

Type of Report: Committee
Council: 3 June 2019
Expiry Date: 13 June 2019
Application No: PLN-19-126
Address: 18 AOTEA ROAD , SANDY BAY
Applicant: Lingyun Yang
27 Townsend street
Xiaoye Cai
5 Connaught place
Proposal: Change of Use to Visitor Accommodation
Representations: Five (5)
Performance criteria: Planning Directive 6; Parking and Access Code

1. Executive Summary

- 1.1 Planning approval is sought for a Change of Use to Visitor Accommodation, at 18 Aotea Road, Sandy Bay.
- 1.2 More specifically the proposal includes:
 - A change of use to the entire 377m2 dwelling, which includes a 3-car garage.
 - The proposed use references a no-party policy and other management measures to be enforced by a property manager.
- 1.3 The proposal relies on performance criteria to satisfy the following standards and codes:
 - 1.3.1 Planning Directive No. 6 - Exemption and Standards for Visitor Accommodation in Planning Schemes
 - 1.3.2 Parking and Access Code - Number of Car Parking Spaces.
- 1.4 Five (5) representations objecting to the proposal were received within the statutory advertising period between 8 April and 26 April 2019.
- 1.5 The proposal is recommended for approval subject to conditions.

1.6 The final decision is delegated to the Council.

2. Site Detail



Image 1: Aerial view of the subject property and surrounds.

- 2.1 18 Aotea Road, Sandy Bay Road is a 1023m² residential property with a 327m² dwelling located centrally on the sloping site. The subject property is located in an established residential area.

3. Proposal

- 3.1 Planning approval is sought for a Change of Use to Visitor Accommodation, at 18 Aotea Road, Sandy Bay.
- 3.2 More specifically the proposal is for:
- A change of use to the entire 377m² dwelling, which includes a 3-car garage (Plate 1).
 - The proposed use references a no-party policy and other management measures to be enforced by a property manager.



Plate 1: The front of the site and existing dwelling as viewed from Aotea Road.

4. Background

- 4.1 The existing dwelling had been operating as visitor accommodation without a permit for a period of time, which lead to Council investigation after complaints from local residents, and the current application being made.

5. Concerns raised by representors

- 5.1 Five (5) representations objecting to the proposal were received within the statutory advertising period between 8 April and 26 April 2019.
- 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.

The large scale of the dwelling has to date attracted large, intimidating groups and disruptive, destructive and unsocial use without effective management, causing issues with noise, privacy, amenity and the feeling of safety for local residents and their children. Unsafe movement of vehicles and parking of vehicles in the street, as well as overflowing rubbish bins are associated impacts. The dwelling's large scale and front deck lends itself to parties and as such makes it unsuitable for such an accommodation use in what has been and should be a quiet residential street. Mini vans and buses have been used to transport guests to and from the property and such vehicles cannot access the property due to the steep and tight access. As a result they are forced to park in the street causing issues for residents and other visitors.

The claims made by the applicant in the application about their contact details being made available to residents and their policies around the use of the accommodation are disputed as being untrue.

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 single dwelling (Residential). The proposed use is Visitor Accommodation. The existing use is a No Permit Required use in the zone. The proposed use is a permitted use in the zone.
- 6.4 The proposal has been assessed against:
- 6.4.1 Planning Directive No. 6 - Exemption and Standards for Visitor Accommodation in Planning Schemes.
- 6.4.2 E6.0 Parking and Access Code
- 6.5 The proposal relies on the following performance criteria to comply with the

applicable standards:

6.5.1 Planning Directive No. 6 - Visitor Accommodation P1

6.5.2 Parking and Access Code - Number of Car Parking Spaces - Part E
6.6.1 P1

6.6 Each performance criterion is assessed below.

6.7 Planning Directive No. 6 - Visitor Accommodation Part 3.1(e) P1

6.7.1 The acceptable solution at clause Part 3.1(e) A1 of Planning Directive No. 6 requires visitor accommodation to have a gross floor area of not more than 200m² per lot.

6.7.2 The proposal includes use of the entire existing dwelling for visitor accommodation, which has a gross floor area of 377m². Floor plans show five bedrooms as well as a home theatre/bedroom across the three levels of the dwelling.

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 Part 3.1(e) P1 provides as follows:

Visitor Accommodation must be compatible with the character and use of the area and not cause an unreasonable loss of residential amenity, having regard to:

(a) the privacy of adjoining properties;

(b) any likely increase in noise to adjoining properties;

(c) the scale of the use and its compatibility with the surrounding character and uses within the area;

(d) retaining the primary residential function of an area;

(e) the impact on the safety and efficiency of the local road network; and

(f) any impact on the owners and users rights of way.

6.7.5 There is no argument that the property is relatively large. As such, if used for visitor accommodation, it has the ability to accommodate larger groups, which in turn brings with it the increased possibility of improper use for things such as parties or generally unsocial behaviour. As the site is somewhat distant from venues catering for night time entertainment (restaurants, bars, night clubs, etc), and given its size, it is considered that there is an increased potential for the property to be used to host parties.

This is, on the face of it, supported by the claims of the representors, but conflicts with the details of the proposal, i.e. no-party policy and other management measures to be enforced by a property manager.

It is difficult to know whether there would be as much opposition to the proposed use if it hadn't previously been occurring in an allegedly unreasonable manner without a permit. If the incidents raised by representors as having resulted from the alleged improper use or ineffective management of the property as visitor accommodation hadn't already occurred, then there would be less of an evidence-based argument regarding the appropriateness or otherwise of the proposed use on the subject site. It is important to note that the assessment of a planning application cannot be based on matters that have occurred prior to the application being made, even if they are specific to the tests laid out in the relevant performance criteria.

What is evident is that although the applicant claims to have in place strict policies preventing parties from occurring on the premises, the allegation that such events have already occurred suggests that the use may not have been properly managed in the past in line with such policies. It is important, however, to distinguish between what has allegedly occurred previously on the property and what (although not necessarily clearly articulated as such) may now be a revised management methodology proposed by the applicant to support their proposal and to assist their proposal's performance against planning scheme standards. In fairness to the applicant, given this application must be assessed as though not having previously existed as a use on site, it must be considered that these management policies are intended to be part of the proposal moving forward if the application were to be approved.

If properly managed through strict policy and enforcement, the proposed use could exist amongst other residential uses without issue. The potential for impact upon residential amenity, purely given the size of the existing dwelling and what it can provide for, is reasonably high. On the other hand, given the larger size of the site and the greater curtilage around the dwelling (the adjacent site uphill to the south is vacant), the use could very easily operate without causing any disruption to residents in the area. In general terms, when considering the performance criteria associated with applications for a change of use of a single dwelling to visitor accommodation, and where that visitor accommodation is appropriately used and managed, matters relating to privacy, noise, maintenance of the local residential function and impacts on the safety and efficiency of the local road network are typically not problematic. It is

noted that dwellings adjacent to the north share a similar outlook and are oriented away from the subject dwelling. Dwellings on the opposite side of Aotea Road primarily back on to the street and face away from the subject site.

Although large with the potential for up to six bedrooms to be occupied, the occupancy of the dwelling for visitor accommodation, if used appropriately, should have no greater impact than if it were to remain a single dwelling residential use. As a large dwelling, the existing building is not out of character in the surrounding residential area and this compatibility would remain if used as visitor accommodation.

To ensure the use is managed appropriately as visitor accommodation it is considered appropriate that any approval granted for the use include the requirement for a strict management plan. This plan would be to the satisfaction of the Council's Director City Planning and would include measures to limit, manage and mitigate unreasonable impacts upon the amenity of local residents. The plan would also specify the maximum permitted occupancy of the accommodation, which in this case should be 12, based on up to six bedrooms used as double rooms. Also included in the plan would be details of rubbish and recycling management, as well as limitations on the number and type of vehicles allowed to be associated with occupiers, and that they must only be parked on the site and preferably within the three garage spaces available. Further the plan would include contact information for 24 hour a day access to the manager of the site. Once approved, the plan would then need to be circulated to surrounding residents.

6.7.6 The proposal complies with the performance criterion subject to conditions.

6.8 Parking and Access Code - Number of Car Parking Spaces - Part E 6.6.1 P1

6.8.1 The acceptable solution at clause Part E 6.6.1 A1 requires on site car parking to be provided in accordance with the proposed use at a rate no less and no greater than the number specified in Table E6.1. For Visitor Accommodation, the offering of an entire dwelling is considered to fall into the serviced apartment subclass, which requires one parking space to be allocated to the use.

6.8.2 The proposal includes the use of the existing three car garage within the ground level of the dwelling.

- 6.8.3 The proposal does not comply with the acceptable solution; therefore assessment against the performance criterion is relied on.
- 6.8.4 The performance criterion at clause Part E 6.6.1 P1 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.*
- 6.8.5 The provision of two additional spaces over and above the required single parking space is considered to be acceptable in terms of the scale of the proposed use. Due to its size and the number it can cater for, it is entirely possible that one parking space would be insufficient to accommodate the needs of likely occupants, however it is important to note that having too many parking spaces for such a use could also lead to an undesirable

outcome. That being said, there is also the distinct possibility that not all spaces would be required by guests even when arriving in their own car, in the same way as not all bedrooms would always be required for guests.

Provided that the existing parking spaces within the dwelling's garage are properly accessed and utilised when required, and it is noted from the representations received that due to the site's steep and narrow access guests may be reluctant to use the driveway to access the parking spaces, then the proposal having two too-many parking spaces is not considered to be unacceptable. The driveway to the garage and parking spaces is however existing, as are the spaces. The spaces are also internal to the dwelling. As the performance criteria are primarily geared towards testing the acceptability of parking provision lower than the amount required for a use, and as the spaces in question are existing, it is considered that the parking provision for the proposed use is acceptable. In line with the assessment of use above, it is considered appropriate to ensure that the number of vehicles and their type be limited as part of the management of the visitor accommodation. Guests should not be allowed to park off site and should arrive by vehicle capable of accessing the site by the existing driveway.

- 6.8.6 The proposal complies with the performance criterion subject to conditions.

7. Discussion

- 7.1 Planning approval is sought for a Change of Use to Visitor Accommodation, at 18 Aotea Road, Sandy Bay.
- 7.2 The application was advertised and received five (5) representations. The representations raised concerns including the scale and disruptive impacts of the use having already commenced at the site without approval or effective management, as well as the property being unsuited to such a use given the quiet residential character of the area.
- 7.3 The proposal has been assessed against the relevant provisions of the planning scheme and is considered to be acceptable subject to conditions, including a condition to ensure the use is appropriately managed.
- 7.4 The proposal has not been required to be assessed by other Council officers.

7.5 The proposal is recommended for approval.

8. Conclusion

8.1 The proposed Change of Use to Visitor Accommodation at 18 Aotea Road, SANDY BAY 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 Change of Use to Visitor Accommodation at 18 Aotea Road, SANDY BAY for the reasons outlined in the officer's report and a permit containing the following conditions be issued:

GEN

The use and/or development must be substantially in accordance with the documents and drawings that comprise PLN-19-126 - 18 AOTEA ROAD SANDY BAY TAS 7005 - Final Planning Documents except where modified below.

Reason for condition

To clarify the scope of the permit.

PLN 18

Prior to the commencement of the approved use, a management plan for the operation of the visitor accommodation must be submitted and approved, to the satisfaction of the Council's Director City Planning. The management plan must include measures to limit, manage and mitigate unreasonable impacts upon the amenity of permanent residents. These measures must include, but are not limited to, the following requirements:

- 1. A strict no-party policy, preventing events such as disruptive parties, functions, gatherings or otherwise to occur on site;**
- 2. An appropriate waste management protocol, including removal of rubbish after each booking;**
- 3. To limit, manage, and mitigate noise generated by the visitor accommodation;**
- 4. To limit, manage, and mitigate behavioural issues associated with the visitor accommodation;**
- 5. To specify the maximum permitted occupancy of the visitor accommodation. The accommodation must not be offered to more than twelve (12) guests, occupying up to six (6) rooms, at any one time;**
- 6. To specify the maximum number of vehicles to be associated with guests, their type and where they must be parked. Guests using the accommodation must have a maximum of three (3) standard vehicles that are all capable of being driven onto the site. The management plan must also specify that those vehicles are all parked on the site at all**

times in the existing garage spaces or elsewhere upon the site. Guests bringing their own vehicle/s must utilise on site parking spaces and vehicles must not be left parked in surrounding streets. Mini buses or coaches must not be allowed to be retained near the site by guests and can be used for drop off or pick up only.

Once accepted by the Council, the management plan must be:

- 1. Circulated by the property owner, at a minimum, to all adjoining properties and those directly opposite across Aotea Road;**
- 2. Implemented prior to the commencement of the approved use; and**
- 3. Maintained for as long as the visitor accommodation is in operation.**

Once approved, the management plan must be implemented prior to the commencement of the approved use and must be maintained for as long as the visitor accommodation is in operation.

Reason for condition

To ensure that visitor accommodation does not cause an unreasonable loss of residential amenity.

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.

VISITOR ACCOMMODATION

More information on visitor accommodation, including when building approval is required, can be found [here](#).

In all cases, check with your insurance company that you have adequate cover.

If you are in a bushfire prone area there may be a need to create/review the Bushfire Management Hazard Plan for your property.



(Cameron Sherriff)

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: 7 May 2019

Attachment(s):

Attachment B - CPC Agenda Documents