at clause *15.3.1* requires hours of operation to be within:

(a) 7.00 am to 9.00 pm Mondays to Fridays inclusive;

(b) 8.00 am to 6.00 pm Saturdays;

(c) 9.00 am to 5.00 pm Sundays and Public Holidays.

6.9.2 The proposal includes the cafe/bar/restaurant which would have the following operating hours:

- 7.00am to 12.00am Monday - Friday;
- 8.00am to 12.00am Saturday;
- 9.00am to 9.00pm Sunday and Public Holidays;

6.9.3 The proposal does not comply with the above acceptable solution and therefore relies upon assessment against the below performance criterion.

6.9.4 The performance criterion P1 at clause 15.3.1 provides as follows:

Hours of operation must not have an unreasonable impact upon the residential amenity through commercial vehicle movements, noise or other emissions that are unreasonable in their timing, duration or extent.

6.9.5 The planning report provided with the application suggests that no commercial vehicle movements would occur within the Urban Mixed Use Zone. Commercial vehicle movements such as deliveries and waste collection would occur within the proposed internal carpark which would not have vehicular access to Elizabeth Street. This arrangement is considered likely to ensure that commercial vehicle movements associated with the proposed cafe/bar/restaurant would not have an unreasonable impact upon residential amenity.

6.9.6 There are several nearby businesses with operating hours that are similar to those proposed for the cafe/bar/restaurant. For example, Room for a Pony (located on the southern corner of Elizabeth Street and Burnett Street) has approval to operate until 1am on Friday and Saturday nights and until midnight on Sunday nights. The Republic Bar and Cafe adjacent to the site has similar operating hours. A restaurant on the ground floor of the mixed use development at 285 Elizabeth Street has approval to operate until 11:30pm on most nights of the week.

6.9.7 The proposed cafe/bar/restaurant would have a relatively small floor area of approximately 50m². Therefore, the premises would not be capable of hosting larger scale events that would generate significant noise. Noise generated by the proposed cafe/bar/restaurant is considered unlikely to have any additional impact upon residential amenity beyond that caused by existing nearby businesses. Given its limited scale, the business is

also unlikely to generate other significant emissions that may impact upon amenity.

6.9.8 The proposal complies with the above performance criterion.

6.10 15.0 Urban Mixed Use Zone - *15.4.8 Residential Amenity P1*

6.10.1 The acceptable solution A1 at clause *15.4.8* requires a dwelling to have at least one habitable room (other than a bedroom) with a window that faces within 30 degrees of north.

6.10.2 The proposal includes the multiple dwelling proposed above the cafe/bar/restaurant (labelled 3U18 on the relevant floor plan) that would not have a habitable room with a window that faces within 30 degrees of north.

6.10.3 The proposal does not comply with the above acceptable solution and therefore relies upon assessment against the below performance criterion.

6.10.4 The performance criterion P1 at clause *15.4.8* provides as follows:

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

6.10.5 The above dwelling would be orientated with its living area on its north-eastern side. The windows to this area are unlikely to receive direct sunlight given the dwelling's position to the south of the higher parts of the development. However, the living area and an attached balcony would receive indirect sunlight. Light wells are also proposed that would admit indirect sunlight into the dwelling's central parts. Therefore, the proposal is considered to optimise sunlight to the habitable rooms of the dwelling to the extent possible on a part of the site where solar access is constrained by existing development.

6.10.6 The proposal complies with the above performance criterion.

6.11 15.0 Urban Mixed Use Zone -*15.4.8 Residential Amenity P4*

6.11.1 The acceptable solution A4 at clause *15.4.8* requires the habitable rooms of dwellings that are adjacent to streets which carry more than 6000 vehicles per day, to be designed to achieve internal noise levels of no more than 45dBa.

6.11.2 The proposal includes habitable rooms that would be adjacent to a street that carries more than 6000 vehicles per day and do not appear to be designed to achieve the above internal noise level. The dwelling (apartment 3U18) proposed above the cafe/bar/restaurant would be adjacent to Elizabeth Street, which carries more than 6000 vehicles per day. There is no indication on the submitted plans that this dwelling has been designed to achieve an internal noise level of 45dBa.

6.11.3 The proposal does not comply with the above acceptable solution and therefore relies upon assessment against the below performance criterion.

6.11.4 The performance criterion P4 at clause 15.4.8 provides as follows:

Habitable rooms of dwellings adjacent to streets carrying more than 6000 vehicle per day must be designed, through site layout and building design, to provide internal noise levels that accord a reasonable level of residential amenity for the occupants.

6.11.5 Given that there is limited opportunity to alter the proposed site layout without significant changes to the proposal, a condition of any approval should be that the above apartment must be designed to be in accordance with the above performance criterion. Potential design measures may include double glazing and solid materials for cladding for the walls which would face Elizabeth Street.

6.11.6 The proposal complies with the above performance criterion provided that the development proceeds in accordance with the condition of approval recommended above.

6.12.1 15.0 Urban Mixed Use Zone - 15.4.4 Passive Surveillance

6.12.1 The acceptable solution at clause 15.4.4 requires building design for non-residential uses to avoid creating entrapment spaces, such as concealed alcoves near public spaces.

6.12.2 The proposal includes a building design for non-residential use that would create a potential entrapment space. The pedestrian access to the site from Elizabeth Street adjacent to the proposed cafe would include a partly concealed alcove between the footpath and an entry door.

6.12.3 The proposal does not comply with the above acceptable solution and

therefore relies upon assessment against the below performance criterion.

- 6.12.4 The relevant sub-clause of the performance criterion at clause 15.4.4 provides as follows:

(d) locate external lighting to illuminate any entrapment spaces around the building site

- 6.12.5 To ensure compliance with the above sub-clause, a condition of approval should be that either lighting must be provided between the above entry door and the street, or, this aspect of the development must be redesigned to avoid the creation of a potential entrapment space.

- 6.12.6 The proposal complies with the above performance criterion provided that the condition of approval recommended above is included upon any Planning Permit issued for the development.

6.13 23.0 Commercial Zone - 23.3.1 Hours of Operation

- 6.13.1 The acceptable solution at clause 23.3.1 requires hours of operation of a use within 50m of a residential zone to be within:

*(a) 6.00 am to 10.00 pm Mondays to Saturdays inclusive;
(b) 7.00 am to 9.00 pm Sundays and Public Holidays.*

except for office and administrative tasks.

- 6.13.2 The proposal includes the proposed visitor accommodation which would operate 24 hours per day. The northernmost part of the site, adjacent to its frontage with Burnett Street, is within 50m of land within the Inner Residential Zone to the north-west, on the opposite side of this street.

- 6.13.3 The proposal does not comply with the above acceptable solution and therefore relies upon assessment against the above performance criterion.

- 6.13.4 The performance criterion at clause 23.3.1 provides as follows:

Hours of operation of a use within 50 m of a residential zone must not have an unreasonable impact upon the residential amenity of land in a residential zone through commercial vehicle movements, noise or other emissions that are unreasonable in their timing, duration or extent.

- 6.13.5 The planning report provided with the application states that commercial vehicle movements associated with the proposed development would occur within the planning scheme's prescribed hours. Therefore, these movements are considered unlikely to have an unreasonable impact upon residential amenity.
- 6.13.6 Given the nature of visitor accommodation, the proposed use is considered unlikely to have a significant impact upon amenity beyond that reasonably expected within a residential area.
- 6.13.6 The proposal complies with the above performance criterion.

6.14 23.0 Commercial Zone - 23.3.3 *External Lighting*

- 6.14.1 The acceptable solution at clause 23.3.3 requires external lighting that is within 50m of a residential zone to be turned off between 11:00pm and 6:00am, unless it is for security lighting.
- 6.14.2 The proposal includes external lighting that would be within 50m of a residential zone and would not be turned off between 11:00pm and 6:00am . As noted in the planning report provided with the application, the proposed driveway would be lit in accordance with the relevant Australian Standard, as required by clause E6.7.7. This lighting would operate overnight in order to serve the proposed residential and visitor accommodation uses. The entrance to the proposed driveway from Burnett Street would be within 50m of the residential zoned land to the north, on the opposite side of this street.
- 6.14.3 The proposal does not comply with the above acceptable solution and therefore relies upon assessment against the below performance criterion.
- 6.14.4 The performance criterion at clause 23.3.3 provides as follows:

External lighting within 50 m of a residential zone must not adversely affect the amenity of adjoining residential areas, having regard to all of the following:

- (a) level of illumination and duration of lighting;*
- (b) distance to habitable rooms in an adjacent dwelling.*

- 6.14.5 As also noted in the planning report, the level of lighting provided would be

the minimum required in order to satisfy the relevant Australian Standard. The report also notes that the entrance to the site is already lit by streetlights and the additional lighting proposed is unlikely to have a significant effect upon residential amenity.

6.14.6 The proposal complies with the above performance criterion.

6.15 23.0 Commercial Zone - 23.4.1 *Building Height*

6.15.1 The acceptable solution A1(b) at clause 23.4.1 requires building height to be no more than 15m and a maximum of four storeys if the development provides at least 50% of the floor space above ground level for residential use.

6.15.2 The proposal includes a building with a maximum height above natural ground level of 21.5m (scaled measurement) and a maximum of seven storeys. The highest part of the development above natural ground level would be at the south-eastern end of the building.

6.15.3 The proposal does not comply with the above acceptable solution and therefore relies upon assessment against the below performance criterion.

6.15.4 The performance criterion at clause 23.4.1 provides as follows:

Building height must satisfy all of the following:

(a) be consistent with any Desired Future Character Statements provided for the area;

(b) be compatible with the scale of nearby buildings;

(c) not unreasonably overshadow adjacent public space;

(d) allow for a transition in height between adjoining buildings, where appropriate;

6.15.5 As noted above, there are no Desired Future Character Statements provided for the area. The above sub-clause (a) is therefore not relevant.

6.15.6 With regard to the above sub-clause (b) The term "compatible" is not defined in the planning scheme. However, in a recent decision of the Resource Management and Planning Appeal Tribunal (*Henry Design and Consulting v Clarence City Council & Ors [2017] TASRMPAT 11*) compatible was considered to mean "consistent with, similar to, in harmony with, and in broad correspondence with". In another Tribunal

decision (*9 Sandy Bay Road Pty Ltd v Hobart City Council & Ors [2017] TASRMPAT 19*), "compatible" was found to mean, in relation to building height, that a building was "capable of co-existing with the scale of nearby buildings". In the same decision, "nearby" was found to mean "close to". Therefore, for the purposes of this assessment, nearby buildings are considered to include the buildings on adjoining lots. The buildings on the opposite side of Elizabeth Street are also considered relevant.

- 6.15.7 Any assessment of the proposal against the above performance criterion must take into account the objective for the above clause, which is:

To ensure that building height contributes positively to the streetscape and does not result in unreasonable impact on residential amenity of land in a residential zone.

- 6.15.8 According to the planning scheme, "streetscape":

means the visual quality of a street depicted by road width, street planting, characteristics and features, public utilities constructed within the road reserve, the setbacks of buildings and structures from the lot boundaries, the quality, scale, bulk and design of buildings and structures fronting the road reserve. For the purposes of determining streetscape with respect to a particular site, the above factors are relevant if within 100 m of the site.

- 6.15.9 The scale of the proposed development should be considered in the context provided by the objective for the above clause. In this context, the development must make a positive contribution to surrounding streetscapes that is consistent and in harmony with the scale of nearby buildings. While the higher parts of the development would be set back from the surrounding streets, they would still be visible from most vantage points in the surrounding area. Therefore, as there are no other buildings of comparable height in the surrounding area, the proposed development would dominate the streetscape.

- 6.15.10 While there are several examples of three storey buildings, or at least taller two storey buildings, nearby, the majority of nearby buildings are two storey. There are also limited numbers of single storey buildings close to the site. The proposed development would therefore be at least five storeys higher than the majority of nearby buildings. The height of the proposed development would therefore not be consistent with or similar to that of nearby buildings as it would be greater than twice the height of existing surrounding development.

- 6.15.11 The height of the proposed development would not be in harmony with existing surrounding development. The existing development that contributes to the nearby Tasma Street streetscape is typified by domestic scale buildings retained upon relatively small lots. While more commercial use and development is found in the nearby Elizabeth Street streetscape, it is consistently of a smaller scale than that proposed. The proposal would introduce a commercial building with a height that is significantly greater than that of the existing surrounding development, which would extend nearly the full length of a lot that is relatively much larger than those found nearby. The height of the proposed development would not correspond with that of any nearby building. Save for a telecommunications tower on the adjoining property to the north-west of the site, no other surrounding development exceeds three storeys in height or its equivalent.
- 6.15.12 The site is not considered to be adjacent to a residential zone. While the Urban Mixed Use Zone allows for residential use and development as "permitted" use and development, as the title of this zone suggests, it is a mixed use zone. Another recent Tribunal decision (*Clegg & Ors v Clarence City Council [2018] TASRMPAT 21*) found that a mixed use zone is not considered to be a residential zone. Therefore, it is considered that the second aspect of the objective for the above clause is not relevant to the proposal, as it would not have a significant effect upon the "residential amenity of land in a residential zone". However, the obvious likely impact of the development upon the amenity of adjacent residences, which is a direct consequence of its height, is perhaps evidence that it is not "capable of co-existing with the scale of nearby buildings".
- 6.15.13 Sub-clause (c) for the above clause considers potential overshadowing of adjacent public space. The site is adjacent to Burnett and Elizabeth Streets. The site is not adjacent to other areas of public space. As shown on the shadow diagrams provided with the application, the proposed development would not overshadow Burnett Street. The development would overshadow Elizabeth Street during the morning, however, this street is already overshadowed prior to 10am by existing development on June 21. The additional overshadowing impact caused by the development, between the hours of 10am and midday on this day of the year, would be limited to a relatively small area. The development would have no additional overshadowing impact after midday on the shortest day of the year.

- 6.15.14 The above sub-clause (d) requires a transition in height between adjoining buildings, where this is considered appropriate. One of the Tribunal decisions mentioned above (*9 Sandy Bay Road Pty Ltd v Hobart City Council & Ors [2017] TASRMPAT 19*) also considered the meaning of "adjoining". "Adjoining" was found to mean "next to" but not to imply that there must be physical connection between adjoining buildings. Therefore, the relevant adjoining buildings when considering the proposal against the above sub-clause (d) are considered to include the mixed use buildings to the south-west and the residential scale buildings to the south-east, noting that several of these buildings are not used for residential purposes but that the buildings appear to have been originally constructed as dwellings.
- 6.15.15 As noted above, the proposed development would be set back from nearby streets. However, the above decision also found that "the question of scale is one of fact, not impression" - i.e. when considering the scale of a proposed development, how it would be perceived is not a relevant consideration. Instead, the Tribunal found that a consideration of the compatibility of scale should be based upon a comparison of quantitative measures such as the height above ground level of proposed and existing development.
- 6.15.16 The relationship between the proposed development and the existing mixed use development at 285 Elizabeth Street, which is to the south-west of the majority of the site, is shown in the south elevation provided for the proposal. The relationship between the proposed development and this existing development is considered to provide an illustrative example of the transition proposed between adjoining buildings.
- 6.15.17 The heights above ground level of different parts of the existing development at 285 Elizabeth Street are not shown on the above plan. However, Council's records indicate that the development has a maximum height of approximately 11.3m at the apex of its pitched roof. The rear of the development, i.e. the part that would be closest to the proposed development, is lower and includes an open common area on the roof of the ground floor of the building. The heights of different components of this part vary, for example the maximum height to the top of the balustrade on the edge of the common area is approximately 7m, while the height to the top of a lift shaft in the central part of this area would be approximately 9.6m.
- 6.15.18 As shown on the above elevation plan, the height of the parapet wall at the south-west edge of the "plinth" formed by the lower levels of the proposed

development would be approximately 7m above natural ground level. However, the maximum height of the proposed development, at the south-eastern end of the building, is approximately 21.5m. This part of the development would be setback less than 4m from the property's south-western boundary and the edge of the "plinth" on this boundary. While the "plinth" at this point would be at a similar level as the adjoining building, the maximum height of the proposed development would be significantly higher than even the highest parts of this building.

6.15.19 Therefore, while the setbacks from nearby streets may give the impression that the proposal allows for some transition in height between adjoining buildings, the actual transition provided is considered to be insufficient. The proposed development would be significantly higher than adjoining buildings, for example, it would be nearly double the maximum height of the development at 285 Elizabeth Street.

6.15.20 The proposal does not adopt or recognise the dimensional attributes of the development at 285 Elizabeth Street or of any other adjoining buildings. While plans are not available for the residential scale buildings on the Tasma Street properties to the south, a comparison between these buildings and the proposed development similar to that conducted above is considered likely to lead to a similar conclusion, i.e. the actual transition with the adjoining buildings on Tasma Street is insufficient, with the proposed development being significantly higher than those buildings.

6.15.21 The Tribunal concluded in the decision referenced earlier (*9 Sandy Bay Road Pty Ltd v Hobart City Council & Ors [2017] TASRMPAT 19*) that:

"P1(d) requires something in the height of the proposal more closely matching the adjoining building. It could be expected that a transitioning element would be much closer to the height of adjoining building, or treated in some other, more acceptable, manner".

The proposed development does not closely or even generally match the height of adjoining buildings. The proposed "plinth" is recognised as an attempt to provide a "transitioning element" between the proposed development and adjoining buildings. However, the "plinth" is considered to be too narrow to provide an adequate transition between the proposed development and adjoining buildings, particularly given the extent of the difference in height between them.

6.15.22 The proposal does not comply with the above performance criterion and is recommended for refusal on this basis.

6.16 E2.0 Potentially Contaminated Land Code - E2.5 Use Standards P1

- 6.16.1 The acceptable solution at clause E2.5 requires a suitably qualified person to certify that potentially contaminated land is suitable for its intended use, or, to approve a plan to manage contamination and associated risk to human health and the environment.
- 6.16.2 The proposal includes potentially contaminated land but does not include the above certification.
- 6.16.3 The proposal does not comply with the above acceptable solution and therefore relies upon assessment against the below performance criterion.
- 6.16.4 The performance criterion at clause E2.5 provides as follows:

Land is suitable for the intended use, having regard to:

(a) an environmental site assessment that demonstrates there is no evidence the land is contaminated; or

(b) an environmental site assessment that demonstrates that the level of contamination does not present a risk to human health or the environment; or

(c) a plan to manage contamination and associated risk to human health or the environment that includes:

(i) an environmental site assessment;

(ii) any specific remediation and protection measures required to be implemented before any use commences; and

(iii) a statement that the land is suitable for the intended use.

- 6.16.5 Council's Environmental Health Officer has assessed the proposal against the above performance criterion and provided the following comments:
- 6.16.6 "As required by the performance criteria, an Environmental Site Assessment was undertaken by a suitably qualified person in accordance with the *National Environment Protection Measure 2013*".
- 6.16.7 Testing carried out for the Environmental Site Assessment found

that "there were no exceedances of the relevant Guidelines in any of the soil samples for indoor vapour assessment or vapour intrusion into trenches".

6.16.8 "The Environmental Site Assessment report concludes that conditional upon recommendations being implemented, that the site is suitable for the intended use".

6.16.9 The Council's Environmental Health Officer has recommended conditions for any approval granted to ensure that the recommendations made in the Environmental Site Assessment are implemented.

6.16.10 The proposal complies with the above performance criterion.

6.17 E2.0 Potentially Contaminated Land Code - *E2.6.2 Excavation*

6.17.1 There is no acceptable solution for clause *E2.6.2* which applies where works involving excavation of potentially contaminated land are proposed.

6.17.2 The proposal includes works involving excavation of potentially contaminated land.

6.17.3 As there is no acceptable solution for the above clause; the proposal relies upon assessment against the below performance criterion.

6.17.4 The performance criterion at clause *E2.6.2* provides as follows:

Excavation does not adversely impact on health and the environment, having regard to:

(a) an environmental site assessment that demonstrates there is no evidence the land is contaminated; or

(b) a plan to manage contamination and associated risk to human health and the environment that includes:

(i) an environmental site assessment;

(ii) any specific remediation and protection measures required to be implemented before excavation commences; and

(iii) a statement that the excavation does not adversely impact on human health or the environment.

6.17.5 The Council's Environmental Health Officer has assessed the proposal

against the above performance criterion and provided the following comments:

- 6.17.6 "As required by the performance criteria, an Environmental Site Assessment was undertaken by a suitably qualified person in accordance with the *National Environment Protection Measure 2013*".
 - 6.17.7 "A total of 38 soil samples from 21 boreholes were analysed for a range of potential contaminants of concern based on the current and past history of the site. Results revealed that there were samples in which levels of contaminants exceeded the NEPM Guidelines - a large portion of these are situated within the proposed excavation zone and risks associated with excavation of this contaminated soil will be managed by implementation of a Contamination Management Plan (submitted and approved). The remaining samples are considered by the consultant to pose a low risk to the environment, ongoing users of the site and commercial workers".
 - 6.17.8 "The Environmental Site Assessment has listed several recommendations which Council intends on listing as conditions of [any] planning permit. These include undertaking additional works to decommission and remove all undergrounds storage tanks and associated infrastructure and the interceptor trap and the remaining soil should be validated. It is also recommended that further investigations be undertaken under the footprint of the buildings currently on the site".
 - 6.17.9 The proposal complies with the performance criterion.
- 6.18 E6.0 Parking and Access Code - *E6.6.1 Number of Car Parking Spaces*
- 6.18.1 The acceptable solution at clause *E6.6.1* requires the number of on-site car parking spaces to be no less than and no greater than the relevant number specified in Table E6.1.
 - 6.18.2 The proposal includes fewer than the relevant number of on-site car parking spaces specified in Table E6.1. A total of 141 car parking spaces are required for the various uses proposed. 106 spaces are proposed, including 20 small car parking spaces and 10 tandem parking spaces.
 - 6.18.3 The proposal does not comply with the above acceptable solution and therefore relies upon assessment against the below performance criterion.

6.18.4 The performance criterion at clause E6.6.1 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;*
- (f) any reduction in car parking demand due to the sharing of car parking spaces by multiple uses, either because of variation of car parking demand over time or because of efficiencies gained from the consolidation of shared car parking spaces;*
- (g) any car parking deficiency or surplus associated with the existing use of the land;*
- (h) any credit which should be allowed for a car parking demand deemed to have been provided in association with a use which existed before the change of parking requirement, except in the case of substantial redevelopment of a site;*
- (i) the appropriateness of a financial contribution in lieu of parking towards the cost of parking facilities or other transport facilities, where such facilities exist or are planned in the vicinity;*
- (j) any verified prior payment of a financial contribution in lieu of parking for the land;*
- (k) any relevant parking plan for the area adopted by Council;*
- (l) the impact on the historic cultural heritage significance of the site if subject to the Local Heritage Code;*
- (m) whether the provision of the parking would result in the loss, directly or indirectly, of one or more significant trees listed in the Significant Trees Code.*

6.18.5 The Council's Development Engineer has considered the proposal against the above performance criterion. The Development Engineer advises that the proposal may be approved on the basis that a condition of approval be included on any Planning Permit issued for the proposal, that requires all car parking spaces on the site to be used only for residential purposes.

6.18.6 The proposal complies with the above performance criterion.

6.19 E6.0 Parking and Access Code - *E6.7.2 Design of Vehicular Accesses*

- 6.19.1 The acceptable solution at clause *E6.7.2* requires the design of vehicle access points to comply with the relevant section of the Australian Standard, *AS/NZS 2890.1:2004 Parking Facilities Part 1: Off-street car parking*.
- 6.19.2 The proposal includes a vehicle access point that would not comply with the above section of the Australian Standard. The proposed vehicle access point would not allow for the sight distance triangles required by the standard.
- 6.19.3 The proposal does not comply with the above acceptable solution and therefore relies upon assessment against the below performance criterion.
- 6.19.4 The performance criterion at clause *E6.7.2* provides as follows:

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

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

- 6.19.5 The application was referred to the Council's Manager Traffic Engineering who provided the following comments regarding the proposal:
- 6.19.6 "It is disappointing that we are having to consider a compromised access arrangement for this development when the site currently has two driveways – which would allow for a one-way driveway arrangement (utilising the current driveways on both Burnett Street and Elizabeth Street). Instead the development proposed to concentrate all traffic movements on to the Burnett Street driveway and the proposed driveway width of 6m does not allow for a driveway design to comply with the requirements of AS2890.1:2004 (Table 3.2) for a Category 3 driveway – which is assessed on the basis of the class of parking facility (residential (Class 1A) and visitor accommodation (Class 2)) and the number of parking spaces being serviced (in this case 106 car spaces plus

motorbike and bicycle parking). The Traffic Impact Assessment accompanying the application is silent on this requirement and instead proposes to address this deviation from E6.7.2 A1(a) through a 'woonerf' arrangement within the driveway".

- 6.19.7 "I note that the TIA indicates that no restrictions are required to be imposed on the access into and out of the Burnett Street driveway. However, queues regularly extend back from the Burnett Street / Elizabeth Street traffic signals and across this driveway. It is therefore recommended that the driveway is restricted to left in – left out only (as per Clause 3.2.3 of AS2890.1) through the use of signage at the driveway. A plan showing this signage should be provided to the satisfaction of the Council's Manager Traffic Engineering and the signage installed prior to the issuing of certification of occupancy. This requirement would also go some way to addressing the concern raised in the TIA about an increased frequency of crashes in the vicinity of the development".
- 6.19.8 "The provision of a road hump installed in the driveway located 2m back from the footpath is recommended by the TIA to address the pedestrian sight distance deficiency. This should also be a condition on [any] planning permit".
- 6.19.9 The proposal complies with the above performance criterion provided that conditions of approval as discussed above are included upon any Planning Permit issued for the proposed development.

6.20 E6.0 Parking and Access Code - *E6.7.3 Vehicular Passing Areas Along an Access*

- 6.20.1 The acceptable solution at clause E6.7.3 requires vehicular passing areas to be provided if an access serves more than 5 car parking spaces, is more than 30m long, and/or it meets a road serving more than 6000 vehicles per day.
- 6.20.2 The proposal includes an access that meets each of the above criterion but would not include a compliant passing area.
- 6.20.3 The proposal does not comply with the above acceptable solution and therefore relies upon assessment against the below performance criterion.
- 6.20.4 The performance criterion at clause E6.7.3 provides as follows:

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

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

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

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

(d) ease of accessibility and recognition for users.

6.20.5 The Council's Development Engineer has considered the proposal against the above performance criterion. The Development Engineer highlights the statement made in the planning report provided with the application, that "the access and parking layout provide for suitable passing in accordance with the standard as detailed within the TIA".

6.20.6 The proposal complies with the above performance criterion.

6.21 E6.0 Parking and Access Code - *E6.7.13 Facilities for Commercial Vehicles*

6.21.1 The acceptable solution at clause *E6.7.13* requires commercial vehicle loading facilities to be provided on-site in accordance with the Australian Standard *Off-street Parking, Part 2 : Commercial. Vehicle Facilities AS 2890.2:2002*.

6.21.2 The proposal includes commercial vehicle loading facilities that would not be in accordance with the above Australian Standard.

6.21.3 The proposal does not comply with the above acceptable solution and therefore relies upon assessment against the below performance criterion.

6.21.4 The performance criterion at clause *E6.7.13* provides as follows:

Commercial vehicle arrangements for loading, unloading or manoeuvring must not compromise the safety and convenience of vehicular traffic, cyclists, pedestrians and other road users.

6.21.5 The Council's Development Engineer has considered the proposal against the above performance criterion. The Development Engineer states that:

"Council objects to on-street garbage collection within Burnett Street and will condition for garbage collection to be prohibited within the Highway Reservation. All garbage collection must occur within the site as shown this is possible by the submitted documentation".

- 6.21.6 The application was referred to the Council's Manager Traffic Engineering who provided the following comments regarding the proposed garbage collection arrangements:

"I agree that garbage collection should be undertaken wholly within the site as Burnett Street does not have the space within the footpath to accommodate a large number of collection bins and the proximity of the bus stop and the "No Stopping" zone associated with the Elizabeth Street traffic signals would preclude this from happening on-street".

- 6.21.7 The proposal complies with the above performance criterion provided that a condition of approval regarding garbage collection arrangements is included upon any Planning Permit issued for the development.

6.22 E6.0 Parking and Access Code - *E6.7.8 Landscaping of Parking Areas*

- 6.22.1 The acceptable solution at clause *E6.7.8* requires landscaping of parking and circulation areas to be provided where more than 5 car parking spaces are proposed. This landscaping must be no less than 5 percent of the area of the car park.

- 6.22.2 The proposal includes more than 5 car parking spaces but does not include landscaping, apart from some limited areas within the proposed shared driveway.

- 6.22.3 The proposal does not comply with the above acceptable solution and therefore relies upon assessment against the below performance criterion.

- 6.22.4 The performance criterion at clause *E6.7.8* provides as follows:

Landscaping of parking and circulation areas accommodating more than 5 cars must satisfy all of the following:

(a) relieve the visual impact on the streetscape of large expanses of hard surfaces;

(b) soften the boundary of car parking areas to reduce the amenity impact on neighbouring properties and the streetscape;

(c) reduce opportunities for crime or anti-social behaviour by maintaining passive surveillance opportunities from nearby public spaces and buildings.

6.22.5 Given that the site is an internal lot and that an enclosed car park is proposed, the proposed driveway and car parking areas are considered unlikely to have a significant visual impact upon nearby streetscapes when using the criteria laid out in the above clause. Similarly, these areas are unlikely to have an amenity impact upon neighbouring properties, as existing development on these properties generally addresses the respective frontage. The proposed car park would be enclosed and would have secure access which is considered likely to reduce opportunities for crime or anti-social behaviour. Given the above, the limited landscaping proposed is considered acceptable.

6.22.6 The proposal complies with the above performance criterion.

6.23 E7.0 Stormwater Management Code - *E7.7.1 Stormwater Drainage and Disposal*

6.23.1 The acceptable solution A2 at clause *E7.7.1* requires a proposed stormwater system to incorporate water sensitive urban design principles if the size of new impervious area is more than 600m² and/or car parking would be provided for more than 6 cars.

6.23.2 The proposal includes a stormwater system that would not incorporate water sensitive urban design principles and an impervious area of more than 600m² and car parking for more than 6 cars are proposed.

6.23.3 The proposal does not comply with the above acceptable solution and therefore relies upon assessment against the below performance criterion.

6.23.4 The performance criterion P2 at clause *E7.7.1* provides as follows:

A stormwater system for a new development must incorporate a stormwater drainage system of a size and design sufficient to achieve the stormwater quality and quantity targets in accordance with the State Stormwater Strategy 2010, as detailed in Table E7.1 unless it is not feasible to do so.

6.23.5 The application was referred to the Council's Environmental Engineering Unit which provided the following comment:

"106 carspaces are proposed. As undercover, the applicant could drain these to sewer. However if they drain to stormwater, they must be treated. An EcoSol treatment device has been proposed, but no sizing details or efficiencies provided etc. This must be sized for likely flows (drips & washdown), and treat the contaminants of concern (fine sediments/ heavy metals and hydrocarbons)".

6.23.6 The Environmental Engineering Unit has advised that the proposed stormwater management arrangements may be approved subject to conditions.

6.23.6 The proposal complies with the above performance criterion.

6.24 E9.0 Attenuation Code - *E9.7.2 Development for Sensitive Use in Proximity to Use with Potential to Cause Environmental Harm*

6.24.1 There is no acceptable solution at clause *E9.7.2*, which applies where sensitive use (which includes dwellings) is proposed on land within an Attenuation Area shown on the planning scheme maps.

6.24.2 The proposal includes sensitive use on land within an Attenuation Area. The site is within the Attenuation Area for the Republic Bar and Cafe (RBC) which is listed as a late night music venue.

6.24.3 As there is no acceptable solution for the above clause, the proposal relies upon assessment against the below performance criterion.

6.24.4 The performance criterion at clause *E9.7.2* provides as follows:

Development for sensitive use, including subdivision of lots within a sensitive zone, must not result in potential to be impacted by environmental harm from use with potential to cause environmental harm, having regard to all of the following:

(a) the nature of the use with potential to cause environmental harm; including:

(i) operational characteristics;

(ii) scale and intensity;

(iii) degree of hazard or pollution that may emitted from the activity;

(b) the degree of encroachment by the sensitive use into the Attenuation Area or the attenuation distance;

(c) measures in the design, layout and construction of the development

for the sensitive use to eliminate, mitigate or manage effects of emissions

- 6.24.5 The Council's Environmental Development Planner has considered the proposal against the above performance criterion. The Environmental Development Planner's report is provided as Attachment E to this report. The report concludes that:
- 6.24.6 "The *Tasmanian Environment Protection Policy (Noise) 2009* includes 'acoustic environmental indicator levels' which are informative reference noise levels. If the indicator levels are not exceeded, it can be assumed that noise will not cause an unreasonable interference to people's health and ability to work, study, relax and converse (where there are no noise sources with dominant or intrusive characteristics). The indicator level for inside bedrooms is 30dB(A) and for outdoor living areas is 50dB(A). Noise levels inside the relevant apartments are therefore expected to comply with these criteria if the estimates provided by the noise consultant are correct and the recommendations for window and glazing design are implemented".
- 6.24.7 "Given the urban location, zoning and relatively high ambient noise levels it is considered reasonable for the occupants of the units to have to close windows and bi-folds to ensure noise levels do not cause an environmental nuisance when events are being held at the adjacent music venue".
- 6.24.8 "Subject to the design recommendations being implemented, based on the information provided it is reasonable to determine that the proposal will not result in the occupants of the proposed development to be impacted by environmental harm from the nearby music venue and the exercise of discretion is recommended".
- 6.24.9 The proposal complies with the above performance criterion.
- 6.25 E13.0 Historic Heritage Code - *E13.8.2 Buildings and Works other than Demolition*
- 6.25.1 There are no relevant acceptable solutions for clause *E13.8.2* which apply where buildings and works other than demolition are proposed on a site that is within a heritage precinct.
- 6.25.2 The proposal includes buildings and works other than demolition on the part of the site that is within the North Hobart 6 Heritage Precinct. The

part of the site that is currently a laneway that provides access to the site is within this heritage precinct. The cafe/bar/restaurant and three multiple dwellings are proposed on this part of the site.

6.25.3 As there are no relevant acceptable solutions, the proposal relies upon the below performance criteria.

6.25.4 The relevant performance criteria at clause E13.8.2 provide as follows:

P1

Design and siting of buildings and works must not result in detriment to the historic cultural heritage significance of the precinct, as listed in Table E13.2.

6.25.5 The Council's Cultural Heritage Officer has assessed the proposal against the relevant planning scheme provisions. The officer's full report is provided as an attachment, however, the following comments are relevant to the above criteria:

6.25.6 "The Precinct is identified as having a general uniformity of form, scale and as having a continuous two storey façade. As originally submitted, the proposed element took the three storeys out to the street frontage. Following concerns raised by the Heritage Officers, the third storey has been set back to a point [roughly] in line with the highest point of the neighbouring 285 Elizabeth Street building, allowing the street front element to primarily read as being two-storey, and thus substantially in keeping with the scale of the commercial streetscape of this part of Elizabeth Street. By also being relatively narrow, it is considered that the general pattern of subdivision and rhythm of the street would be unaffected".

6.25.7 "The architectural form of the this part of the proposed development would follow a style associated with International modernism, utilising a flat roof, ribbon style fenestration to the upper floor residential units and simplified pre-formed slab construction style that would clearly set it apart from the earlier Victorian and Federation buildings which make up the greater proportion of the streetscape built form. The general lack of detailing and pre-cast materials are considered to be unfortunate. However, it is acknowledged that there are several examples of development in the International style within the Precinct, perhaps most notably the Republic Hotel, and that proposed design would not be so out of keeping with the general architectural language of the streetscape to warrant refusal or

alteration by way of condition in this instance. However, final approval of materials and colouration, including to the area of blank elevation that would extend beyond the front elevation of No.281 Elizabeth Street by condition would be prudent in this instance to ensure that the this element of the development sits comfortably within the wider streetscape".

6.25.8 The proposal complies with the above performance criteria.

6.26 E13.0 Historic Heritage Code - *E13.10.1 Building, Works and Demolition*

6.26.1 The acceptable solution at clause *E13.10.1* requires buildings and works at a place of archaeological potential to not involve excavation or ground disturbance.

6.26.2 The proposal includes buildings and works that involve excavation and ground disturbance. The site is identified as a place of archaeological potential in the planning scheme.

6.26.3 The proposal does not comply with the acceptable solution and therefore relies upon assessment against the below performance criterion.

6.26.4 The performance criterion at clause *E13.10.1* provides as follows:

Buildings, works and demolition must not unnecessarily impact on archaeological resources at places of archaeological potential, having regard to:

(a) the nature of the archaeological evidence, either known or predicted;
(b) measures proposed to investigate the archaeological evidence to confirm predictive statements of potential;

(c) strategies to avoid, minimise and/or control impacts arising from building, works and demolition;

(d) where it is demonstrated there is no prudent and feasible alternative to impacts arising from building, works and demolition, measures proposed to realise both the research potential in the archaeological evidence and a meaningful public benefit from any archaeological investigation;

(e) measures proposed to preserve significant archaeological evidence 'in situ'.

6.26.5 The Council's Cultural Heritage Officer has assessed the proposal against the relevant planning scheme provisions. The officer's full report is provided as an attachment, however, the following comments are

relevant to the above criterion:

- 6.26.6 "This site is located within an area identified as being of historical archaeological potential. A Statement of Archaeological Potential, Impact Assessment and Method Statement has been prepared and submitted as supporting documentation by Tasarc on behalf of Irene Inc. dated 5 June 2018. The report is considered to be thorough in its assessment, sound in its methodology and to have been conducted by a suitably qualified practitioner".
- 6.26.7 "The report goes on to make a number of recommendations in the form of an Archeological Method Statement based an archaeological excavation strategy within the medium to high zones identified in the report involving ground clearance and excavation of exposed historical finds with a low watching brief for the low to no potential zones. The recommendations are considered reasonable and should form a condition should approval be granted".
- 6.26.8 The proposal complies with the above performance criterion.

6.27 E17.0 Signs Code - *E17.7.1 Standards for Signs*

- 6.27.1 The acceptable solution A1 at clause *E17.7.1* requires a sign to comply with the standards listed in Table E.17.2.
- 6.27.2 The proposal includes signs that do not comply with the relevant standards listed in Table E.17.2. The area of the proposed street number signs would be greater than that allowed for in the Table.
- 6.27.3 The proposal does not comply with the above acceptable solution and therefore relies upon assessment against the below performance criterion.
- 6.27.4 The performance criterion P1 at clause *E17.7.1* provides as follows:

A sign not complying with the standards in Table E17.2 or has discretionary status in Table E17.3 must satisfy all of the following:

(a) be integrated into the design of the premises and streetscape so as to be attractive and informative without dominating the building or streetscape;

(b) be of appropriate dimensions so as not to dominate the streetscape or premises on which it is located;

- (c) be constructed of materials which are able to be maintained in a satisfactory manner at all times;*
- (d) not result in loss of amenity to neighbouring properties;*
- (e) not involve the repetition of messages or information on the same street frontage;*
- (f) not contribute to or exacerbate visual clutter;*
- (g) not cause a safety hazard.*

- 6.27.5 The street number signs proposed at the main entrance to the site are considered to be adequately integrated into the design of premises. The signs would not be attached to the proposed building. The proposed signs are not considered likely to dominate the streetscape as they would be set back from the street and would have dimensions that are in keeping with adjacent buildings, including the heritage listed wall on the adjacent property to the west. The proposed signs would be constructed from perspex and aluminum which are considered to be suitable low maintenance materials.
- 6.27.6 The proposed signs would not result in a loss of amenity to neighbouring properties as they would not overshadow adjacent properties nor have a significant visual impact. While the proposed signs would be internally illuminated, the entrance to the site is already illuminated by streetlights. The proposed signs would therefore not introduce a new source of light pollution into the area surrounding the site.
- 6.27.7 While the proposed signs would carry similar information, each sign would face a different direction. The proposed signs would therefore not involve an unreasonable repetition of information on the same street frontage. The signs would have a fairly simple, neat design that is not considered likely to contribute to visual clutter in an area where there is already signage present. The proposed signage is considered to improve safety by readily identifying the access to the site and would not cause a safety hazard.
- 6.27.8 The proposal complies with the above performance criterion.

7. Discussion

- 7.1 Planning approval is sought for demolition and a new building for 68 multiple dwellings, 22 visitor accommodation units, food services, and signage at 66 Burnett Street, North Hobart.

- 7.2 The application was advertised and received twenty (20) representations. The representations raised a range of concerns, including potential overshadowing, privacy, and traffic impacts as a result of the development. The representations also raised general concern regarding the height of the proposed development, particularly that the height of the proposed building would be incompatible with surrounding development.
- 7.3 The proposal has been assessed against the relevant provisions of the planning scheme and is considered to not comply with the standard for building height in the Commercial Zone.
- 7.4 The proposal has been assessed by other Council officers, including the Council's Development Engineer, Cultural Heritage Officer, Environmental Development Planner, and its Environmental Health Officer. The officers have raised no objection to the proposal, subject to conditions.
- 7.5 The proposal is recommended for refusal.

8. Conclusion

- 8.1 The proposed demolition and new building for 68 multiple dwellings, 22 visitor accommodation units, food services, and signage at 66 Burnett Street, North Hobart does not satisfy the relevant provisions of the *Hobart Interim Planning Scheme 2015* and is recommended for refusal.

9. Recommendations

That: Pursuant to the *Hobart Interim Planning Scheme 2015*, the Council refuse the application for demolition and new building for multiple dwellings, visitor accommodation and food services at 66 Burnett Street, North Hobart for the following reasons:

- 1 The proposal does not meet the acceptable solution or the performance criterion with respect to clause 23.4.1 A1 or P1 of the *Hobart Interim Planning Scheme 2015* because:
 - a) the building height of the proposed development would not be compatible with the scale of nearby buildings; and,
 - b) the building height of the proposed development would not allow for a transition in height between adjoining buildings.



(Adam Smee)

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: 2 November 2018

Attachments:

Attachment B - CPC Agenda Documents

Attachment C - Referral Officer Report - Cultural Heritage Officer

Attachment D - UDAP Minutes - 15 August 2018

Attachment E - Referral Officer Report - Environmental Development Planner

Attachment F - UDAP Minutes - 23 October 2018