



CITY OF HOBART

AGENDA

Special City Planning Committee Meeting

Open Portion

Monday, 2 December 2019

at 4:25 pm

Lady Osborne Room

THE MISSION

Working together to make Hobart a better place for the community.

THE VALUES

The Council is:

People	We value people – our community, our customers and colleagues.
Teamwork	We collaborate both within the organisation and with external stakeholders drawing on skills and expertise for the benefit of our community.
Focus and Direction	We have clear goals and plans to achieve sustainable social, environmental and economic outcomes for the Hobart community.
Creativity and Innovation	We embrace new approaches and continuously improve to achieve better outcomes for our community.
Accountability	We work to high ethical and professional standards and are accountable for delivering outcomes for our community.

ORDER OF BUSINESS

Business listed on the agenda is to be conducted in the order in which it is set out, unless the committee by simple majority determines otherwise.

APOLOGIES AND LEAVE OF ABSENCE

- 1. INDICATIONS OF PECUNIARY AND CONFLICTS OF INTEREST 4**
- 2. COMMITTEE ACTING AS PLANNING AUTHORITY 5**
 - 2.1 APPLICATIONS UNDER THE HOBART INTERIM PLANNING SCHEME 2015 6**
 - 2.1.1 315 Elizabeth Street, North Hobart - Partial Demolition, Alterations Fencing and Partial Change of Use to Food Services - Deferral - PLN-19-103 6**

**Special City Planning Committee Meeting (Open Portion) held Monday, 2
December 2019 at 4:25 pm in the Lady Osborne Room.**

COMMITTEE MEMBERS

Deputy Lord Mayor Burnet (Chairman)
Briscoe
Denison
Harvey
Behrakis

Apologies:

Leave of Absence:

NON-MEMBERS

Lord Mayor Reynolds
Zucco
Sexton
Thomas
Dutta
Ewin
Sherlock

1. INDICATIONS OF PECUNIARY AND CONFLICTS OF INTEREST

Ref: Part 2, Regulation 8(7) of the *Local Government (Meeting Procedures) Regulations 2015*.

Members of the committee are requested to indicate where they may have any pecuniary or conflict of interest in respect to any matter appearing on the agenda, or any supplementary item to the agenda, which the committee has resolved to deal with.

2. COMMITTEE ACTING AS PLANNING AUTHORITY

In accordance with the provisions of Part 2 Regulation 25 of the Local Government (Meeting Procedures) Regulations 2015, the intention of the Committee to act as a planning authority pursuant to the Land Use Planning and Approvals Act 1993 is to be noted.

In accordance with Regulation 25, the Committee will act as a planning authority in respect to those matters appearing under this heading on the agenda, inclusive of any supplementary items.

The Committee is reminded that in order to comply with Regulation 25(2), the General Manager is to ensure that the reasons for a decision by a Council or Council Committee acting as a planning authority are recorded in the minutes.

2.1 APPLICATIONS UNDER THE HOBART INTERIM PLANNING SCHEME 2015

**2.1.1 315 Elizabeth Street, North Hobart - Partial Demolition, Alterations Fencing and Partial Change of Use to Food Services - Deferral - PLN-19-103
File Ref: F19/154039**

Memorandum of the Manager Development Appraisal of 29 November 2019 and attachments.

Delegation: Committee



City of **HOBART**

MEMORANDUM: CITY PLANNING COMMITTEE

315 Elizabeth Street, North Hobart - Partial Demolition, Alterations Fencing and Partial Change of Use to Food Services - Deferral - PLN-19-103

Background

This memorandum relates to PLN-19-103 proposing partial demolition, alterations, fencing and partial change of use to Food Services at 315 Elizabeth Street, North Hobart (operated under the name Boodle Beasley).

The application received 840 representations during its public notification period, 833 in support of the proposal and seven objecting to the proposal. The application was considered at the City Planning Committee meeting of 25 November 2019, with an officer recommendation for refusal based on grounds broadly related to the use of the rear section of the property being inconsistent with the residential zoning of that part of the site, and the proposal then not being consistent with special planning provisions within the *Hobart Interim Planning Scheme 2015* related to changes to existing non-conforming use. At that meeting, the Committee deferred determination of the application in the following terms:

That the matter be deferred to a special City Planning Committee meeting prior to Council on 2 December 2019 to enable officers time to liaise with the two representors that made deputations at the City Planning Committee meeting of 25 November 2019 and the applicant regarding the wording of potential conditions of approval that include the following:

- *Limiting the life of a possible planning permit to one year*
- *Requiring the operators to submit a Management Plan that stipulates how the site, particularly the external areas of the site to the rear of the existing building, will be managed to minimise detrimental impacts to adjoining uses and the amenity of the locality, and that considers matters including but not limited to:*
 - *Noise attenuation and possible boundary fence alterations with neighbouring properties*
 - *Minimising light spill to neighbouring properties*
 - *Hours of operation*
 - *Rear access provisions*

- *Contact numbers of the business manager*

In accordance with that deferral, potential conditions of approval have been formulated and are attached to this memorandum (Attachment A). Those potential conditions were forwarded for comment to the two representors that made deputations at the City Planning Committee meeting of 25 November 2019 and the applicant.

One of those representors indicated that their primary concern related to a fire management strategy, to cigarettes and to the large 'fire pit', which they described as being taller than a human, and being located near an adjacent shed used by that representor.

The other representor has indicated as follows:

Please find below my response to the Planning Committee's potential approval of the application by Boodle Beasley to use all of the outdoor spaces that they have been using and continue using without approval.

What are the reasons for potential approval

I would like to know the Planning Committee reason/s why the proposal for Boodle Beasley to expand their business into the Inner Residential Zone is more important than allowing me to have my residential amenity and that of the nearby residents? Boodle Beasley set up their restaurant/ outdoor area with flagrant disregard to the neighbours.

I am very disappointed that the Planning Committee seeks to accommodate the expansion of a business into the Inner Residential Zone that will financially benefit the two owners of the business, to my personal detriment and that of all surrounding residents.

Approval of the proposal will significantly devalue my properties in the Inner Residential zone as the residential amenity will be lost. It will also impede any potential development of these Inner Residential Zones. Why should the owners of surrounding properties have to face a potential financial loss?

Restaurants have operated on the site for 26 years without causing any harm to residents.

Later opening hours seven days a week and the extension into outdoor areas has encouraged a 'party' atmosphere where the emphasis is on drinking not eating. To say it is "family friendly" is ridiculous! Families will not have children out in a bar till midnight.

Who will monitor the noise levels and nuisance caused by this potential permit? I'm sure that the planning committee members would not allow this if it was their family homes being affected.

Numerous restaurants and hotels offering outdoor drinking and dining

There are numerous restaurants and hotels across Hobart that offer outdoor drinking and dining and the owners of Boodle Beasley already run Preachers in Battery Point.

There are two within 100 metres of Boodle Beasley, those being Room For A Pony and The Republic Bar and Café that have outdoor drinking and dining, beer gardens.

In addition, approximately 400m from Boodle Beasley will be the refurbished Crescent Hotel which is expected to re-open early next year, also with a beer garden.

Potential Conditions

Allowing Boodle Beasley to extend into the Inner Residential Zone will unreasonably impact on my residential amenity regardless of any conditions imposed as the main problem is the noise.

The proposal does not meet the *Hobart Interim Planning Scheme 2015* Regulations and the noise emitted from the outside areas of the venue is excessive. (Please read the noise emission report attached to the applicants proposal)

The Planning Committee does not appear to fully appreciate the significant intrusion of the continuous music and patron noise, at all times of the day and night. This will be for 16 hours a day!

The highest measurement of noise emitted was taken at my boundary fence where the deck has already been built and is still in use (without Council Planning approval).

The Tasmanian Environmental Protection Policy guidelines for Outdoor Living:

Noise of Serious annoyance is 55 db

Moderate annoyance is 50 db

The noise assessment at my boundary where the deck is situated, measured levels of 77db for 4 days running, that was only "customer voices" and did not include music.

Music is currently played on the deck and will no doubt continue.

If the noise measurement is higher than the Tasmanian EPP guidelines for Outdoor Living how can this be acceptable?

It is like living next door to a continuous party.

Building a 2.4 m high fence will not reduce the noise, no matter what materials are used. Also, the deck is elevated so any fence would have to be much higher than 2.4 to compensate for the difference in height.

My response to the potential conditions

The only way that the impact could be reduced would be to make opening hours changes as follows:

PLN 6

The use must not be open to the public outside of the following hours:

Venue:

8:00am to 12:00 midnight, Monday - Saturday

8:00am to 11:00pm, Sunday

Courtyard, deck and rear garden area:

8:00am to 6:00pm, Monday - Friday

Rear garden not used on Saturdays or Sundays

No speakers and no music to be played outside

The large wood burner is a safety issue, firstly for any children that would be in the area, there is no safety barrier, and to adjoining properties because of the risk of a fire.

Reason for these conditions:

To ensure that non-residential use does not unreasonably impact on residential amenity and property values.

The applicant has made two comments in relation to the potential conditions that were circulated.

The first comment relates to potential condition PLN s1, which as drafted, reads as follows:

PLN s1

The proposed use of the Rear Garden Area (ie. the area to the rear and the western side of the New Decking Area) is approved for one (1) year from the date of the issue of planning permit PLN-19-103. Following that date, use of the Rear Garden Area in association with the Food Services use of the site must cease unless prior, separate planning approval has been granted allowing that use to continue.

Reason for condition

To clarify the scope of the permit

The applicant has indicated that while, as drafted, the one year period would start from the date of the Council's decision, the actual use of the Rear Garden Area would not be able to commence until after any appeal period, and then after all conditions on any permit issued had been satisfied, including getting Council approval for the Management Plan mooted under condition PLN s2. They indicate that the time associated with those matters may significantly shorten the length of any approval granted by the Council for use of that area. They therefore request that, if the proposal is approved, the one year period start from the commencement of that part of the use, rather than the Permit date. If the Council support the imposition of a condition to reflect that change, it is recommended that condition PLN s1 be reworded so that the one year period commences from a known date - the date of approval by the Director City Planning of the Management Plan required by potential condition PLN s2 (which allows the use of the Rear Garden Area to commence). Such a condition could read as follows (proposed changes underlined):

PLN s1

The proposed use of the Rear Garden Area (ie. the area to the rear and the western side of the New Decking Area) is approved for one (1) year from the date of the approval by the City of Hobart's Director City Planning of the Management Plan required by condition PLN s2 of this planning permit. Following that date, use of the Rear Garden Area in association with the Food Services use of the site must cease unless prior, separate planning approval has been granted allowing that use to continue.

Reason for condition

To clarify the scope of the permit

The second comment relates to potential condition PLN s1, which as drafted, reads as follows:

ENG 5

No car parking is approved on-site under this permit.

Reason for condition

To ensure the provision of parking for the use is safe and efficient.

The applicant has indicated that the operators currently use the rear area for deliveries, and have therefore asked whether that condition, if imposed, could be amended to read as follows (proposed changes underlined):

ENG 5

No car parking (other than for delivery purposes) is approved on-site under this permit.

Reason for condition

To ensure the provision of parking for the use is safe and efficient.

The City of Hobart's Development Engineering Officer, however, indicates that the officer view is that condition ENG 5 should remain as drafted if imposed by Elected Members on an approval of the proposal – that is, to not allow any car parking on site, including for delivery purposes.

They indicate that there is a loading zone within 50 metres of the subject site on Elizabeth Street that meets the Acceptable Solution (A1) for Clause E6.7.13 – Facilities for Commercial Vehicles, and that that onsite commercial vehicle arrangements should not be accepted under performance criteria as they would compromise the safety and convenience of vehicular traffic, cyclists, pedestrians and other road users. In addition, the Development Engineering Officer indicates as follows:

The existing access within 315 Elizabeth Street (also Right of Way for 317 Elizabeth Street) appears to be less than 3.0m (2.74m) wide for the first ~21 metres and there is no Right of Way over 317 Elizabeth Street for No. 315 Elizabeth Street. Also, there are no sight triangles present either side of the access for pedestrian safety as prescribed in AS/NZ2890.1. A previously approved development application (930526) provided commentary regarding the access, referring to it as sub-minimum and having little scope of providing a further increase in parking to the four (4x) spaces being approved for the site in 1993. A cash-in-lieu contribution was taken at the time of that 1993 approval. Also at that time, there appeared no scope for alternative access to the rear of the applicant's property. The City Engineer at the time agreed that additional vehicles using the narrow right of way access to the rear of the property could not be condoned. They also indicated at the time that the minimum width for a commercial access (AS/NZ 2890.2 Table 3.1) was 3.6 metres, and that this could not be achieved.

It is worth noting that Council's current standards require a minimum driveway access width of 3 metres and the current pedestrian sight lines on-site would make it difficult to approve commercial access to this development under the current planning scheme.

It would consider it dangerous to approve commercial access to this development.

If Elected Members would prefer to grant approval for the application subject to conditions that reflect the applicant's suggested changes, a full list of potential conditions including those changes forms Attachment C to this memorandum.

Conclusion

Following deferral by the City Planning Committee, potential conditions of approval have been formulated, and comments have been provided from the two representors that made deputations at the City Planning Committee meeting of 25 November 2019 and the applicant.

The report at Attachment B to this memorandum contains the officer assessment of the proposal against the *Hobart Interim Planning Scheme 2015* and recommends refusal.

Following extensions of time being granted by the applicant, the application is due to expire on 2 December 2019.

Due to the number of objections received and the recommendation of refusal, delegation to determine the application rests with full Council.

RECOMMENDATION

That pursuant to the *Hobart Interim Planning Scheme 2015*, the Council refuse the application for partial demolition, alterations, fencing and partial change of use to food services at 315 Elizabeth Street, North Hobart TAS 7000 for the following reasons:

1. The proposal does not meet clause 9.1.1(c) of the *Hobart Interim Planning Scheme 2015* regarding *Changes to an Existing Non-conforming Use* because the existing Food Services use does not apply to the whole site.

2. The proposal does not meet clause 9.1.1(c) of the *Hobart Interim Planning Scheme 2015* regarding *Changes to an Existing Non-conforming Use* because the proposed minor development to a non-conforming use will not result in:
 - (a) *no detrimental impact on adjoining uses; or*
 - (b) *the amenity of the locality; and*
 - (c) *no substantial intensification of the use of any land, building or work.*




3. The proposal does not meet clause 9.5 of the *Hobart Interim Planning Scheme 2015* regarding *Change of Use of a Heritage Place* because there is not sufficient justification that the proposed prohibited use is required to facilitate the restoration, conservation and future maintenance of the historic cultural heritage significance of the place.

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.



Rohan Probert
**MANAGER DEVELOPMENT
APPRAISAL**

Date: 29 November 2019
File Reference: F19/154039

- Attachment A: PLN-19-103 - 315 Elizabeth Street - Possible Conditions of Approval ↓ 
- Attachment B: Officer Report for Planning Application PLN-19-103 dated 20 November 2019 with attachments ↓ 
- Attachment C: PLN-19-103 - 315 Elizabeth Street - Possible Conditions of Approval with suggested amendments from the applicant ↓ 

GEN

The use and/or development must be substantially in accordance with the documents and drawings that comprise PLN-19-103 315 ELIZABETH STREET NORTH HOBART TAS 7000 - Final Planning Documents except where modified below.

Reason for condition

To clarify the scope of the permit.

THC

The use and/or development must comply with the requirements of the Tasmanian Heritage Council as detailed in the Notice of Heritage Decision, THC Works Ref: 5858 dated 19 November 2019, as attached to the permit.

Reason for condition

To clarify the scope of the permit.

PLN 6

The use must not be open to the public outside of the following hours:

Venue, courtyard and deck areas:

- 8:00am to 12:00 midnight, Monday - Saturday
- 8:00am to 11:00pm, Sunday

Rear Garden Area

- 8:00am to 6:00pm, Monday - Sunday

Reason for condition

To ensure that non-residential use does not unreasonably impact on residential amenity

PLN s1

The proposed use of the Rear Garden Area (ie. the area to the rear and the western side of the New Decking Area) is approved for one (1) year from the date of the issue of planning permit PLN-19-103. Following that date, use of the Rear Garden Area in association with the Food Services use of the site must cease unless prior, separate planning approval has been granted allowing that use to continue.

Reason for condition

To clarify the scope of the permit

PLN s2

Prior to the commencement of the approved use of the New Decking Area and Rear Garden Area, a Management Plan for the operation of the New Decking Area and Rear Garden Area must be submitted and approved, to the satisfaction of the City of Hobart's Director City Planning. The Management Plan must include measures to minimise detrimental impacts on adjoining uses and the amenity of the locality. These measures must include, but are not limited to, the following requirements:

1. The hours of operation of the New Decking Area being confined to 8:00am to 12:00 midnight, Monday - Saturday and 8:00am to 11:00pm, Sunday;
2. The hours of operation of the Rear Garden Area being confined to 8:00am to 6:00pm, Monday - Sunday;
3. That the operators of the Food Services use introduce measures to minimise the likelihood of noise from the New Decking Area and Rear Garden Area creating a noise nuisance (as defined under the provisions of the *Environmental Management and Pollution Control Act 1994*) to adjoining properties. Those measures could include but are not limited to the installation of outdoor acoustic insulation. Prior to the commencement of the use of the New Decking Area and Rear Garden Area, the operators of the Food Services use must provide certification from a qualified Acoustic Engineer to the satisfaction of the City of Hobart's Director City Planning that such measures have been installed to minimise the likelihood of noise from the New Decking Area and Rear Garden Area creating a noise nuisance (under the provisions of the *Environmental Management and Pollution Control Act 1994*) to adjoining properties. Once approved by the Director City Planning, the measures referred to in the certification must be maintained on the site for as long as the New Decking Area and Rear Garden Area are being used in association with the use of the site for Food Services;
4. Details of how any amplified music will be located and/or managed within the New Decking Area and Rear Garden Area to minimise impacts upon adjoining uses and the amenity of the locality;
5. Details of how any open fires, including fire pots, will be located and/or managed within the New Decking Area and Rear Garden Area to minimise impacts upon adjoining uses and the amenity of the locality;
6. Details of how any lighting will be located and/or managed within the New Decking Area and Rear Garden Area to minimise impacts upon adjoining uses and the amenity of the locality;
7. Details of how the area between the rear boundary of the property and the new fence located approximately 3.0m in from the rear boundary of the property will be managed to minimise impacts upon adjoining uses and the amenity of the locality;
8. The side gate between the Rear Garden Area and the Right of Way to Elizabeth Street being closed after 6:00pm every day, with access to the venue after 6:00pm only being via the front door onto Elizabeth Street unless patrons are accompanied by a staff member;
9. The name/s and the phone number/s of the person/s responsible for the management of the operation of the Food Services use being provided, so that nearby residents have a 24 hour point of contact in relation to any complaints regarding the impact of the New Decking Area and Rear Garden Area upon adjoining uses and the amenity of the locality;
10. The operators of the Food Services use actively managing the behaviour of patrons within the New Decking Area and Rear Garden

Area to minimise impacts upon adjoining uses and the amenity of the locality;

11. That no parking will occur in the Rear Garden Area.

Once approved by the City of Hobart's Director City Planning, the Management Plan must be provided, at a minimum, to all owners/occupiers of all adjoining properties by the operators of the Food Services use.

Once approved, the Management Plan must be implemented prior to the commencement of the approved use of the New Decking Area and Rear Garden Area. The New Decking Area and Rear Garden Area must be operated in accordance with the approved Management Plan for as long as they are being used in association with the use of the site for Food Services.

Reason for condition

To minimise detrimental impacts to adjoining uses and the amenity of the locality

ENG 5

No car parking is approved on-site under this permit.

Reason for condition

To ensure the provision of parking for the use is safe and efficient.

ENG 1

Any damage to council infrastructure resulting from the implementation of this permit, must, at the discretion of the Council:

1. **Be met by the owner by way of reimbursement (cost of repair and reinstatement to be paid by the owner to the Council); or**
2. **Be repaired and reinstated by the owner to the satisfaction of the Council.**

A photographic record of the Council's infrastructure adjacent to the subject site must be provided to the Council prior to any commencement of works.

A photographic record of the Council's infrastructure (e.g. existing property service connection points, roads, buildings, stormwater, footpaths, driveway crossovers and nature strips, including if any, pre-existing damage) will be relied upon to establish the extent of damage caused to the Council's infrastructure during construction. In the event that the owner/developer fails to provide to the Council a photographic record of the Council's infrastructure, then any damage to the Council's infrastructure found on completion of works will be deemed to be the responsibility of the owner.

Reason for condition

To ensure that any of the Council's infrastructure and/or site-related service connections affected by the proposal will be altered and/or reinstated at the owner's full cost.

ADVICE

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

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

BUILDING PERMIT

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

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

PLUMBING PERMIT

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

OCCUPATION OF THE PUBLIC HIGHWAY

You may require a permit for the occupation of the public highway for construction (e.g. placement of skip bin, crane, scissor lift etc). Click [here](#) for more information.

GENERAL EXEMPTION (TEMPORARY) PARKING PERMITS

You may qualify for a General Exemption permit for construction vehicles i.e. residential or meter parking/loading zones. Click [here](#) for more information.

STORM WATER

Under section 23 of the Urban Drainage Act 2013 it is an offence for a property owner to direct stormwater onto a neighbouring property.

RIGHT OF WAY

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

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

FEES AND CHARGES

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

City of **HOBART****APPLICATION UNDER HOBART INTERIM PLANNING SCHEME 2015**

Type of Report:	Committee
Council:	2 December 2019
Expiry Date:	2 December 2019
Application No:	PLN-19-103
Address:	315 ELIZABETH STREET , NORTH HOBART
Applicant:	(Boodle Beasley by agent Ireneinc Planning and Urban Design) C/- 49 Tasma Street
Proposal:	Partial Demolition, Alterations, Fencing and Partial Change of Use to Food Services
Representations:	Eight hundred and forty (840) representations - eight hundred and thirty three (833) in support and seven (7) objecting to the proposal.
Performance criteria:	Use, Setbacks and Building Envelope, Heritage and Parking and Access

1. Executive Summary

- 1.1 Planning approval is sought for Partial Demolition, Alterations, Fencing and Partial Change of Use to Food Services at 315 Elizabeth Street, North Hobart.

- 1.2 The proposal is for the extension of the existing Food Services use of the site, with associated decking, landscaping, fencing, and minor external and internal alterations to the existing venue of 315 Elizabeth Street, North Hobart.

The proposed extension of the use is to allow for the informal gravel car parking area and rear yard area to be used as an outdoor space associated with the existing restaurant use. The majority of the area will be covered in artificial turf, with garden beds and a section of crushed stone at the rear of the site. The proposal also includes a 21.5m² low level deck extension to the existing deck and courtyard area, as well as a 2.4m high paling fence constructed along the rear and side boundaries.

The venue's existing operating hours are 11:00am to 12:00 midnight, Monday to Friday, 6:00pm to 12:00 midnight Saturdays and 6:00pm to 11:00pm on Sundays. The proposal seeks to extend the venue's existing hours to allow for an earlier daytime opening time of 8:00am. However the rear outdoor garden area only proposes operating hours of 8:00am to 6:00pm seven days a week. The use of the new deck area is to be consistent with the existing deck, courtyard area and venue with the proposed operating hours of 8:00 am to 12:00 midnight Monday to Saturday and 8:00am to 11:00pm on Sundays.

The other minor external and internal alterations are primarily decorative elements, improvements to toilet facilities, plus kitchen and bar fitout works, with the demolition of an existing pergola structure undertaken by previous operators. The majority of the works have been undertaken, however the use of the rear yard has since ceased from its initial unapproved usage.

- 1.3 The proposal relies on performance criteria to satisfy the following standards and codes:
- 1.3.1 Inner Residential Zone - Use
 - 1.3.2 Inner Residential Zone - Development Standards - Setbacks and Building Envelope
 - 1.3.3 Historic Heritage Code
 - 1.3.4 Parking and Access Code
- 1.4 Eight hundred and thirty three (833) representations in support and seven (7) representations objecting to the proposal were received within the statutory advertising period between 21 October and 5 November 2019.
- 1.5 The proposal is recommended for refusal.
- 1.6 The final decision is delegated to the Council.

2. Site Detail

- 2.1 The 809m² site (CT109396/1) is located in the North Hobart restaurant strip and contains an existing two storey heritage listed building. Since 1993, the venue has been used as a restaurant with a variety of businesses occupying the venue over the years. It has a courtyard and deck area to the rear, along with a small toilet amenities and storage building. The rest of the rear yard area is a gravel area that has previously been informally used for car parking with only four car parks officially existing on the site from its previous use as a furniture store. The rear yard is accessed via a relatively narrow 2.74m wide right of way. The site is also subject to two zones under the *Hobart Interim Planning Scheme 2015*, with the General Business Zone covering the front section of the site and the Inner Residential Zone the rear. The intersection of the two zones on site is approximately at the alignment of the existing deck and amenities building.



Figure 1: GIS Image 1:2000 Scale



Figure 2: GIS Image 1:1000 Scale



Figure 3: Site frontage



Figure 4: Rear garden area when it was in use

3. Proposal

- 3.1 Planning approval is sought for Partial Demolition, Alterations, Fencing and Partial Change of Use to Food Services at 315 Elizabeth Street, North Hobart.

- 3.2 The proposal is for the extension of the existing Food Services use of the site, with associated decking, landscaping, fencing, and minor external and internal alterations to the existing venue at 315 Elizabeth Street, North Hobart.

The proposed extension of the use is to allow for the informal gravel car parking area and rear yard area to be used as an outdoor space associated with the existing restaurant use. The majority of the area will be covered in artificial turf, with garden beds and a section of crushed stone at the rear of the site. The proposal also includes a 21.5m² low level deck extension to the existing deck and courtyard area, as well as a 2.4m high paling fence constructed along the rear and side boundaries.

The venue's existing operating hours are 11:00am to 12:00 midnight Monday to Friday, 6:00pm to 12:00 midnight Saturdays, and 6:00pm to 11:00pm on Sundays. The proposal seeks to extend the venue's existing hours to allow for an earlier daytime opening time of 8:00am. However, the rear outdoor garden area only proposes operating hours of 8:00am to 6:00pm seven days a week. The use of the new deck area is to be consistent with the existing deck, courtyard area and venue, with the proposed operating hours of 8:00 am to 12:00 midnight Monday to Saturday and 8:00am to 11:00pm on Sundays.

The other minor external and internal alterations are primarily decorative elements, improvements to toilet facilities, plus kitchen and bar fitout works, with the demolition of an existing pergola structure undertaken by previous operators. The majority of the works have been undertaken, however the use of the rear yard has since ceased from its initial unapproved usage.

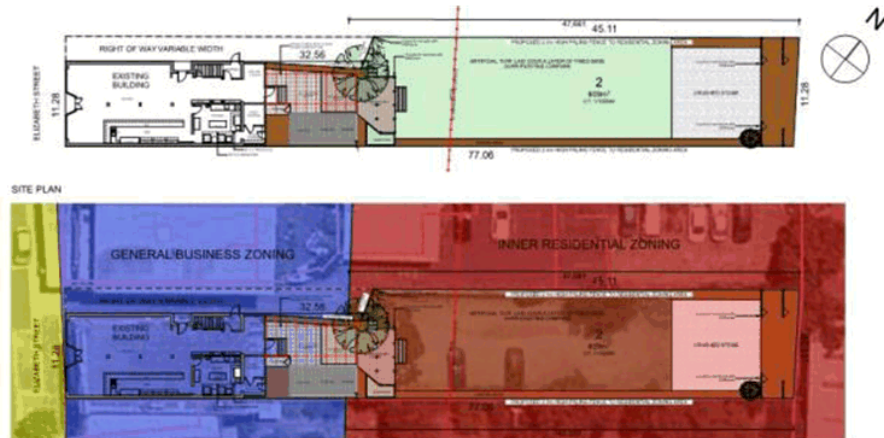


Figure 5: Proposal and Zoning Plan

4. Background

- 4.1 The site has an existing approved use as restaurant since 1993, with various operators using and adapting the venue since then.
- 4.2 The City of Hobart first became aware of works being undertaken onsite with respect to the preparation of the venue for opening. Then at a later, the City became aware of the use of the rear area for outdoor dining and drinking. That area included two shipping containers, a deck extension, the covering of the rear area in artificial turf, landscaping and use of the area during the venue's operating hours. It was requested that a planning application be lodged for the that development and the proposed extension of the the use into the rear area of the site. Reportedly, the operator was not aware the works and use of the rear yard required planning approval.

5. Concerns raised by representors

- 5.1 Eight hundred and forty (840) representations - eight hundred and thirty three (833) in support and seven (7) objecting to the proposal - were received within the statutory advertising period between 21 October and 5 November 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 garden offers a safe, family-friendly dining/entertainment option away from traffic in North Hobart, is in keeping with the site's historical use and optimises the use of a valuable and functional urban space.
It's a great space to eat and drink, and the business treats the environment around it really well.
Hobart needs more outdoor social areas to make the most of the little summer days we get.
I also live right next door to a Hobart pub and don't find any issues with it. We should be helping to bring Hobart city to life and supporting our local businesses.

<p>The lawn area provides for an outdoor space like no other in North Hobart's restaurant strip. Or elsewhere in Hobart for that matter and that point of difference should be encouraged. To be able to sit outside, enjoy a drink, meal or community engagement away from traffic is what we need more of. Not to an area made only worse by turning it into yet another, albeit very small car park. Endorse the application before HCC and build a public car park in the old Chickenfeed carpark to service the needs of everyone wishing to use businesses in North Hobart and bring back Boodle Beasley's backyard.</p>
<p>It truly is a one of a kind space and has been sadly missed for almost 12 months.</p>
<p>This space presents no incursion on pedestrian spaces of North Hobart and offers a safe secluded space to support the growing population of North Hobart and surrounding area's leisure time. Which as you can understand for positive mental health is needed for a healthy population.</p>
<p>The city needs more spaces like this and it's absurd that it has been taken away, especially coming into summer! There are not enough great outdoor dining spaces in North Hobart.</p>
<p>I was lucky enough to use the space before it was cordoned off, and think it represents a pleasing use of this space. There are certainly not enough venues around with outdoor areas such as this, and it would be a shame to not use this one!</p>
<p>As our city becomes bigger and busier I think North Hobart should be promoting this wonderful open green space for cultural use and not as car parking. Why on earth would we promote people driving their fossil fuelled cars by giving them more spaces to park, over a shared and loved community space?!</p>
<p>This strip of Hobart has been a hub of the Hobart City for more than a decade. Residential/residents that choose to live in this environment is by choice the area is a mainstream food & bar hub. If u live there u must love the lifestyle. The HCC has never once questioned the space when it was under different management & I have been to many functions over the years in the back area of that building which have gone way longer.</p>
<p>Greater Hobart has few beer gardens and indeed inner Hobart has only one other vaguely green beer garden away from traffic. North Hobart has none. It was a place I am proud to bring my interstate and overseas friends to as it showcases the urban space rarely seen in other cities and Hobart's more amenable weather and fresh air. Losing it would be detrimental.</p>
<p>They also provide spacious safe off street bike parking which no other establishment provides in North Hobart. This reduces congestion by reducing the number of cars coming to the area as well - an added bonus for this area.</p>

<p>Prior tenants/owners that operated the premises since 1993 in accordance with the General Business Zone did not cause any problems to the surrounding properties including those located on the northern and southern boundaries in the Inner Residential Zone.</p>
<p>Since Boodle Beasley has expanded their operations into the Inner Residential Zone without Planning Approval I have completely lost all privacy and quiet enjoyment of my home and garden.</p>
<p>The application documents have a number of incorrect statements in respect of the adjoining properties.</p>
<p>Approval of this proposal would provide a precedent for all businesses that have a portion of their property in the Inner Residential Zone to access that Zone, which would be of significant detriment to the community.</p>
<p>Although there is no seating in the extended deck area in the Inner Residential Zone it will not remove the emitted amount of noise from the property.</p>
<p>The proposed operating hours are significantly longer than has been used by any other restaurant since the premises commenced use as a restaurant (1993). The longer hours plus the use of the full outside area of the property for service of food and alcohol from 8am daily does not give me any chance to relax and enjoy my own heritage listed home and garden, as well as no opportunity for quiet and privacy.</p>
<p>The current outdoor fairy lights in the large gum tree are a disturbance to residents.</p>
<p>The use class should be a Hotel Industry as they hold a number of events and classes there, as well as the sale of food and alcohol.</p>
<p>The proposal does not meet any of the following:</p> <p>(a) no detrimental impact on adjoining uses;</p> <p>The proposal has a significant detrimental impact on the residents that live nearby and on the northern and southern boundaries of the property that lie in the Inner Residential northern and southern boundaries of the property that lie in the Inner Residential Zone.</p> <p>(b) the amenity of the locality; and</p> <p>The proposal (and the current unapproved) use of the property is detrimental to the amenity of the locality that is the Inner Residential Zone as it is very intrusive – lack of privacy, constant loud music, excessive patron noise, swearing and unpleasant behaviour especially late in the evening.</p> <p>Surrounding properties would be reluctant to make any investment due to the impact of the use on the area.</p>

<p>The proposal does not meet clause 9.1.1(c) of the <i>Hobart Interim Planning Scheme 2019</i>, as the proposal is a significant development to a non-conforming use in an Inner Residential Zone. The proposal (and current unapproved) use of the property will result in significant intensification of use of the existing building and the land in the Inner Residential Zone through the additional numbers of patrons accessing and using the site.</p>
<p>The reuse and works associated with the heritage listed building are not sufficient justification to approve the use.</p>
<p>The proposal does not meet the Use standards for the Inner Residential Zone in respect of hours of operation, noise and lighting.</p>
<p>The proposal does not meet the requirements of clause 11.4.3 Site coverage and open space as the development has a site coverage of more than 50%.</p>
<p>The proposal doesn't meet the requirements of the Parking and Access Code.</p>
<p>There are inconsistencies in the submitted Noise Assessment in respect of the areas it is assessing and hours of operation, and does not take into account music being played outside.</p> <p>Also questions to the methods used in the Noise Assessment in terms of the measurement of patron noise and determination whether correct measure of the term intrusive is used.</p>
<p>Concern at the potential risk of fire to the adjoining shed, used timber furniture and lighting design from materials close to the fence, the existing fire pot and long grass combined with people smoking. The shed is a timber structure and contains a large amount of timber. It is not demonstrated how the applicant seeks to eliminate the risk of fire damage to the shed, its contents or occupants, due to the actions of the applicant or their guests.</p>
<p>Objection to the reopening of Boodle Beasley as it becomes extremely loud in the late afternoon and evening and I am unable to use my outdoor space or enjoy the company of visitors.</p>
<p>I cannot have any open windows and even to watch television the volume needs to be turned right up due to the background noise of the music.</p>
<p>I am unable to sleep before 11pm or 12 midnight, 5 nights a week.</p>
<p>There should be noise restrictions put in place so all the residents around this area can at least live normal lives.</p>
<p>I have never complained before, but feel I need to at this time. All the other establishments around this area do not infringe on anyone's right to enjoy their home and also have music/entertainment so I fail to see how this business can encroach on daily living as much as it does.</p>

The management do not seem to have any plans in place to restrict or soften the noise that emits from the backyard yard.
Concern at the stability of the fence and financial responsibility.
Does the fence give licence to turn up the music?
Short term respect for residents on either side of the property.
The gate should be closed and all traffic go to the street entrance.
The North Hobart area is already severely lacking adequate parking. Boodle Beasley (prior to their renovations), had the opportunity to offer their customers parking but declined to.
The area should be turned back into parking for their customers as it will help ease the issue in the area.
When the rear area was operating there was a trial period where the gate to the rear of the property was kept open however it resulted in a number of issues. These included congregating of patrons in the laneway drinking and smoking, using it as a toilet, broken glass, rubbish and using the side entrance as a main business entrance, (will cause someone to get hurt in the long run, as it is too narrow).
There are a number of key proposals, claims and assertions within the submission that I find to be either very mistaken or blatantly false. It is claimed that it is to operate as Food Service (restaurant) rather than a bar to grant the ability to use the outdoor space for dining. The use of unsourced dictionary definitions for justification that it is restaurant is incredibly weak. The venue has a significant selection of alcohol with limited food options. The social media for the venue refers to it as Boodle Beasley, Bar Craft beer + Cocktails with promotions and photos and promotions of Alcohol are featured in roughly 90% of images and food roughly 15%. It appears that the business is not operating as a restaurant but as bar.
The noise from patrons will not be mitigated by the fence. It is understood that the use, when operating, had considerable impacts on both the residential and commercial neighbours.
The rules and restrictions to venues should be applied fairly across the board. We operate as a genuine food service. We also have had to consider noise impacts.
The removal of the parking to the rear utilised by staff members of previous uses will only add to the parking congestion of 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 General Business Zone and Inner Residential Zone of the *Hobart Interim Planning Scheme 2015*.



Figure 6: Zoning overlay of the site

- 6.3 The proposal states that the existing use operates as Food Services in the form of a restaurant and will continue to do so. The Food Services use is a permitted use in the General Business Zone, however a prohibited use in the Inner Residential Zone. The intersection of the two zones on site is approximately at the alignment of the existing deck and amenities building, with the proposed deck extension and rear yard area sited within the Inner Residential Zone.

The proposal seeks to use the entire rear area for the use of Food Services, which is a prohibited use in the Inner Residential Zone.

Clause 9.1.1 - Changes to an Existing Non-conforming Use - of the *Hobart Interim Planning Scheme 2015* allows for the consideration of prohibited uses in certain circumstances. It states:

9.1 Changes to an Existing Non-conforming Use

9.1.1

Notwithstanding any other provision in this planning scheme, whether specific or general, the planning authority may at its discretion, approve an application:

(a) to bring an existing use of land that does not conform to the scheme into conformity, or greater conformity, with the scheme; or

(b) to extend or transfer a non-conforming use and any associated development, from one part of a site to another part of that site; or

(c) for a minor development to a non-conforming use,

where there is –

(a) no detrimental impact on adjoining uses; or

(b) the amenity of the locality; and

(c) no substantial intensification of the use of any land, building or work.

In exercising its discretion, the planning authority may have regard to the purpose and provisions of the zone and any applicable codes.

The application as submitted suggests that the existing restaurant use extends to the entire site, and therefore that the application is applying for a minor development to a non-conforming use, and therefore must be considered against the following:

(c) for a minor development to a non-conforming use,

where there is –

(a) no detrimental impact on adjoining uses; or

(b) the amenity of the locality; and

(c) no substantial intensification of the use of any land, building or work.

In exercising its discretion, the planning authority may have regard to the purpose and provisions of the zone and any applicable codes.

City of Hobart officers have sought external legal advice (Attachment C to this report) in relation to the following two aspects of the proposal:

(a) what is the meaning and scope of “minor development” as it appears within the clause and in the context of the application; and

(b) what is the meaning and scope of “substantial intensification” as it appears

within the clause and in the context of the application.

As part of the preparation of that advice, an examination of the existing use rights relating to the property was undertaken. Under the approval of the original restaurant application use in 1993, it was acknowledged that there were four existing car parking spaces on the property, one being in a carport existing at the time and three in the gravel area adjacent to that carport. Therefore, that area of the site (located within the residentially zoned land), but not the whole site, was associated with the restaurant use for the purposes of car parking. The image below shows the location of the carport and therefore the alignment of the adjacent three car parking spaces. The legal advice concluded that the existing use rights of the restaurant use within the Inner Residential Zone section of the site are confined to this area - approximately half the site - and only relate to the use of it for car parking ancillary to the primary use.



Figure 7: Existing Site Plan from the 1993 application

Setting aside for a moment this consideration that the existing use relates to only half of the site, and continuing with the assessment of the proposed use of the whole site against clause 9.1.1(c), one aspect of the legal advice sought was whether the proposed works were considered a 'minor development'. It is worth noting that at the time the advice was sought, it was at an earlier stage of the application's consideration, where the application included additional works for two shipping containers onsite. However, even with the inclusion of those additional aspects of the development (which have since been omitted from the proposal), the legal advice concluded that the works could be considered a minor development.

When considering proposed minor development to a non-conforming use under clause 9.1.1(c), the proposal must demonstrate that there is:

- (a) *no detrimental impact on adjoining uses; or*
- (b) *the amenity of the locality; ...*

The rear of the site, proposed under this application to be used in its entirety as part of the Food Services use of the whole site, has been informally used for car parking at a much greater capacity than the 4 car parking spaces sited in the area of the rear yard closest to the main building associated with the existing approval. The rear of the site has also reportedly been used for storage for previous restaurant uses.

The adjoining site to the north at 317 Elizabeth Street has a similar 'split' zoning, with the property containing a flat and a retail premises fronting Elizabeth Street, with a large rear area containing a mix of formal and informal car parking spaces. The property to the south at 313-313a Elizabeth Street contains a residence with a section of the building used for a health studio. It has a large, vegetated, undeveloped rear yard, and is also subject to two zones under the *Hobart Interim Planning Scheme 2015*. The property to the rear at 45B Burnett Street is fully contained within the Inner Residential Zone and is a manufacturing workshop.

The use of the rear garden area as an extension of the restaurant use in this location arguably provides some consistency with the Zone Purpose through providing a compatible non-residential use that primarily serves the local community. It also does not displace an existing residential use. However, it is questionable whether the component of the Zone Purpose Statement requiring that the amenity of existing residential uses not being adversely affecting would be met.

The operation of the rear garden area is to be between 8:00am and 6:00pm which is consistent with permitted hours for the zone. As assessed under the submitted acoustic assessment, the proposed use would also meet the Acceptable Solution for noise emissions between 8:00am and 6:00pm in respect of patron noise. The use of the rear yard area also meets most acceptable Use Standards under clause 11.3 of the Inner Residential Zone. The exception to this, however, is the new section of deck which extends 4m from the existing deck, and is proposed to operate in conjunction with the existing deck/courtyard area and venue, during the hours of 8:00am to 12:00 midnight Monday to Saturday and 8:00am to 11:00pm on Sundays. It is difficult to determine the potential additional impact that the 21.5m² of area would generate relative to the existing deck/tiled courtyard area. There is no current restriction on patron numbers in that area, and it could be argued that the deck extension would not necessarily result in a greater number of patrons - rather just a potential wider spread of patrons throughout the enlarged deck and courtyard area.

When considering whether the proposal causes no detrimental impact on adjoining uses or the amenity of the locality, the submitted acoustic report does not specifically assess the potential increase in noise associated with use of the proposed deck extension relative to the existing deck and tiled courtyard area. The

report also relates to the operation of the rear yard area until 10:00pm, as that was the originally proposed time for use of the rear area, rather than 6:00pm. The report gives an assessment of general patron noise in the vicinity of the proposed deck extension, and includes noise associated with the use of the rear yard and the existing deck and tiled courtyard area. Taking into account the increased height of the fencing to 2.4m and noise associated with the existing restaurant, noise associated with the proposed use was assessed as *not being intrusive* in the approximate location of the proposed deck extension. It should be noted that in this new section of deck, there is no seating proposed after 6:00pm, therefore likely further reducing potential noise. The acoustic report does not specifically address amplified music intrusion from the area of the proposed deck extension, and although the existing operation may occasionally play music, consideration of the levels of potential music intrusion into the Inner Residential Zone would need to be addressed to minimise those potential impacts from the use. Another factor that could potentially limit the impact of the proposed use would be for the venue to make access to the rear area after 6:00pm be via the front door only and not the side gate unless accompanied by staff. This would allow the venue to have control of the usage of this area and awareness of the patrons using it. It would also help address any amenity issues in respect of the use of the laneway.

The requirement however within clause 9.1.1 of the *Hobart Interim Planning Scheme 2015* that there be *no detrimental impact on adjoining uses or the amenity of the locality* sets a very high regulatory bar for the planning application to clear. The existing area in the Inner Residential Zone that is subject to the application has previously had very limited use and activity. To then propose to substantially intensify the commercial use of the space for the entire site and argue that it will have no detrimental impact on the adjoining uses is difficult regardless of how the proposed use may be managed. Even the considerations above in relation to noise do not remove that impact - rather, they seek to minimise its intrusiveness. The noise associated with the proposed use of the rear area is considered to be directly associated with having patrons, and potentially a large number of patrons, using the area, and a detrimental impact that is difficult to avoid. It is also clearly apparent from the submitted representations that when the rear area was being utilised (without approval), detrimental impacts to adjoining uses were occurring. It is not evident how the proposal could function without resulting in detrimental impact on adjoining uses or the amenity of the locality.

The other requirement for assessing the acceptability a minor development to a non-conforming use under clause 9.1.1 is consideration of the following part of the clause:

(c) no substantial intensification of the use of any land, building or work.

This subclause formed the second aspect of the requested external legal advice - namely, to determine the meaning and scope of 'substantial intensification', and whether the minor development of the non-conforming use in this case resulted in a substantial intensification of the use of the land. The advice concluded that the extension of the Food Services use into that area of the site is a substantial intensification relative to its existing approved use. This consideration was based on the design of the area allowing for the accommodation of a large number of patrons and the general increased activity of the area.

In light of this advice, it is determined that the use as proposed in the Inner Residential zoned section of the site is considered a substantial intensification of the existing use. Therefore, clause 9.1.1 cannot be used to approve the proposal even if the use has no detrimental impact on adjoining uses or the amenity of the locality, as the proposal is inconsistent with subclause 9.1.1(c). It was also determined that the existing use rights of the Food Services use only extend to approximately half the of the site.

It is therefore considered that the extension of the use as proposed must be refused. The applicants were made aware of the likelihood of this conclusion and likely officer recommendation early in the overall assessment process, prior to the advertising of the application.

- 6.4 The proposal has been assessed against:
 - 6.4.1 Part C 9.1 Changes to an Existing Non-conforming Use
 - 6.4.2 Part D - 11 Inner Residential Zone
 - 6.4.2 Part D - 21 General Business Zone
 - 6.4.3 Part E2.0 Potentially Contaminated Land Code
 - 6.4.3 Part E6.0 Parking and Access Code
 - 6.4.3 Part E7.0 Stormwater Management Code
 - 6.4.4 Part E13.0 Historic Heritage Code
- 6.5 The proposal relies on the following performance criteria to comply with the applicable standards:
 - 6.5.1 Setbacks and Building Envelope – Part D 11.4.2 P3

- 6.5.2 Heritage – Part E E13.7.1 P1, E13.7.2 P1 & P2, E13.8.1 P1 and Part C 9.5
- 6.5.3 Parking and Access Code Part E - E6.6.1 P1
- 6.6 Each performance criterion is assessed below.
- 6.7 Setback and Building Envelope Part D 11.4.2 P3
- 6.7.1 The proposed 2.4m high fencing exceeds the exempt height of 2.1m for side and rear boundary fencing. Therefore the fencing is subject to clause 11.4.2 A3 - setbacks and building envelope.
- 6.7.2 Due to its nature, the proposed fencing is within 1.5m of the side boundary and within the 3m rear setback.
- 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 D 11.4.2 P3 provides as follows:
- P3*
- The siting and scale of a dwelling must:*
- (a) not cause unreasonable loss of amenity by:*
- (i) reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining lot; or*
- (ii) overshadowing the private open space of a dwelling on an adjoining lot; or*
- (iii) overshadowing of an adjoining vacant lot; or*
- (iv) visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining lot; and*
- (b) provide separation between dwellings on adjoining lots that is compatible with that prevailing in the surrounding area.*
- 6.7.5 The proposed fencing's 300mm increase above the exempt height for

fencing to 2.4m will allow for increased privacy for the subject site and the neighbouring properties. Only the property at 313-313a Elizabeth Street has a section of land associated with a residential use adjoining where the fence is to be constructed. The significant rear yard area of that property contains established vegetation, and the minor increase in fence height is not considered to result in unreasonable visual impact or overshadowing, particularly on habitable rooms or developed private open space areas of that property. To the rear of the subject site adjoining the boundary is the existing workshop, and to the northern side is a car parking area, with no foreseeable impact on residential amenity in either case. The fence ensures the rear garden space is more of a sanctuary and will screen the adjoining car parking area from view.

6.7.6 The proposal complies with the performance criterion.

6.8 Heritage – Part E E13.7.1 P1, E13.7.2 P1 & P2, E13.8.1 P1 and Part C 9.5

6.8.1 The subject site is a listed property under the Historic Heritage Code and is also located within a Heritage Precinct of the *Hobart Interim Planning Scheme 2015*, and therefore the Council's Cultural Heritage Officer has provided the following assessment:

315 Elizabeth Street, North Hobart proposal for Change of Use, Partial Demolition, Alterations, New Outdoor Dining, and New Buildings for storage.

Number 315 Elizabeth Street is a listed place in Table E13.1 of the Hobart Interim Planning Scheme 2015 and is partially located within the North Hobart 6 Heritage Precinct. The building is a substantial Federation Free-Classical commercial building with a prominent street frontage. The two-storey building has a ground floor shopfront with an early shop front window featuring a recessed central doorway. The façade features an ornate central gabled pediment and colonnaded parapet, all with a stuccoed concrete finish. The upper storey has a central arched window flanked by two narrower arched windows with timber sashes and multi-paned upper sashes. The top portion of the upper storey of the façade features concrete stucco, with the lower portion face brick and features arched lintels with central keystones and cornice. The rear yard of the property is a large open space and has remained largely undeveloped. With the majority of historic activity and uses being confined within the building footprint.

The proposal seeks retrospective approval for the alterations to the rear

patio/deck area and the rear yard, along with the previous alterations including the removal/demolition of a pergola structure, and minor internal alterations and works. The proposal must be assessed against E13.7 Development Standards for Heritage Places, and E13.8 Development Standards for Heritage Places. The proposal also included documents that address 9.5 Change of Use of a Heritage Place, the proposal has been assessed against these clauses. Council received 840 representations during the advertising period, 7 against the proposal and 833 for the proposal. Many representations in support the proposal used [a] proforma with the following statement that mentions historical use 'The garden offers a safe, family-friendly dining/entertainment option away from traffic in North Hobart, and is in keeping with the site's historical use.' One representation against raises heritage concerns that 'The proposal does not meet any of the provisions 9.5.3(a),(b),(c),(d) and most importantly (e)'.

North Hobart 6 – Statement of Significance:

1. The fine quality and quantity of Old Colonial, mid to late Victorian, Federation and Inter War commercial/residential buildings demonstrate its original mixed use nature
2. Intact individual houses that are representative examples of Old Colonial and Federation residential architecture.
3. The continuous two storey (mostly brick) facades, general uniformity of form and scale together with a distinctive nineteenth century subdivision pattern that create a consistent and impressive streetscape.
4. The front gardens of a few properties south of Burnett Street, and more recent street art are important aesthetic features that reinforce its mixed use character.

E13.7 Development Standards for Heritage Places

E13.7.1 Demolition

Objective:

To ensure that demolition in whole or part of a heritage place does not result in the loss of historic cultural heritage values unless there are exceptional circumstances.

Performance Criteria 1

Demolition must not result in the loss of significant fabric, form, items, outbuildings or landscape elements that contribute to the historic cultural heritage significance of the place unless all of the following are

satisfied;

(a) there are, environmental, social, economic or safety reasons of greater value to the community than the historic cultural heritage values of the place;

(b) there are no prudent and feasible alternatives;

(c) important structural or façade elements that can feasibly be retained and reused in a new structure, are to be retained;

(d) significant fabric is documented before demolition.

The proposal does not involve any demolition of significant heritage fabric. The removal / demolition of the rear pergola structure will not result in the loss of historic heritage values of the place and is considered acceptable. E.13.7.1 Performance Criteria 1 is satisfied.

E13.7.2 Buildings and Works other than Demolition

Performance Criteria 1

Development must not result in any of the following:

(a) loss of historic cultural heritage significance to the place through incompatible design, including in height, scale, bulk, form, fenestration, siting, materials, colours and finishes;

(b) substantial diminution of the historic cultural heritage significance of the place through loss of significant streetscape elements including plants, trees, fences, walls, paths, outbuildings and other items that contribute to the significance of the place.

The former rear car park is proposed for usage as an outdoor dining and entertainment area, the proposal involves low impact development such as outdoor furnishings, and the installation of a synthetic turf ground finish. Internally changes include new lighting, bar, painting, and the installation of a partition wall in the upper floor bar area. The proposed works are not considered to impact upon the historic cultural heritage significance of the place and will not result in the loss of heritage significance of the place. E.13.7.2 Performance Criteria 1 is satisfied.

Performance Criteria 2

Development must be designed to be subservient and complementary to the place through characteristics including:

(a) scale and bulk, materials, built form and fenestration;

- (b) setback from frontage;*
- (c) siting with respect to buildings, structures and listed elements;*
- (d) using less dominant materials and colours.*

The rear yard works are considered to be minor developments and will have no impact upon the listed building. The proposed works will have no impact upon the historic heritage values of the place. E.13.7.2 Performance Criteria 2 is satisfied

E13.8 Development Standards for Heritage Precincts

E13.8.1 Demolition

Objective:

To ensure that demolition in whole or in part of buildings or works within a heritage precinct does not result in the loss of historic cultural heritage values unless there are exceptional circumstances.

Performance Criteria 1

Demolition must not result in the loss of any of the following:

- (a) buildings or works that contribute to the historic cultural heritage significance of the precinct;*
- (b) fabric or landscape elements, including plants, trees, fences, paths, outbuildings and other items, that contribute to the historic cultural heritage significance of the precinct;*

The proposal does not involve any demolition of significant heritage fabric. The removal / demolition of the rear pergola structure will not result in the loss of historic heritage values of the place and is considered acceptable. E.13.8.1 Performance Criteria 1 is satisfied.

E13.8.2 Buildings and Works other than Demolition

Performance Criteria 1

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.

The proposed works will not result in detriment to the cultural heritage significance of the precinct. The proposed development is deemed to meet this performance criteria. The proposed rear yard works are not

visible from the streetscape of Elizabeth Street and will have limited impact upon the precinct given the works are to be located behind the bulk of the listed building and surrounding built forms along Elizabeth Street. The proposed works therefore satisfy Performance Criteria 1 of E13.8.2.

In conclusion the proposal for 315 Elizabeth Street meet the relevant performance criteria of E.13.7 and E.13.8 of the Hobart Interim Planning Scheme 2015.

9.5 Change of Use of a Heritage Place

The proposal has included documents as part of the Praxis Environment Heritage Impact Assessment that addresses Special Provision 9.5 Change of Use of a Heritage Place. It should be noted that the historic activity and uses of the site, as well as the significant heritage fabric is confined within the building footprint of 315 Elizabeth Street. The rear yard of the property is not considered to have any individual heritage value or significance.

9.5.1

An application for a use of a Heritage Place listed in the Historic Heritage Code or a place on the Tasmanian Heritage Register that would otherwise be prohibited is discretionary.

9.5.2

The planning authority may approve such an application if it would facilitate the restoration, conservation and future maintenance of the historic cultural heritage significance of the place.

9.5.3

In determining an application the planning authority must have regard to all of the following:

(a) a statement of significance, as defined in the Historic Heritage Code;

Page 19 of the Praxis Environment Heritage Impact Assessment Report provides a statement of significance from the Tasmanian Heritage Register data sheet for 315 Elizabeth Street. Clause (a) of 9.5.3 is satisfied.

(b) a heritage impact statement and a conservation plan, as defined in

the Historic Heritage Code, written with regard to the proposed use;

A conservation plan has not been provided or written with regard to the proposed use. Clause (b) of 9.5.3 is not satisfied.

(c) the degree to which the restoration, conservation and future maintenance of the historic cultural heritage significance of the place is dependent upon the commencement of the proposed use;

It is recognised that the ongoing use of any heritage listed place is a key aspect of the future maintenance and conservation of a building. However the proposed use of the rear yard of 315 Elizabeth Street as an outdoor dining / entertainment space is not considered to have any beneficial impact upon the future maintenance or continued conservation of the Federation Free-Classical commercial building. It is noted that former businesses that have occupied this site utilised the rear space as parking / storage, as such it has been demonstrated that this permitted use had no adverse impacts upon former businesses abilities to continue conservation or maintenance of the building. Consequently it is not believed that the ongoing maintenance or conservation of the building at 315 Elizabeth Street is dependent upon the prohibited use of the rear yard as a dining / entertainment space. Clause (c) of 9.5.3 is not satisfied.

(d) the extent to which the proposal provides for the active use or re-use of any heritage fabric;

The proposal provides no evidence or details of the active use or re-use of any heritage fabric that is to be used in the proposed rear yard dining / entertainment space. Clause (d) of 9.5.3 is not satisfied.

(e) the likely impact of the proposed use on the residential amenity of the area if within a residential area.

The proposed outdoor dining / entertainment area is located within the Inner Residential Zone, the Development Appraisal Planner has addressed the impact of the proposed use on the residential amenity of the area in the Planning Permit Assessment.

In conclusion the proposal does not satisfy the relevant clauses of 9.5 Change of Use of a Heritage Place.

6.8.2 The proposal does not comply with relevant provisions.

6.9 Parking and Access Code Part E - E6.6.1 P1

- 6.9.1 The proposal will result in the loss of the four informal existing car parking spaces on the site. The Council's Development Engineer has provided the following assessment on the proposal:

Clause E6.6.10 applies - Residential Zones

Acceptable solution - A1: - E.6.6.10: Number of Car Parking Spaces - Residential Zones

No on-site parking is required for:

- (a) food services uses up to 100m² floor area or 30 seats, whichever is the lesser; and*
- (b) general retail and hire uses up to 100m² floor area; provided the use complies with the hours of operation specified for the relevant zone.*

The submitted planning report stated the following;

"The proposal meets A1 in that the seating proposed does not exceed 30 [and the hours of use for the garden area are proposed to meet the hours of the acceptable solution for the zone.]"

Development Engineering received direction from the Planner that the above statement is endorsed.

Performance Criteria - P1

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.

The submitted planning report stated the following;

"The existing building floor area generates 53 parking spaces and at the time of the 1993 restaurant permit was described as having 1 garage and 3 gravel parking spaces. The application proposes no parking on the site.

While the current application does not increase floor area there are additional seats provided in the outdoor areas although the use of these seats is intended to provide customers with larger seating choice across the site rather than increasing maximum occupancy at particular times.

Given that the proposed outdoor area will primarily operate during the day and over some parts of the year the increased generation from this area is not directly related to the number of seats provided in the area.

The application considers the matters related to the performance criteria as follows:

- There is no doubt that North Hobart attracts an existing high demand for parking created by the existing businesses operating within the area, with discretionary activities such as cafes and restaurants this demand is largely self-regulating as people visiting the area have alternative options they can exercise if the proximity of available parking does not suit their individual need.*
- There are significant numbers of both on and off-street car parking options in close proximity to the site and within the locality in both private and public car parks and within the network of local streets;*
- Elizabeth Street provides a frequent public transport service to the*

site;

- The site is located where there is a high likelihood of use of alternative modes of transport;
- The North Hobart precinct provides opportunities for reduction in car parking demand due to the sharing of car parking spaces by multiple uses, and over differing times of the day and night;"

Acting Manager Traffic Engineering

"It is considered that the impact of the removal of the 4 parking spaces (approved for staff members of La Porchetta) at the site on the surrounding on-street parking is likely to be minimal. Staff / customers / residents are exposed to modes of transport other than motor vehicles as the site is within close proximity to the North Hobart Commercial area, public transport facilities and cycling facilities in North Hobart. The use of other modes of transport other than motor vehicles can alleviate the parking demand on the street.

It is agreed that the existing access has a number of safety implications such as inadequate width and deficiencies in sight distance. Given there is a high volume of pedestrians using the footpath in front of the site, the traffic issues associated with the access could present a potential risk for vehicle / pedestrian conflict."

NOTE: The existing access within 315 Elizabeth Street (also Right of Way for 317 Elizabeth St.) appears <3.0m (2.74m) wide for the first ~21 metres and there is no Right of Way over 317 Elizabeth Street for No. 315. Also, there are no sight triangles present either side of the access for pedestrian safety as prescribed in AS/NZ2890.1. A previously approved development application (930526) provided commentary regarding the access referring to it as sub-minimum and given the little scope of providing further increase in parking to the four (4x) spaces being approved for the site, a cash-in-lieu contribution was taken at the time of approval. There appears no scope for alternative access to the rear of the applicant's property. The City Engineer at the time agreed that additional vehicles using the narrow right of way access the rear of the property could not be condoned.

It is worth noting that Council's current standards require a minimum driveway access width of 3 metres and the current pedestrian sight lines on-site would make it difficult to approve a development should intensification of the access and car parking be considered. Council is supportive in reducing vehicle movements into and out of this access.

Any planning permit issued for the proposal should include a condition that no car parking is approved on-site.

Based on the above assessment and given the submitted documentation, the parking provision may be accepted under Performance Criteria P1:E6.6.1 of the Planning Scheme.

6.9.2 The proposal complies with the performance criterion.

7. Discussion

- 7.1 Planning approval is sought for Partial Demolition, Alterations, Fencing and Partial Change of Use to Food Services at 315 Elizabeth Street, North Hobart.
- 7.2 The application was advertised and eight hundred and forty (840) representations representations - eight hundred and thirty three (833) in support and seven (7) objecting to the proposal - were received within the statutory advertising period between 21 October and 5 November 2019.

- 7.3 The application received a significant number of representations in support of the proposal. Those representations stated that the rear garden area provides a safe, family friendly dining option away from the traffic of North Hobart that is a valuable and functional urban space. They indicated that it provides a space like no other in the North Hobart strip and it is spaces like the subject space that Hobart needs more of. They also indicated that using the rear of the site for outdoor use by patrons of the restaurant is a much better use of the area than for car parking, and the reliance on fossil fuelled cars should be discouraged. Further, those representations indicated that other options for car parking in the area should be explored by Council. It was also raised that residents choose to live in this area, which is a food and bar hub and therefore must enjoy the lifestyle.

The representations objecting to the proposal raised a number of amenity concerns that have been alleged to only have arisen under the current operator, with previous businesses on the site not causing any problems. The stated impacts, which were also in conjunction with use of the rear yard area when operating, included noise intrusion from patrons and music to some residences, with no apparent plans from management to address these issues. Also, that the rear area is located in the Inner Residential Zone and there is a level of expected amenity with respect to noise and privacy. Further to this, those representations indicated that the proposal does not meet the provisions for a non-conforming use in the Inner Residential Zone, that it has a detrimental impact on adjoining uses and the amenity of the locality, and that it is a substantial intensification of the use. Other concerns raised in those representations related to the potential risks to adjoining properties and the use of the right of way which has apparently resulted in a variety of associated impacts. In some of the representations, there were also claims against the validity of the Food Services use, inconsistencies in details submitted in the application, and the lack of compliance with a number of planning scheme provisions, as well as the impact of the removal of car parking from the rear area.

It is fully appreciated that that the proposed use of the rear area of the property may provide a significant sanctuary within the North Hobart strip and may be a great space for dining and relaxing, serving as an extension of the premises. However, these features do not negate the fact that much of the rear area of the site is located within the Inner Residential Zone, that preservation of residential amenity is the prime objective of that zone, and that that zone is accompanied by a reasonable expectation that its amenity will be protected. The inclusion of non-residential uses in the zone are to be complimentary to existing residential uses, being at an appropriate scale and operating in a way so as not to cause detrimental impacts on amenity.

- 7.4 The proposal has been assessed against the relevant provisions of the *Hobart Interim Planning Scheme 2015* and is considered to meet the performance

criteria in respect of its discretions under Setbacks and Building Envelope, Historic Heritage and Parking and Access where concerned with physical works.

The proposed fencing is not considered to cause an unreasonable impact on the neighbouring properties, and will provide additional privacy between the subject site and adjoining properties. The Council's Cultural Heritage Officer has concluded that proposed internal and external works satisfy the Historic Heritage Code. The Tasmanian Heritage Council have also issued an approval for the proposal.

The Council's Development Engineer, with the assistance of the Acting Manager Traffic Engineering, is satisfied with the removal of what were four informal staff car parking spaces from the site, and considers the likely impact on surrounding on-street parking to be minimal. It was acknowledged that the substandard width and sight line issues of the access present a number of safety implications with pedestrian/vehicle conflicts.

The fundamental and complex aspect of the proposal is the extension of the use of the venue into the Inner Residential Zone, which applies to the majority of the rear yard area. Ordinarily, the proposed Food Services use is a prohibited use in the zone. However, the planning scheme has mechanisms allowing discretionary consideration of such a prohibited use within the zone. The application seeks approval for the use under two of these provisions - firstly under clause 9.1 *Changes to an Existing Non-conforming Use* and secondly clause 9.5 *Change of Use of a Heritage Place*.

The relevant clause being applied for under clause 9.1 is:

(c) for a minor development to a non-conforming use,

where there is –

- (a) no detrimental impact on adjoining uses; or*
- (b) the amenity of the locality; and*
- (c) no substantial intensification of the use of any land, building or work.*

To assist in the assessment of this clause, Council officers sought external legal advice, which is included as an attachment to this report. That advice sought to clarify the following:

(a) what is the meaning and scope of "minor development" as it appears within the clause and in the context of the application; and

(b) what is the meaning and scope of "substantial intensification" as it appears within the clause and in the context of the application.

The advice determined that while the works associated with the use could be considered minor, they resulted in a substantial intensification of the use of the land. Also, through the preparation of the advice and examination of the existing use rights relating to the property, it was found that the existing use only relates to approximately half of the site. This finding raised the question of whether the provision (Clause 9.1) could be in fact be utilised to potentially approve the use of the whole site for the proposed use.

The other aspect of the clause requires the assessment of the following:

(c) for a minor development to a non-conforming use,

where there is –

- (a) no detrimental impact on adjoining uses; or*
- (b) the amenity of the locality;*

In the consideration of these clauses, it was determined that the substantial intensification of the commercial use, simply due to its nature and potential patronage, could not function without *detrimental impact on adjoining uses or the amenity of the locality*, particularly when representors have reported experiencing detrimental impacts related to the use of the rear yard area when it was previously operating without approval.

Clause 9.5 - *Change of Use of a Heritage Place* of the *Hobart Interim Planning Scheme 2015* allows for the potential approval of a prohibited use if the application facilitates the restoration, conservation and future maintenance of the historic cultural heritage significance of the place. In the Cultural Heritage Officer's assessment, they state that "*The rear yard of the property is not considered to have any individual heritage value or significance.*" They note that while the ongoing use of the property is key to the future maintenance and conservation of buildings, it has been demonstrated that previous businesses have achieved this without the proposed use of the rear yard. Therefore, it was not considered sufficient justification for the extension of the prohibited use into the rear yard.

In light of the consideration of the above clauses in respect of use, it is recommended that the extension of the Food Services use into the rear of the property be refused.

7.5 The proposal is recommended for refusal.

8. Conclusion

8.1 The proposed Partial Demolition, Alterations, Fencing and Partial Change of Use to Food Services at 315 Elizabeth Street, North Hobart satisfies the relevant provisions of the *Hobart Interim Planning Scheme 2015*, and as such is recommended for refusal.

9. Recommendations

That: Pursuant to the *Hobart Interim Planning Scheme 2015*, the Council refuse the application for Partial Demolition, Alterations, Fencing and Partial Change of Use to Food Services at 315 Elizabeth Street, North Hobart for the following reasons:

- 1 The proposal does not meet clause 9.1.1(c) of the *Hobart Interim Planning Scheme 2015* regarding *Changes to an Existing Non-conforming Use* because the existing Food Services use does not apply to the whole site.
- 2 The proposal does not meet clause clause 9.1.1(c) of the *Hobart Interim Planning Scheme 2015* regarding *Changes to an Existing Non-conforming Use* because the proposed minor development to a non-conforming use will not result in:
 - (a) *no detrimental impact on adjoining uses; or*
 - (b) *the amenity of the locality; and*
 - (c) *no substantial intensification of the use of any land, building or work.*
- 3 The proposal does not meet clause 9.5 of the *Hobart Interim Planning Scheme 2015* regarding *Change of Use of a Heritage Place* because there is not sufficient justification that the proposed prohibited use is required to facilitate the restoration, conservation and future maintenance of the historic cultural heritage significance of the place.



(Tristan Widdowson)

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.



(Cameron Sherriff)

Acting Senior Statutory Planner

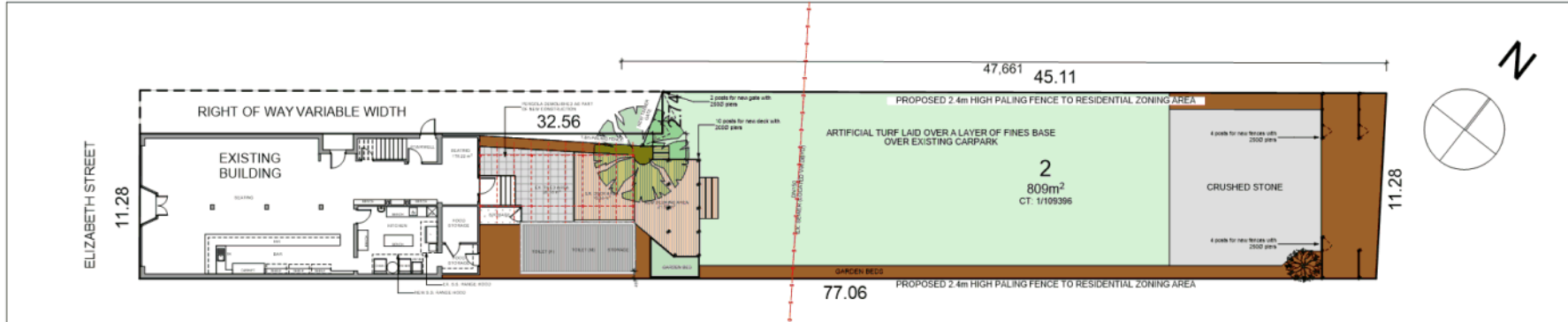
As signatory to this report, I certify that, pursuant to Section 55(1) of the Local Government Act 1993, I hold no interest, as referred to in Section 49 of the Local Government Act 1993, in matters contained in this report.

Date of Report: 20 November 2019

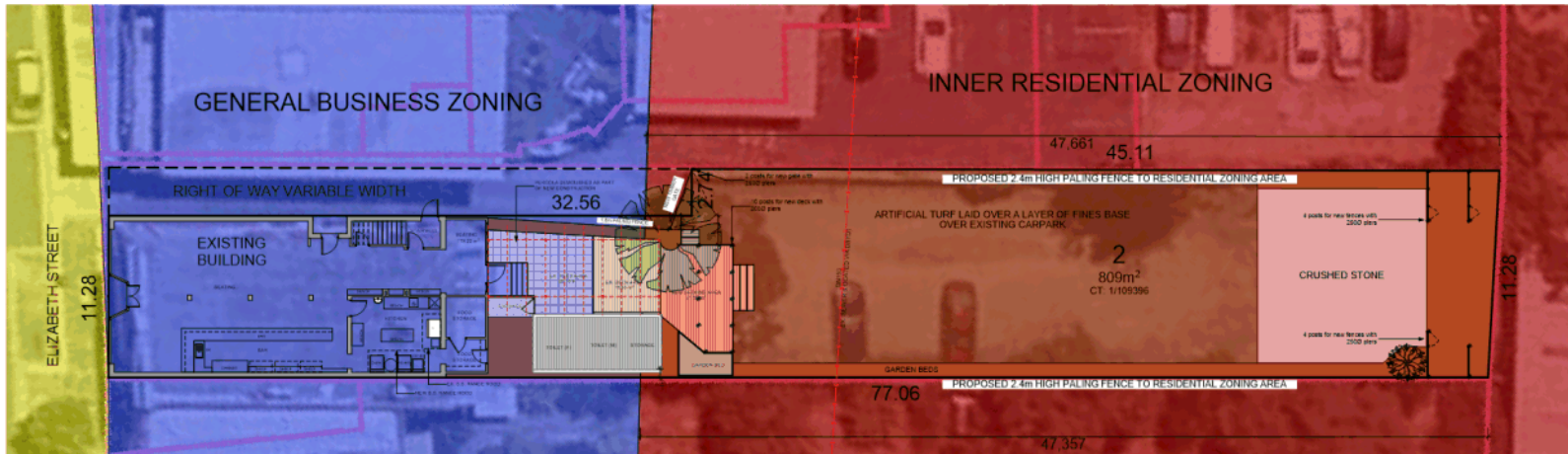
Attachment(s):

Attachment B - CPC Agenda Documents

Attachment C - External Legal Advice - Use



SITE PLAN



ZONING MAP

Amendments	
Date	Description

Site Plan

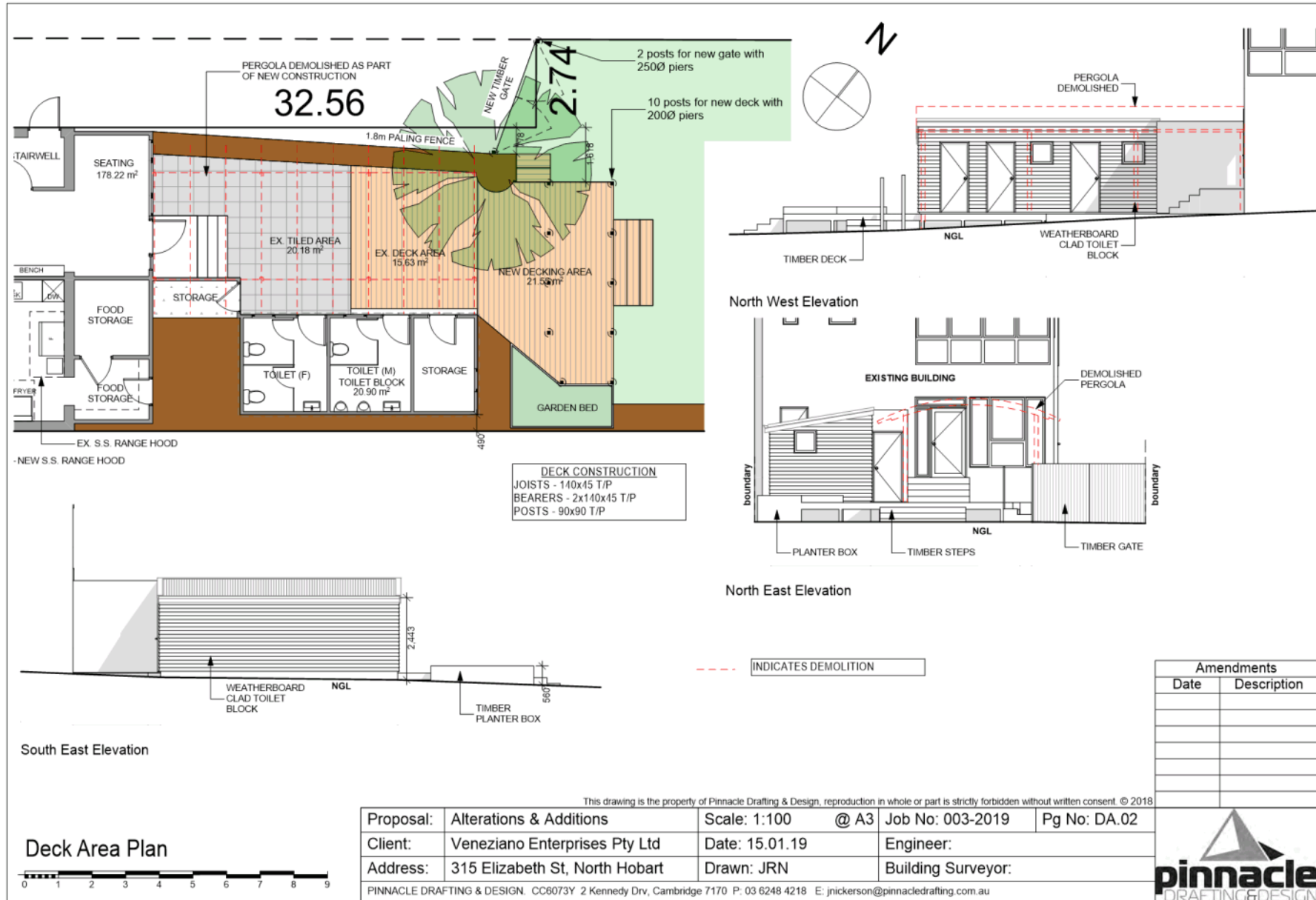


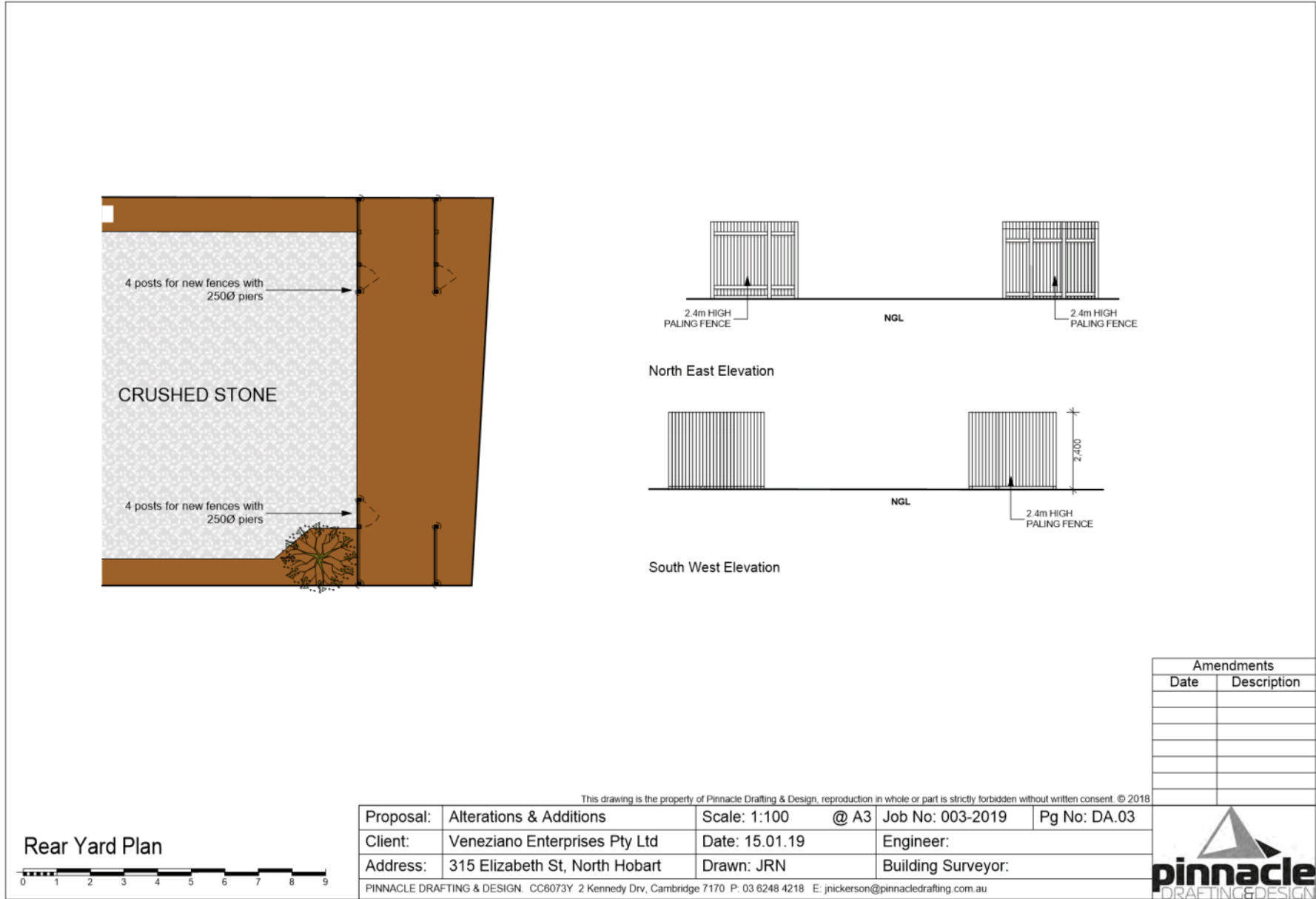
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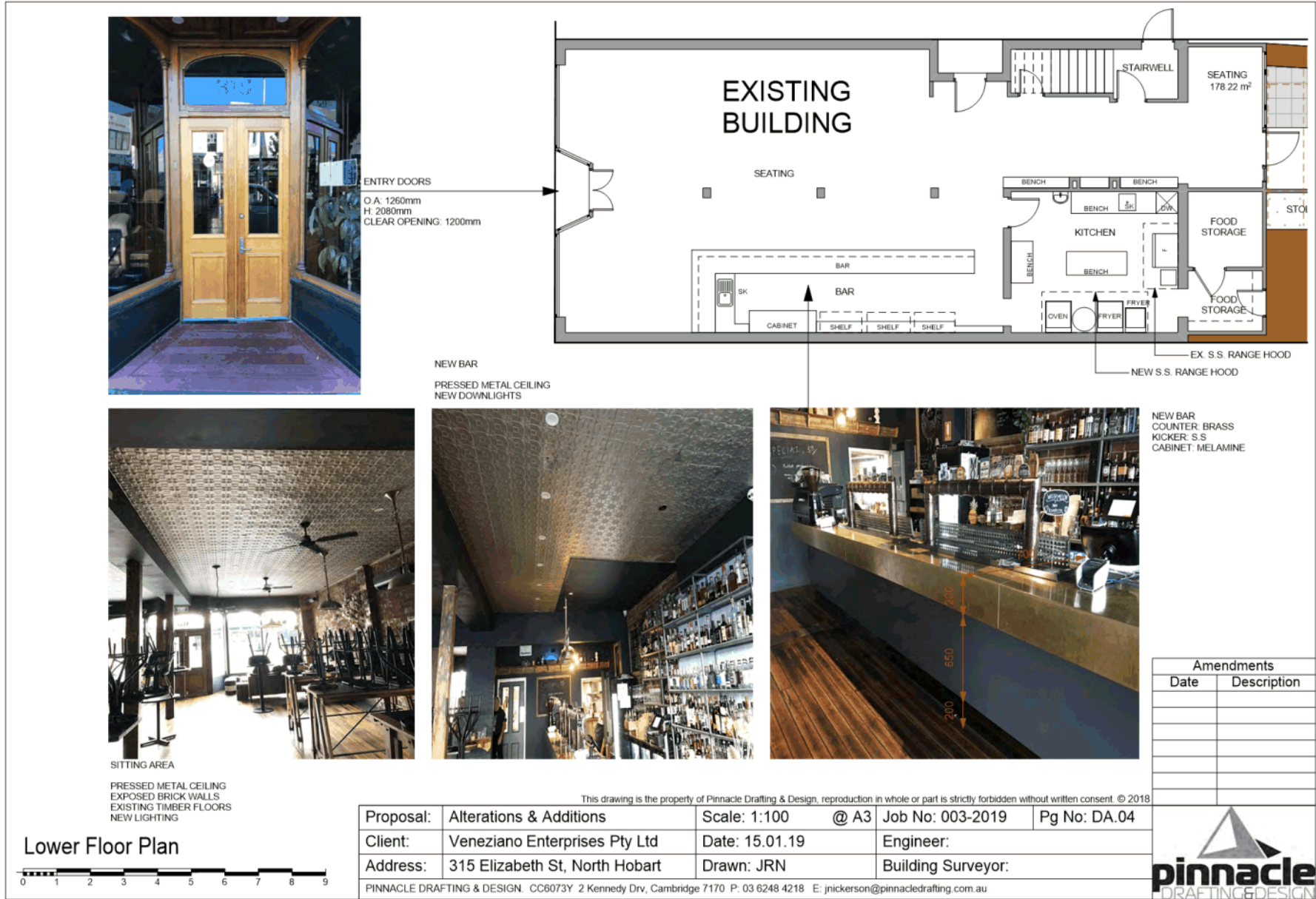
Proposal:	Alterations & Additions	Scale:	1:250 @ A3	Job No:	003-2019	Pg No:	DA.01
Client:	Veneziano Enterprises Pty Ltd	Date:	15.01.19	Engineer:			
Address:	315 Elizabeth St, North Hobart	Drawn:	JRN	Building Surveyor:			

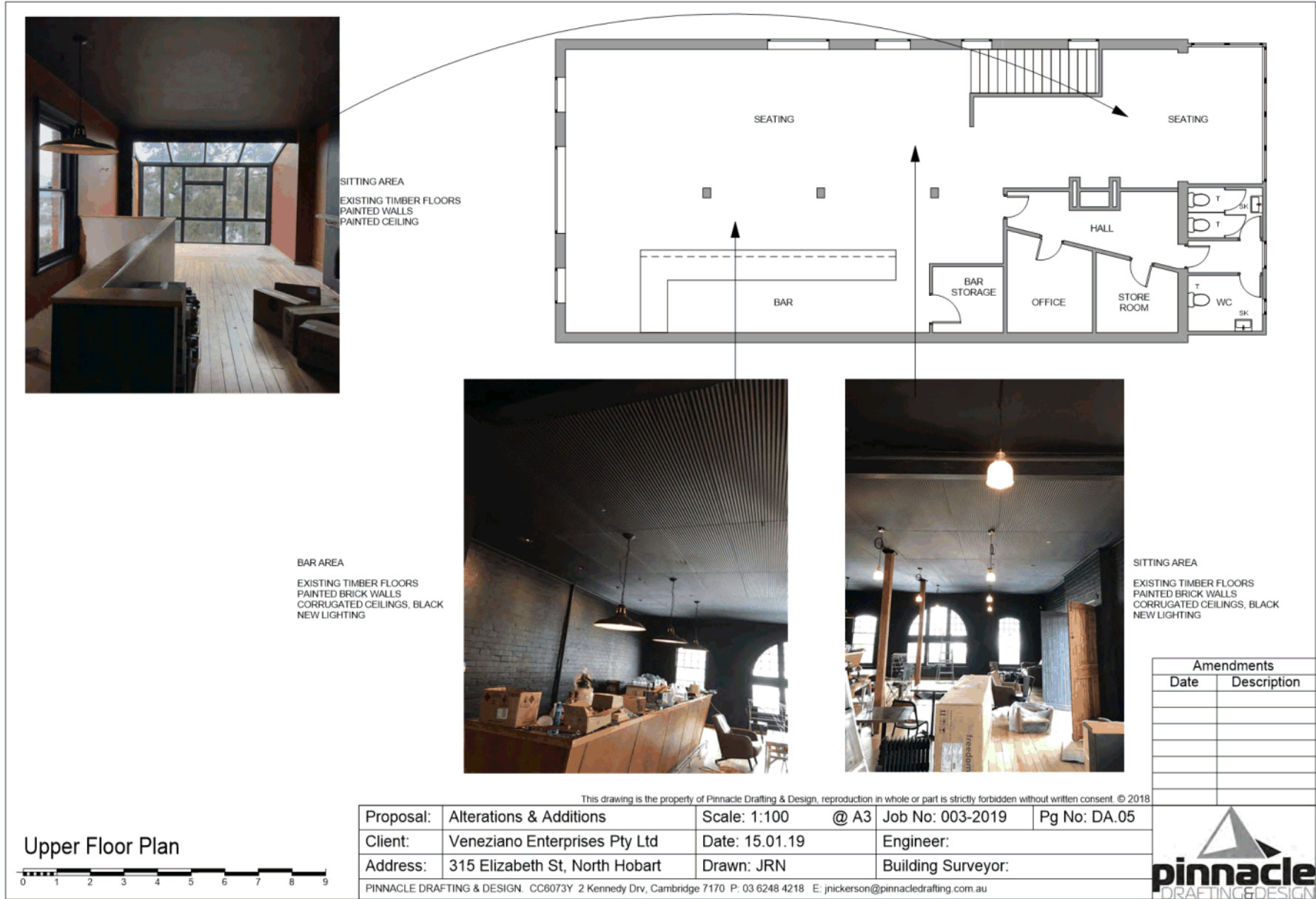
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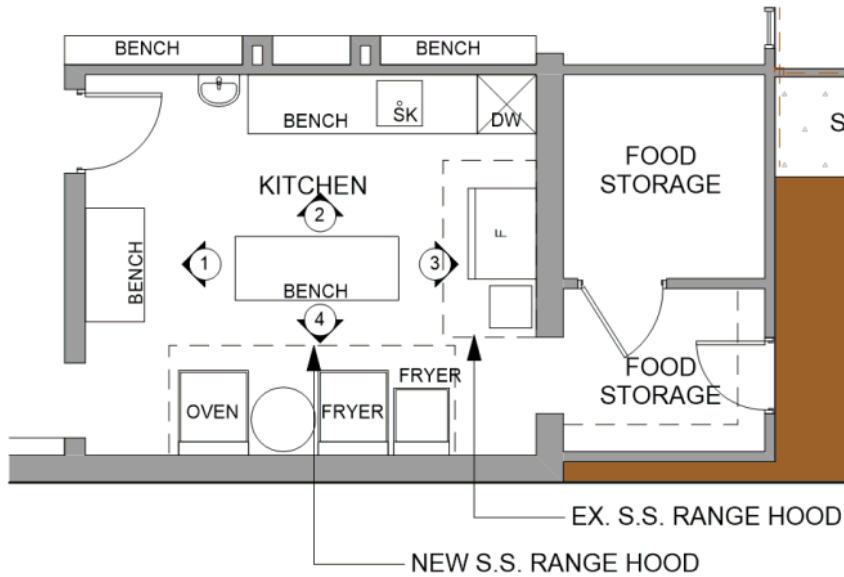
PICTURE 1

WALLS: TILED
FLOOR: VINYL
BENCHES: S.S.



PICTURE 2

WALLS: TILED
FLOOR: VINYL
BENCHES: S.S.



PICTURE 3

WALLS: TILED
FLOOR: VINYL
BENCHES: S.S.



PICTURE 4

WALLS: TILED
FLOOR: VINYL
BENCHES: S.S.

Kitchen Plan



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Proposal:	Alterations & Additions	Scale: 1:50 @ A3	Job No: 003-2019	Pg No: DA.06
Client:	Veneziano Enterprises Pty Ltd	Date: 15.01.19	Engineer:	
Address:	315 Elizabeth St, North Hobart	Drawn: JRN	Building Surveyor:	

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315 ELIZABETH STREET, NORTH HOBART



ireneinc & smithstreetstudio
PLANNING & URBAN DESIGN

315 ELIZABETH STREET, NORTH HOBART

Submission to the Hobart City Council
Planning Application for Use and Development

Last Updated - 8 October 2019

Author - Jacqui Blowfield

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ireneinc PLANNING

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1. INTRODUCTION

Ireneinc Planning have been engaged to prepare an application for use and development of the land at 315 Elizabeth Street, North Hobart.



Figure 1: Location plan with cadastre and topographic map from www.theLIST.tas.gov.au © State of Tasmania

This report provides an assessment of the proposal against the provisions of the *Hobart Interim Planning Scheme 2015*.

1.1 SITE AND EXISTING DEVELOPMENT

315 Elizabeth Street, is a 809m² lot (Title ref: 109396/1) which fronts the north-eastern side of Elizabeth Street. The property is regular in shape being over 75m deep, with a width to the street of 11.28m.

There is a 2.74m wide driveway access and right-of-way located along the north-western side boundary which provides a shared access to the rear of the subject property and also to the neighbouring property to the north.

The original building is located on the front boundary with it and rear additions located at a depth of approximately 30m. The site has for some years been used through various iterations as food services.

The rear area of the property appears to have been largely used relatively informally for storage and gravelled car parking area.

The site and surrounds and existing development is described in the following figure:



Figure 2: ESIR Imagery from www.theLIST.tas.gov.au © State of Tasmania

The surrounding properties contain a variety of uses and developments including other commercial development either side fronting Elizabeth Street. Many of these commercial properties have largely undeveloped rear yards with some formal or informal car parking area and informal gardens.

To the rear of the subject site is another property within the Inner Residential Zone but that contains a storage shed but appears to be otherwise unutilised.

It is understood that Council is at the moment exploring options for extension of public car parking to the north.

Further information relating to the previous and existing use and development of the subject site is detailed below.

1.2 BACKGROUND

The subject property has been for some years in various different iterations of restaurant format with each new tenant undertaking various refurbishments to suit their needs and concept, including development and use of the outdoor patio/deck area at the rear of the building. It appears that not all of these different modifications and refurbishments have been through a formal approval process, based on the records that Council has been able to provide.

The original planning permit for the restaurant dates from 1993 (Ccl ref: 930526) with the Council file indicating the inclusion of a limited number of parking spaces available in the rear yard, although there does not appear to be a plan which indicates the layout of this approved parking.

Similar to previously, the current tenant has undertaken their own redecoration and refurbishment of the property and, through some lack of knowledge and misinterpretation of some previous advice from Council, understood that the works they had proposed and have undertaken, did not require a new planning approval.

These works include the creation of the rear outdoor garden through minor works and installations, in the previous rear yard and informal parking area. 2 shipping containers had also been incorporated in to the garden area however these are intended to be removed and therefore do not form part of this application.

The current operators are therefore seeking retrospective approval for the alterations to the rear patio/deck area and the rear garden undertaken recently, along with the previous alterations including previous removal of a pergola structure, minor internal alterations and works.

2. PROPOSAL

2.1 USE

The use proposed is an alteration to the previous and existing use of the property as a café/restaurant business within the Food Services use class.

The use will operate across the entire site, including the existing 2 storey building and rear single storey bathroom/storage building, as well as the outdoor areas on the patio/deck and garden.

It is understood that the originally approved hours of operation are as follows:

Monday to Friday	11.00 am to 12.00 midnight
Saturday	6.00 pm to 12.00 midnight
Sunday	6.00 pm to 11.00 pm

Over the past years the various iterations of restaurants have had differing hours, the application proposes to operating hours as follows:

Monday to Friday	8.00 am to 12.00 midnight - for indoor and the outdoor deck areas (consistent with existing); No seating within the extended deck within the Inner Residential Zone from 6pm until 8am within the residential zone; and 8.00 am to 6.00 pm for the rear garden area.
Saturday	8.00 am to 12.00 midnight- for indoor and the outdoor deck areas; No seating within the extended deck within the Inner Residential Zone from 6pm until 8am within the residential zone; and 8.00 am to 6.00 pm for the rear garden area.
Sunday	8.00 am to 11.00 pm; No seating within the extended deck within the Inner Residential Zone from 6pm until 8am within the residential zone; and 8.00 am to 6.00 pm for the rear garden area.

The above is intended to be the most extended operating hours across the year, however the outdoor areas are obviously less used outside of summer months and it is not proposed that the rear garden area will be lit so operation of this area will be more limited during times of the year when it gets dark earlier.

2.2 DEVELOPMENT

The development will include works previously undertaken by previous operators but understood to have not previously have been approved, including the removal of a previous roof pergola previously over the patio area.

The development will also include the new decking over the previous stepped patio, new fencing, as well as landscaping, including artificial turf through the rear garden area.

2.2.1 SIGNAGE

The Boodle Beasley signage is rebadging of existing signage area on the frontage of the building - the area of the signage has been decreased and the design simplified from the previous 2 restaurant iterations consistent with the exemptions of the planning scheme and more appropriate to the heritage values of the site, as detailed below:



Figure 3: Previous signs Everydays Smokin BBQ & Bar' (Image www.zomato.com)



Figure 4: Previous signs La Porchetta (Image www.yelp.com.au)



Figure 5: Proposed signage

3. PLANNING SCHEME PROVISIONS

The following provisions of the *Hobart Interim Planning Scheme 2015* are relevant to consideration of the proposal.

3.1 ZONING AND OVERLAYS

The figure below describes the subject site with a split zone, with the front of the site within the General Business Zone and the rear of the site within the Inner Residential Zone. The zones applicable to the subject land are consistent with the neighbouring land, although there is also an area of Light Industry zoned land along Burnett Street.

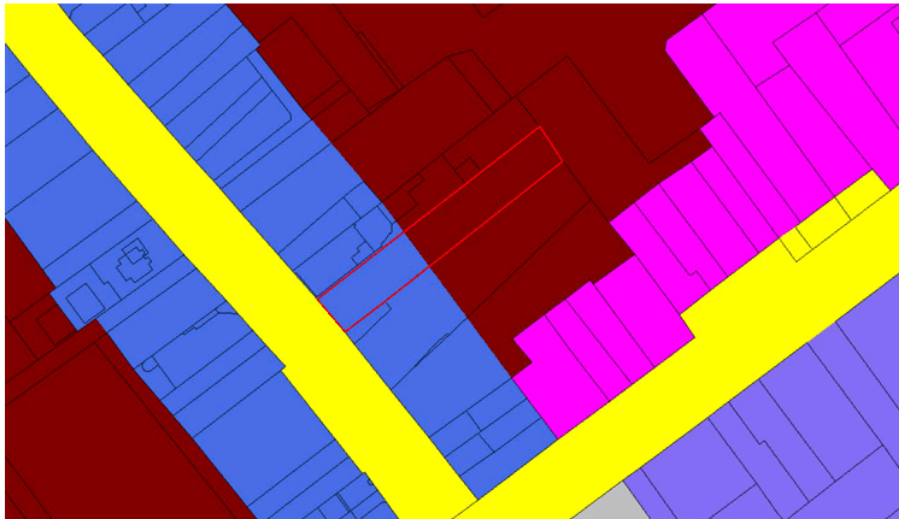


Figure 7: Zoning Plan from www.theLIST.tas.gov.au © State of Tasmania

There are also 2 mapped overlays which are relevant the North Hobart Specific Area Plan and the NH6 Heritage Precinct which both apply to the General Business Zone area of the site (with the Overlay Boundaries following the zone boundary).

In addition to being partially within the heritage precinct the site is also listed as a Heritage Place within the Historic Heritage Code and on the State Heritage Register.

3.2 USE

3.2.1 USE DEFINITION

Clarification of the proposed use is provided as follows:

The Scheme includes 2 Use Classes which relate to the hospitality industry being:

<i>Food services</i>	<i>use of land for preparing or selling food or drink for consumption on or off the premises. Examples include a cafe, restaurant and take-away food premises.</i>
<i>Hotel industry</i>	<i>use of land to sell liquor for consumption on or off the premises. If the land is so used, the use may include accommodation, food for consumption on the premises, entertainment, dancing, amusement machines and gambling. Examples include a hotel, bar, bottle shop, nightclub and tavern.</i>

Within these definitions the examples of differing uses are largely not defined by the Scheme and therefore should be defined by dictionary definition or common understanding. The most relevant definitions¹ are included below:

<i>Bar</i>	<i>4a. a counter in a hotel, restaurant, or café across which alcohol or refreshments are served. b. a room in a hotel in which customers may sit and drink. c. a tavern.</i>
<i>Café</i>	<i>a small coffee house; a simple restaurant.</i>
<i>Hotel</i>	<i>1. a public house, a pub. 2. a (usually licensed) establishment providing accommodation and meals for payment.</i>
<i>Restaurant</i>	<i>A public premises where meals or refreshments may be had.</i>
<i>Tavern</i>	<i>A place where alcoholic liquor is sold to be drunk on the premises and which does not provide accommodation.</i>

On the basis of the above definitions a bar is defined as a tavern and café as a simple restaurant, additionally the business is not consistent with the above definition or the common understanding as a hotel.

In the definition of restaurant, the service of meals and refreshments are consistent with the proposed operation, and while there is no specific inclusion or exclusion of refreshments including alcohol within the definition, it is certainly common if not almost the rule that local restaurants would include the service of alcoholic drinks.

The alternative tavern definition makes no reference to the service of food, only seems to specifically differentiate itself from a hotel by specifying no accommodation is included. This is consistent with the Use class definition of Hotel industry where service of alcohol is the primary purpose with other element such as food, entertainment and gambling allowable in addition.

The Boodle Beasley format is aimed at providing modern/casual food and beverages at all times of the day (with expansion to breakfast/brunch included with this application) in a vibrant setting. The service format is aimed at table and lounge seating options in both indoor and outdoor areas, with the proposed garden area providing an additional sunny outdoor area which will also provide additional family friendly space.

For the above reasons it is considered that the Food Services Use class is the one most appropriate for the business operation.

¹ Australian Concise Oxford Dictionary

3.2.2 USE STATUS

Table 11.2 and 23.2 within the 2 relevant zone provisions indicate the Food Services use class as follows:

Food services use class	General Business Zone	Inner Residential Zone
Permitted	<i>Only if a take away food premises or cafe.</i>	N/A
Discretionary	<i>Except if permitted</i>	<i>Only if in an existing building and not displacing a residential or visitor accommodation use, unless occupying floor area previously designed and used for non-residential commercial purposes (excluding visitor accommodation). Except ...</i>
Prohibited	N/A	<i>... if a take away food premises with a drive through facility.</i>

As the area of the rear garden being applied for as part of the service area for the restaurant is land area, rather than floor area, under the Use Table of the Inner Residential zone Food Services would generally be prohibited, however, the Special Provisions of Part 9 of the Scheme the use is able to be considered under provisions relating to its existing use and heritage, detailed in the following parts.

3.2.3 CHANGES TO AN EXISTING NON-CONFORMING USE

Clause 9.1.1 of the Scheme provides:

Notwithstanding any other provision in this planning scheme, whether specific or general, the planning authority may at its discretion, approve an application:

- (a) to bring an existing use of land that does not conform to the scheme into conformity, or greater conformity, with the scheme; or*
 - (b) to extend or transfer a non-conforming use and any associated development, from one part of a site to another part of that site; or*
 - (c) for a minor development to a non-conforming use, where there is -*
 - (a) no detrimental impact on adjoining uses; or*
 - (b) the amenity of the locality; and*
 - (c) no substantial intensification of the use of any land, building or work.*
- In exercising its discretion, the planning authority may have regard to the purpose and provisions of the zone and any applicable codes.*

The property in its various iterations as a restaurant has only been occupied by one tenant at a time, previous planning approval (Ccl ref: 930526), which established the restaurant use on the site, included consideration of the proposed and existing car parking area within the now Inner Residential Zoned area of the site and considered the extent of additional car parking which it may be possible to include on the site. The Council planning assessment of the time suggests that except for the ROW access being 100mm narrower than required, that it would have been reasonable to required additional parking be provided in the backyard layout. However, with

the available width of the access being considered too narrow for additional traffic no additional parking in the rear yard was required.

As far as this information goes in the context of the relatively scant information in the written documents, typical of the time it is considered that the application at that time was considering the use of restaurant as applying to the entire site.

It is therefore considered that the use of restaurant within the rear Inner Residential Zoned area of the site is something which was previously approved and is therefore existing.

The works undertaken in that area of the site are a combination of landscaping and relocatable features and furniture to both make the rear of the property more attractive when viewed from the rear of the restaurant and deck area, along with providing an alternative outdoor seating area when the weather make it desirable for restaurant patrons.

It is considered that the works undertaken to renovate this space are consistent with 9.1.1(c) in that they are minor development to a non-conforming use.

This being the case the proposal must demonstrate that the other provisions of 9.1.1 in relation to:

- (a) *no detrimental impact on adjoining uses; or*
- (b) *the amenity of the locality; and*
- (c) *no substantial intensification of the use of any land, building or work.*

Adjoining use include commercial, residential and car parking, the area of the site in question was previously used as storage and carparking associated with previous restaurants uses, and therefore a degree of commercial usage of this area has been in place since 1993 as a restaurant and previous to that associated with the previous commercial retail use. The replacement of these previous activities with the outdoor garden area for customers requires little in the way of substantial development apart from the installation of the artificial grass, storage and screening structures proposed with the application, and the installation of the outdoor tables etc. The potential for noise impacts from customer activity has been assessed in the accompanying NVC report which considers the relevant standards of the Scheme to be met.

The proposal is therefore considered not to detrimentally impact the amenity of adjoining properties or the locality generally, in accordance with subclauses (a) and (b) above.

The development associated with the proposed use in the garden area are generally minor structures and ephemeral works, such as the installation of the artificial grass and furniture. The intensity of the use of the area is generally intended to supplement and support the main use of the existing restaurant by providing an alternative outdoor space suitable in warmer, sunny daylight hours, and therefore primarily through summer and shoulder seasons. The area is in this way intended to provide seating options which broaden the appeal of the venue across the year and at different times of the day rather than significantly changing the intensity of the customer numbers at peak periods. It is therefore considered that the proposed use will not substantially intensify the use in accordance with subclause (c) above.

These issues also relate directly to matters considered within the specific requirement of the Inner Residential Zone and the Use Standards in particular and therefore will be considered in further detail in part 3.4.1.

3.2.4 CHANGE OF USE OF A HERITAGE PLACE

The subject site is both a Heritage Place in the Historic Heritage Code and is also listed as a place of heritage significance on the Tasmanian Heritage Register.

In relation to heritage sites the Scheme provides:

- 9.5.2 *An application for a use of a Heritage Place listed in the Historic Heritage Code or a place on the Tasmanian Heritage Register that would otherwise be prohibited is discretionary.*
- 9.5.2 *The planning authority may approve such an application if it would facilitate the restoration, conservation and future maintenance of the historic cultural heritage significance of the place.*
- 9.5.3 *In determining an application the planning authority must have regard to all of the following:*
- (a) a statement of significance, as defined in the Historic Heritage Code;*
 - (b) a heritage impact statement and a conservation plan, as defined in the Historic Heritage Code, written with regard to the proposed use;*
 - (c) the degree to which the restoration, conservation and future maintenance of the historic cultural heritage significance of the place is dependent upon the commencement of the proposed use;*
 - (d) the extent to which the proposal provides for the active use or re-use of any heritage fabric;*
 - (e) the likely impact of the proposed use on the residential amenity of the area if within a residential area.*

The above provisions allow for uses which the Scheme may otherwise prohibit to be approved where they support the ongoing active use of heritage fabric and may assist in the ongoing conservation and maintenance of heritage fabric.

The proposal is consistent with this provision in that the additional facilities enhance the economic viability of the existing business through providing additional options for customers and attracting a broader customer base through the outdoor seating options. This in turn allows the business to reinvest in the ongoing maintenance and refurbishment and therefore allow greater public access and use of the heritage building.

The accompanying Heritage Impact Assessment further considered the matters relevant to this part.

3.3 GENERAL BUSINESS ZONE PROVISIONS

3.3.1 DESIRED FUTURE CHARACTER STATEMENTS

<i>Desired Future Character Statements</i>
<p><i>Elizabeth Street North Hobart</i></p> <p><i>Central North Hobart should continue to function as a day-time local shopping area and night-time restaurant destination. These functions should exist equally, with neither becoming predominate.</i></p> <p><i>New development should continue the traditional height and rectangular building form parallel to Elizabeth Street where buildings are either one or two storeys.</i></p> <p><i>New development should not be permitted to intrude into important views, ...</i></p>

All new development should be built to the street edge and should improve pedestrian amenity and convenience. Protection from the elements for the pedestrian should be provided, primarily by the retention and/or introduction of awnings.

The historic streetscape and particularly the 'red brick' character of many individual buildings are highly valuable and should be retained. Painting of intact brickwork on the Elizabeth Street frontage is prohibited.

The diversity and intactness of shop fronts is essential to the character of central North Hobart, the retention of the physical fabric of shop fronts is critical to the preservation of character.

Development should provide detail and architectural interest at various levels of the streetscape, inset doorways and associated detailing are desirable as they contribute to the diverse pattern of the existing streetscape.

Development should encourage laneways to extend the network of informal public spaces. Development should not 'build in' laneways. Commercial use of buildings fronting laneways is appropriate. Development should reinforce the existing hierarchy of public spaces.

Integrated artwork/s are entirely appropriate and contribute to the cultural and artistic focus that has developed in North Hobart.

The rear garden area proposed to support the existing restaurant use is generally consistent with the above character statements in that it provides access to and make attractive a rear area consistent with the concept of a network of informal spaces.

The application through the extension of operating hours in to the mornings is also consistent with the ambition to keep a balance between day time and night time activity within the precinct.

3.3.2 USE STANDARDS

The following use standards are relevant to the proposal.

22.3.1 Hours of operation	
<i>Objective: To ensure that hours of operation do not have unreasonable impact on residential amenity on land within a residential zone.</i>	
<i>A1 Hours of operation of a use within 50m of a residential zone must be within: (a) 6.00am to 10.00pm Mondays to Saturdays inclusive; (b) 7.00am to 9.00pm Sundays and Public Holidays. except for office and administrative tasks.</i>	<i>P1 Hours of operation of a use within 50m 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.</i>
RESPONSE: Within this Zone the proposed formalisation of extended operating hours in the mornings are consistent with the acceptable solution.	
21.3.2 Noise	
<i>Objective: To ensure that noise emissions do not cause environmental harm and do not have unreasonable impact on residential amenity on land within a residential zone.</i>	

<p><i>A1 Noise emissions measured at the boundary of a residential zone must not exceed the following:</i></p> <ul style="list-style-type: none"> <i>(a) 55dB(A) (LAeq) between the hours of 7.00 am to 7.00 pm;</i> <i>(b) 5dB(A) above the background (LA90) level or 40dB(A) (LAeq), whichever is the lower, between the hours of 7.00 pm to 7.00 am;</i> <i>(c) 65dB(A) (LAm_{ax}) at any time.</i> <p><i>Measurement of noise levels must be in accordance with the methods in the Tasmanian Noise Measurement Procedures Manual, ... Noise levels are to be averaged over a 15minute time interval.</i></p>	<p><i>P1 Noise emissions measured at the boundary of a residential zone must not cause environmental harm within the residential zone.</i></p>
<p>RESPONSE: The proposed extension in hours proposed for the use within this zone is in accordance with the acceptable solution.</p>	
<p>21.3.3 External lighting</p>	
<p><i>Objective: To ensure that external lighting does not have unreasonable impact on residential amenity on land within a residential zone.</i></p>	
<p><i>A1 External lighting within 50m of a residential zone must comply with all of the following:</i></p> <ul style="list-style-type: none"> <i>(a) be turned off between 11:00pm and 6:00am, except for security lighting;</i> <i>(b) security lighting must be baffled to ensure they do not cause emission of light outside the zone.</i> 	<p><i>P1 External lighting within 50m of a residential zone must not adversely affect the amenity of adjoining residential areas, having regard to all of the following:</i></p> <ul style="list-style-type: none"> <i>(a) level of illumination and duration of lighting;</i> <i>(b) distance to habitable rooms in an adjacent dwelling.</i>
<p>RESPONSE: No new lighting is proposed within this Zone.</p>	
<p>21.3.4 Commercial vehicle movements</p>	
<p><i>Objective: To ensure that commercial vehicle movements not have unreasonable impact on residential amenity on land within a residential zone.</i></p>	
<p><i>A1 Commercial vehicle movements, (including loading and unloading and garbage removal) to or from a site within 50m of a residential zone must be within the hours of:</i></p> <ul style="list-style-type: none"> <i>(a) 6.00am to 10.00pm Mondays to Saturdays inclusive;</i> <i>(b) 7.00am to 9.00pm Sundays and Public Holidays.</i> 	<p><i>P1 Commercial vehicle movements, (including loading and unloading and garbage removal) to or from a site within 50m of a residential zone must not result in unreasonable adverse impact upon residential amenity having regard to all of the following:</i></p>

	<ul style="list-style-type: none"> (a) the time and duration of commercial vehicle movements; (b) the number and frequency of commercial vehicle movements; (c) the size of commercial vehicles involved; (d) the ability of the site to accommodate commercial vehicle turning movements, including the amount of reversing (including associated warning noise); (e) noise reducing structures between vehicle movement areas and dwellings; (f) the level of traffic on the road; (g) the potential for conflicts with other traffic.
<p>RESPONSE: No change to existing operations are proposed and therefore are understood to be consistent with the acceptable solution.</p>	

3.3.3 DEVELOPMENT STANDARDS FOR BUILDINGS & WORKS

The previously removed pergola roof structure (previously removed) was at the rear of the existing buildings but within this Zone, other external development proposed within this Zone is new timber decking on top of previous paved patio area, some refurbishment of the outbuilding containing toilets and storage, and a small section of altered fence. The only relevant development standard is as follows:

21.4.7 Fencing	
Objective: To ensure that fencing does not detract from the appearance of the site or the locality and provides for passive surveillance.	
<p>A1 Fencing must comply with all of the following:</p> <ul style="list-style-type: none"> (a) fences, walls and gates of greater height than 1.5m must not be erected within 4.5m of the frontage; (b) fences along a frontage must be at least 50% transparent above a height of 1.2m; (c) height of fences along a common boundary with land in a residential zone must be no more than 2.1m and must not contain barbed wire. 	<p>P1 Fencing must contribute positively to the streetscape and not have an unreasonable adverse impact upon the amenity of land in a residential zone which lies opposite or shares a common boundary with a site, having regard to all of the following:</p> <ul style="list-style-type: none"> (a) the height of the fence; (b) the degree of transparency of the fence; (c) the location and extent of the fence; (d) the design of the fence; (e) the fence materials and construction; (f) the nature of the use; (g) the characteristics of the site, the streetscape and the locality, including fences;

	(h) any Desired Future Character Statements provided for the area.
<p>RESPONSE:</p> <p>The fencing proposed which is within this Zone is not on a frontage or a common boundary with land in a residential zone and therefore meets the above acceptable solution. Some additional fencing is proposed within the Inner Residential Zoned area of the site, which is considered below.</p>	

3.4 INNER RESIDENTIAL ZONE PROVISIONS

3.4.1 USE STANDARDS

11.3.1 Non-Residential Use	
<p><i>Objective: To ensure that non-residential use does not unreasonably impact residential amenity.</i></p>	
<p><i>A1 Hours of operation must be within 8.00am to 6.00pm, except for office and administrative tasks or visitor accommodation.</i></p>	<p><i>P1 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.</i></p>
<p>RESPONSE:</p> <p>The outdoor garden area within this Zone is proposed to only operate within hours consistent with A1.</p> <p>Commercial deliveries in to the rear yard will occur in a way consistent with current operation, and not after 6pm. The previous approved operating hours of the restaurant was until midnight and therefore would have traditionally included noise and vehicle movement associated with customers and/or staff leaving from the rear yard after 6pm up to or after midnight.</p> <p>The proposed outdoor garden area therefore replaces this previous use and vehicle activity with outdoor dining and seating area, however unlike the previous car park area, the garden is not proposed to operate after 6pm.</p>	
<p><i>A2 Noise emissions measured at the boundary of the site must not exceed the following:</i></p> <ul style="list-style-type: none"> <i>(a) 55dB(A) (LAeq) between the hours of 8.00am to 6.00pm;</i> <i>(b) 5dB(A) above the background (LA90) level or 40dB(A) (LAeq), whichever is the lower, between the hours of 6.00pm to 8.00am;</i> <i>(c) 65dB(A) (LAm_{ax}) at any time.</i> <p><i>Measurement of noise levels must be in accordance with the methods in the Tasmanian Noise Measurement Procedures Manual, issued by the Director of</i></p>	<p><i>P2 Noise emissions measured at the boundary of the site must not cause environmental harm.</i></p>

<p><i>Environmental Management, including adjustment of noise levels for tonality and impulsiveness.</i></p>	
<p>RESPONSE: The customer use in the outdoor garden area within this Zone requires consideration against the Performance Criteria. The acoustic assessment undertaken by NVC has concluded that the noise of customer voices from this area up until the proposed 10.00pm will not cause environmental harm in accordance with P2. Subsequent to the noise assessment the application has been further revised to further restrict the hours of operation of the garden area to not extend after 6pm and therefore reduce impacts further.</p>	
<p><i>A3 External lighting must comply with all of the following:</i> <i>(a) be turned off between 6:00pm and 8:00am, except for security lighting;</i> <i>(b) security lighting must be baffled to ensure they do not cause emission of light into adjoining private land.</i></p>	<p><i>P3 External lighting must not adversely affect existing or future residential amenity, having regard to all of the following:</i> <i>(a) level of illumination and duration of lighting;</i> <i>(b) distance to habitable rooms in an adjacent dwelling.</i></p>
<p>RESPONSE: Currently the outdoor lighting is only some small ‘fairy light’ type decorations, these lights are decorative rather than for significant illumination of the outdoor areas. The outdoor spaces generally and specifically the rear garden within this zone is intended to operate primarily within daylight hours, however some security lighting of the rear yard may be required, in accordance with the acceptable solution, in that it will be baffled to ensure they do not cause emission of light into adjoining private land.</p>	
<p><i>A4 Commercial vehicle movements, (including loading and unloading and garbage removal) to or from a site must be limited to within the hours of:</i> <i>(a) 7.00am to 5.00pm Mondays to Fridays inclusive;</i> <i>(b) 9.00am to 12.00pm Saturdays;</i> <i>(c) nil on Sundays and Public Holidays.</i></p>	<p><i>P4 Commercial vehicle movements, (including loading and unloading and garbage removal) must not result in unreasonable adverse impact upon residential amenity having regard to all of the following:</i> <i>(a) the time and duration of commercial vehicle movements;</i> <i>(b) the number and frequency of commercial vehicle movements;</i> <i>(c) the size of commercial vehicles involved;</i> <i>(d) the ability of the site to accommodate commercial vehicle turning movements, including the amount of reversing (including associated warning noise);</i> <i>(e) noise reducing structures between vehicle movement areas and dwellings;</i> <i>(f) the level of traffic on the road;</i></p>

	(g) the potential for conflicts with other traffic.
<p>RESPONSE:</p> <p>The existing operation includes some small commercial van/utility deliveries into the rear yard area before it is opened to customers, and this generally occurs after 7am, no change to this is proposed, therefore could be considered to be within the existing approved permit, but would otherwise be consistent with the performance criteria.</p>	

3.4.2 DEVELOPMENT STANDARDS FOR BUILDINGS AND WORKS

<p>11.4.9 Non-dwelling development</p> <p><i>Objective: To ensure that all non-dwelling development is sympathetic to the form and scale of residential development and does not significantly affect the amenity of nearby residential properties.</i></p>	
<p>A1 Non-dwelling development must comply with all of the following acceptable solutions as if it were a dwelling:</p> <p>(a) 11.4.2 A1 and A3; (b) 11.4.3 A1 (a) and (c); (c) 11.4.7 A1.</p>	<p>P1 Non-dwelling development must comply with the related performance criteria as if it were a dwelling.</p>
<p>RESPONSE:</p> <p>11.4.2 and 11.4.3 as they relate to the application are considered below, 11.4.7 A1 relates to front fences and is therefore not relevant to the application.</p>	
<p>A3 Outdoor storage areas must comply with all of the following:</p> <p>(a) be located behind the building line; (b) all goods and materials stored must be screened from public view; (c) not encroach upon car parking areas, driveways or landscaped areas.</p>	<p>P3</p> <p><i>Outdoor storage areas must satisfy all of the following:</i></p> <p>(a) be located, treated or screened to avoid unreasonable adverse impact on the visual amenity of the locality; (b) not encroach upon car parking areas, driveways or landscaped areas.</p>
<p>RESPONSE:</p> <p>In accordance with A3, the existing building occupies the frontage and the rear are of the property is fences and therefore does not provide for public view. No storage areas are proposed, although the outdoor garden area does also provide for deliveries outside of times it is available to customers.</p>	
<p>11.4.2 Setback and building envelope</p> <p><i>Objective: To control the siting and scale of dwellings to:</i></p> <p>(a) provide reasonably consistent separation between dwellings on adjacent sites and a dwelling and its frontage; and (b) provide consistency in the apparent scale, bulk, massing and proportion of dwellings; and</p>	

<i>(c) provide separation between dwellings on adjacent sites to provide reasonable opportunity for daylight and sunlight to enter habitable rooms and private open space.</i>	
SCHEME PROVISION	DEVELOPMENT RESPONSE
<p>A3 A dwelling, excluding outbuildings with a building height of not more than 2.4m and protrusions (such as eaves, steps, porches, and awnings) that extend not more than 0.6m horizontally beyond the building envelope, must:</p> <p>(a) be contained within a building envelope (refer to diagrams 11.4.2A, 11.4.2B, 11.4.2C and 11.4.2D) determined by:</p> <p>(i) a distance equal to the permitted frontage setback ...; and</p> <p>(ii) projecting a line at an angle of 45 degrees from the horizontal at a height of 3m above natural ground level at the side boundaries and a distance of 3m from the rear boundary; to a building height of not more than 9.5m above natural ground level; and</p> <p>(b) only have a setback within 1.5m of a side boundary if the dwelling:</p> <p>(i) does not extend beyond an existing building built on or within 0.2m of the boundary of the adjoining lot; or</p> <p>(ii) does not exceed a total length of 9m or one-third the length of the side boundary (whichever is the lesser).</p>	<p>P3 The siting and scale of a dwelling must:</p> <p>(a) not cause unreasonable loss of amenity by:</p> <p>(i) reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining lot; or</p> <p>(ii) overshadowing the private open space of a dwelling on an adjoining lot; or</p> <p>(iii) overshadowing of an adjoining vacant lot; or</p> <p>(iv) visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining lot; and</p> <p>(b) provide separation between dwellings on adjoining lots that is compatible with that prevailing in the surrounding area.</p>
<p>RESPONSE:</p> <p>The development and works include deck extension and fencing within this Zone.</p> <p>New fencing (part existing) at the rear of the property to provide additional screened storage area at the rear of the property. The neighbouring land to the north is used for informal car parking, while the property to the south is the rear garden of a neighbouring dwelling located at the front (within the General Business Zoned area of this property).</p> <p>The proposed structures will have no impact on residential amenity to the north. There is no existing residential development on the land to the rear. The neighbouring property to the south is a large garden and the additional 300mm height proposed for the boundary fence will have no significant additional impact though overshadowing or visual impact.</p> <p>The development proposed meets A3.</p>	

11.4.3 Site coverage and private open space	
<p>Objective: To provide:</p> <p>(a) for outdoor recreation and the operational needs of the residents; and</p> <p>(b) opportunities for the planting of gardens and landscaping; and</p> <p>(c) private open space that is integrated with the living areas of the dwelling; and</p> <p>(d) private open space that has access to sunlight.</p>	
<p>A1 ... must have:</p> <p>(a) a site coverage of not more than 50% (excluding eaves up to 0.6m); and ...</p> <p>(c) a site area of which at least 25% of the site area is free from impervious surfaces.</p>	<p>P1 ... must have:</p> <p>...(b) reasonable space for the planting of gardens and landscaping.</p>
<p>RESPONSE:</p> <p>No additional roofed buildings are proposed and therefore A1(a) is met. In addition, the site retains significant areas free of impervious surfaces with both the artificial turf and crushed stone areas of the rear yard retaining the ability for infiltration, in accordance with A1(c).</p>	

3.5 POTENTIALLY CONTAMINATED LAND CODE

E2.4 of the Scheme provides the Use or Development exempt from this Code, including as follows:

E2.4.4 Development that does not involve disturbance of more than 1m² of land.

The only works proposed which involve disturbance are the augured holes for the gate and fence posts and deck supports, these are detailed as follows:

	No. post holes	Hole size	Hole area	Total area
Deck	10	200mm dia	0.031m ²	0.310m ²
Gate	2	250mm dia	0.049m ²	0.098m ²
Fence	8	250mm dia	0.049m ²	0.392m ²
Total Disturbance				0.8m²

The area of disturbance is therefore within the exemption of the Code.

3.6 PARKING AND ACCESS CODE

3.6.1 USE STANDARDS

E6.6.1 Number of Car Parking Spaces	
<p>Objective: To ensure that:</p> <p>(a) there is enough car parking to meet the reasonable needs of all users of a use or development, taking into account the level of parking available on or outside of the land and the access afforded by other modes of transport.</p> <p>(b) a use or development does not detract from the amenity of users or the locality by:</p> <p>(i) preventing regular parking overspill;</p> <p>(ii) minimising the impact of car parking on heritage and local character.</p>	
<p>A1 The number of on-site car parking spaces must be:</p>	<p>P1 The number of on-site car parking spaces must be sufficient to meet the reasonable</p>

<p>(a) no less than and no greater than the number specified in Table E6.1; except if: ...<i>(ii)</i> the site is subject to clauses E6.6.5, E6.6.6, E6.6.7, E6.6.8, E6.6.9 or E6.6.10 of this planning scheme.</p>	<p>needs of users, having regard to all of the following: ...</p>
<p>RESPONSE: A1 is met as Clause E6.6.10 applies, as detailed below.</p>	
<p>E6.6.4 Number of Bicycle Parking Spaces</p>	
<p><i>Objective: To ensure enough bicycle parking is provided to meet the needs of likely users and by so doing to encourage cycling as a healthy and environmentally friendly mode of transport for commuter, shopping and recreational trips.</i></p>	
<p>A1 The number of on-site bicycle parking spaces provided must be no less than the number specified in Table E6.2.</p>	<p>P1 The number of on-site bicycle parking spaces provided must have regard to all of the following: <i>(a) the nature of the use and its operations;</i> <i>(b) the location of the use and its accessibility by cyclists;</i> <i>(c) the balance of the potential need of both those working on a site and clients or other visitors coming to the site.</i></p>
<p>RESPONSE: The proposal does not add floor area and therefore no additional requirements for bicycle parking is required. Notwithstanding this the existing floor area of the restaurant would generate 2 spaces. It is proposed to include rails to provide for 2-4 bicycle parking spaces in the rear garden area (precise location to be determined) which can provide additional encouragement for alternative transport modes.</p>	
<p>E6.6.10 Number of Car Parking Spaces - Residential Zones</p>	
<p><i>Objective: To facilitate the adaptive reuse of existing non-residential buildings in a residential zone so that the parking generated by that reuse has limited impacts on residential amenity.</i></p>	
<p>A1 No on-site parking is required for: <i>(a) food services uses up to 100m² floor area or 30 seats, whichever is the lesser; and</i> <i>(b) general retail and hire uses up to 100m² floor area;</i> provided the use complies with the hours of operation specified for the relevant zone.</p>	<p>P1 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: <i>(a) car parking demand generated by the proposed use during its proposed hours of operation;</i> <i>(b) the availability of on-street and public car parking in the locality;</i> <i>(c) the availability and frequency of public transport within a 400m walking distance of the site;</i> <i>(d) the availability and likely use of other modes of transport;</i></p>

	<ul style="list-style-type: none"> (e) <i>the availability and suitability of alternative arrangements for car parking provision;</i> (f) <i>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;</i> (g) <i>any car parking deficiency or surplus associated with the existing use of the land;</i> (h) <i>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> (i) <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;</i> (j) <i>any verified prior payment of a financial contribution in lieu of parking for the land;</i> (k) <i>any relevant parking plan for the area adopted by Council;</i> (l) <i>the impact on the historic cultural heritage significance of the site if subject to the Historic Heritage Code.</i> (m) <i>any existing on-street parking restrictions;</i> (n) <i>the proportion of residential properties without off-street parking within a 100m radius of the subject site.</i>
<p>RESPONSE:</p> <p>The proposal meets A1 in that the seating proposed does not exceed 30 and the hours of use for the garden area are proposed to meet the hours of the acceptable solution for the zone.</p>	

3.7 STORMWATER MANAGEMENT CODE

3.7.1 DEVELOPMENT STANDARDS

E7.7.1 Stormwater Drainage and Disposal	
<i>Objective: To ensure that stormwater quality and quantity is managed appropriately.</i>	
<i>A1 Stormwater from new impervious surfaces must be disposed of by gravity to public stormwater infrastructure.</i>	<i>P1 Stormwater from new impervious surfaces must be managed by any of the following:</i> <i>(a) disposed of on-site with soakage devices having regard to the suitability of the site, the system design and water sensitive urban design principles</i> <i>(b) collected for re-use on the site;</i> <i>(c) disposed of to public stormwater infrastructure via a pump system which is designed, maintained and managed to minimise the risk of failure to the satisfaction of the Council.</i>
<p>RESPONSE:</p> <p>No new roofed buildings or structures are proposed, and the landscaping proposed is restricted to the laying of the artificial turf over fines on the previous car park area, and a section of gravel.</p> <p>The artificial turf is an APT Asia Pacific product which is constructed with a backing which is perforated to make it water permeable² across the whole of the backing rather than in drainage channels, which allows for infiltration directly to the subsurface, with the drainage rate for the product specified as being 2000mm per hour³. The product therefore provides infiltration into the sand infill and gravel fines layer providing infiltration in the same manner as the previous surface.</p> <p>There are therefore no new impervious surfaces proposed.</p>	

3.8 HISTORIC HERITAGE CODE

As detailed previously the front of the site is within the NH6 - Elizabeth Street Heritage Precinct, and the site is also listed as a Heritage Place within this Code.

Additional information in relation to this Code is also provided within the

3.8.1 DEVELOPMENT STANDARDS FOR HERITAGE PLACES

E13.7.1 Demolition	
<i>Objective: To ensure that demolition in whole or part of a heritage place does not result in the loss of historic cultural heritage values unless there are exceptional circumstances.</i>	
<i>A1</i> <i>No acceptable solution</i>	<i>P1 Demolition must not result in the loss of significant fabric, form, items, outbuildings or landscape elements that contribute to the historic cultural heritage significance of the place unless all of the following are satisfied;</i>

² <https://aptasiapacific.com.au/company/apt-turf/>

³ <https://synlawn.com.au/products/artificial-grass/lawns-landscapes/classic-summer-30/>

	<ul style="list-style-type: none"> (a) <i>there are, environmental, social, economic or safety reasons of greater value to the community than the historic cultural heritage values of the place;</i> (b) <i>there are no prudent and feasible alternatives;</i> (c) <i>important structural or façade elements that can feasibly be retained and reused in a new structure, are to be retained;</i> (d) <i>significant fabric is documented before demolition.</i>
<p>RESPONSE: The application includes demolition, undertaken by previous operators, of a rear pergola structure. This element was not considered to contribute to the heritage significance of the place and these works are therefore considered to be consistent with P1.</p>	
<p>E13.7.2 Buildings and Works other than Demolition</p>	
<p>Objective: <i>To ensure that development at a heritage place is:</i></p> <ul style="list-style-type: none"> (a) <i>undertaken in a sympathetic manner which does not cause loss of historic cultural heritage significance; and</i> (b) <i>designed to be subservient to the historic cultural heritage values of the place and responsive to its dominant characteristics.</i> 	
<p>SCHEME PROVISION</p>	<p>DEVELOPMENT RESPONSE</p>
<p>A1 <i>No Acceptable Solution.</i></p>	<p>P1 <i>Development must not result in any of the following:</i></p> <ul style="list-style-type: none"> (a) <i>loss of historic cultural heritage significance to the place through incompatible design, including in height, scale, bulk, form, fenestration, siting, materials, colours and finishes;</i> (b) <i>substantial diminution of the historic cultural heritage significance of the place through loss of significant streetscape elements including plants, trees, fences, walls, paths, outbuildings and other items that contribute to the significance of the place.</i>
<p>RESPONSE: Proposed works included on the application are a combination of minor internal works along with alteration associated with outdoor deck and fenced rear garden area. These works have been undertaken to enhance rather than detract from the original building fabric and heritage significance of the place.</p>	
<p>A2 <i>No Acceptable Solution.</i></p>	<p>P2 <i>Development must be designed to be subservient and complementary to the place through characteristics including:</i></p> <ul style="list-style-type: none"> (a) <i>scale and bulk, materials, built form and fenestration;</i> (b) <i>setback from frontage;</i> (c) <i>siting with respect to buildings, structures and listed elements;</i>

	(d) using less dominant materials and colours.
RESPONSE: All works are subservient to the place in term of their scale and have been designed to compliment the characteristics of the place.	
A3 No Acceptable Solution.	P3 Materials, built form and fenestration must respond to the dominant heritage characteristics of the place, but any new fabric should be readily identifiable as such.
RESPONSE: The new built elements are readily identifiable but new materials have been selected to enhance the heritage characteristics of the place.	
A4 No Acceptable Solution.	P4 Extensions to existing buildings must not detract from the historic cultural heritage significance of the place.
RESPONSE: The only extension proposed is the rear deck area which will not detract from the cultural heritage significance of the place.	
A5 New front fences and gates must accord with original design, based on photographic, archaeological or other historical evidence.	P5 New front fences and gates must be sympathetic in design, (including height, form, scale and materials), to the style, period and characteristics of the building to which they belong.
RESPONSE: No front fence is proposed.	
A6 Areas of landscaping between a dwelling and the street must be retained.	P6 The removal of areas of landscaping between a dwelling and the street must not result in the loss of elements of landscaping that contribute to the historic cultural significance of the place.
RESPONSE: There is no existing landscaping at the front of the property.	

3.8.2 DEVELOPMENT STANDARDS FOR HERITAGE PRECINCTS

Table E13.2 Heritage Precincts includes the following in relation to the subject precinct:

Ref. No.	Name of Precinct	Statement of Historic Cultural Heritage Significance
NH6	Elizabeth Street	This precinct is significant for reasons including: 1. The fine quality and quantity of Old Colonial, mid to late Victorian, Federation and Inter War commercial/residential buildings demonstrate its original mixed use nature 2. Intact individual houses that are representative examples of Old Colonial and Federation residential architecture. 3. The continuous two storey (mostly brick) facades, general uniformity of form and scale together with a distinctive

		<p>nineteenth century subdivision pattern that create a consistent and impressive streetscape.</p> <p>4. The front gardens of a few properties south of Burnett Street, and more recent street art are important aesthetic features that reinforce its mixed use character.</p>
--	--	---

The following standards are relevant to the development proposed which is located within the precinct.

E13.8.2 Buildings and Works other than Demolition	
<i>Objective: To ensure that development undertaken within a heritage precinct is sympathetic to the character of the precinct.</i>	
A1 No Acceptable Solution	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.
<p>RESPONSE: As the precinct covers the front part of the site, containing the existing building, and the works in this area are restricted to minor refurbishments and internal works, there will be no impact on the heritage significance of the precinct.</p>	
A2 No Acceptable Solution	P2 Design and siting of buildings and works must comply with any relevant design criteria / conservation policy listed in Table E13.2, except if a heritage place of an architectural style different from that characterising the precinct.
<p>RESPONSE: There are no design criteria or conservation policy relevant.</p>	
A3 No Acceptable Solution	P3 Extensions to existing buildings must not detract from the historic cultural heritage significance of the precinct.
<p>RESPONSE: No extension to existing buildings are proposed.</p>	
A4 New front fences and gates must accord with original design, based on photographic, archaeological or other historical evidence.	P4 New front fences and gates must be sympathetic in design, (including height, form, scale and materials), and setback to the style, period and characteristics of the precinct.
<p>RESPONSE: New fences are not proposed within the precinct.</p>	
A5 Areas of landscaping between a dwelling and the street must be retained.	P5 The removal of areas of landscaping between a dwelling and the street must not result in the loss of elements of landscaping that contribute to the historic cultural significance or the streetscape values and character of the precinct.
<p>RESPONSE: There is no existing landscaping</p>	

APPENDIX A - TITLE



APPENDIX B - PLANS



APPENDIX C - NOISE ASSESSMENT

APPENDIX D - HERITAGE IMPACT ASSESSMENT





Irene Inc.
 49 Tasma Street
 North Hobart, TAS 7000

14 February 2019

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Attention: Jacqui Blowfield

315 ELIZABETH STREET – NOISE ASSESSMENT

Boodle Beasley at 315 Elizabeth Street North Hobart are seeking to extend their existing outdoor dining area to include the remainder of the back yard. As part of the DA for this extension, a noise assessment of the impact this will have on the amenity of surrounding neighbours is required. This letter provides such an assessment, conducted by NVC in January 2019.

SITE DESCRIPTION

The site and surrounds are shown in Figure 1. The site (yellow in figure) has a two-storey building at the front of the block, with a small facilities building extending down the southern boundary that has toilet and store spaces. The northern boundary has a driveway along it that accesses the back yard area and also provides access to the back of 317 Elizabeth Street. Neighbours on each boundary are residential, with some car parking areas and commercial spaces also present.

The land is zoned General Business for the front section, while the rear section is zoned Inner Residential; the proposed extension of operations is within the Inner Residential zone.



Figure 1: Site and surroundings

The existing outdoor use comprises tables with seating, nominally 4 – 6 people per table, Figure 2. Background music is played through small outdoor speakers.



Figure 2: Existing Operations

The extended use is intended to be lower density than the current operation and will similarly use tables and seating with nominally 8 to 10 tables throughout the extended space. The hours of operation for the extended space are 8 am to 10 pm and no outdoor music will be played in the extended space. The noise from the extended space will then be patron noise only.

NOISE MEASUREMENTS

Existing noise levels have been logged over a 4-day period at two locations on the boundary (B and D in Figure 1), with additional detailed attended measurements of patron noise made on the night of 18th January. The measurements are summarised in Figure 3, and Table 1, with the following comments relevant:

- For the existing operations when outdoor dining was occurring it was the dominant boundary noise at D. At B patron noise was audible as a background with general urban noise being the main noise.
- From the detailed measurements, the patron noise was determined to have a sound power level of 79 dBA. This is the same level as a raised voice as defined by ANSI¹ and gives credence to the measurements and their use in deriving the patron sound power level.
- Current patron noise typically extends to between 2200 hours and midnight.

Table 1: Measured Noise Levels

		Sound Pressure Level, dBA		
		L10	L90	Leq
Location B	Day Time *	51	45	49
	Night Time *	53	46	50
Location D	Day Time *	60	52	58
	Night Time *	71	60	68

* Day time 0800 – 1800 hours, Night time 1800 – 2200 hours.

¹ ANSI 3.5-1997. American National Standard – Methods for calculation of Speech Intelligibility Index

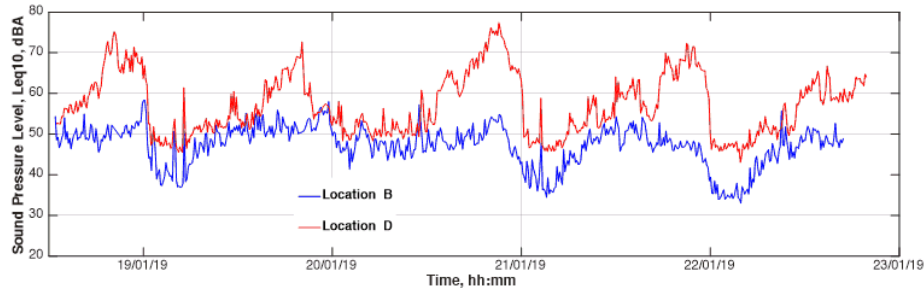


Figure 3: Existing Noise Levels

NOISE PREDICTIONS

Noise levels at the boundary of the site have been predicted using iNoise software, which implements the ISO9613 algorithms for environmental noise. The predictions account for geometric spreading, barrier attenuation, atmospheric absorption, reflections off buildings, and ground absorption. The following assumptions have been made in the predictions:

- Existing operations are included as 8 occupied tables.
- Extended operations have 12 tables dispersed throughout the back yard.
- Based on measurements for current operations, a sound power of 85 dBA is assigned to each table for night time operations (6pm until 10pm), and 77 dBA during the daytime (normal rather than raised voice level used during the day).
- The fence has been increased in height from 1.7 to 2.4 metres.
- As per the Tasmanian Noise Measurement Procedures Manual, noise levels are predicted at 1.5m above ground.

The model for extended operations is shown in Figure 4, with the red stars being the noise sources (tables), and the grey areas buildings.



Figure 4: Acoustic Model of Extended Operations

Noise levels are predicted for the four locations (A to D in Figure 1) that are within the residential zone, and for three scenarios; the existing use during the night time, the extended use during the day, and the extended use during the night. The results are summarised in Table 2.



315 ELIZABETH STREET – NOISE ASSESSMENT

Table 2: Predicted Boundary Noise Levels from Boodle Beasley

		Sound Level, Leq dBA			
		A	B	C	D
Baseline	Night Time	60	50	52	65
Extended Use	Day Time	49	47	48	51
	Night Time	55	53	55	57

CRITERIA

The extended operations are within the inner residential zone and so clause 11.3.1 of the Hobart Interim Planning Scheme 2015 applies which provides criteria “To ensure that non-residential use does not unreasonably impact residential amenity.” In particular:

“ A1:

Hours of operation must be within 8.00 am to 6.00 pm, except for office and administrative tasks or visitor accommodation.

A2:

Noise emissions measured at the boundary of the site must not exceed the following:

- (a) *55 dBA (Leq) between the hours of 8:00 am and 6:00 pm;*
- (b) *5 dBA above the background (L90) level or 40 dBA (Leq), whichever is the lower, between the hours of 6:00 pm and 8:00 am;*
- (c) *65 dBA (Lmax) at any time*

A1 is not met by the extended use and after 6pm noise levels are already higher than 40 dBA and so A2 is not met in the night. The performance criteria must then be referred to which states:

P2:

“ *Noise emissions measured at the boundary of the site must not cause environmental harm* “

Environmental harm is defined in the Act² as “ *..any adverse effect on the environment and includes an environmental nuisance* ”. Environmental nuisance is further defined in the Act³ as:

- “ (3) *Where an offence under subsection (1) or (2) is constituted by the emission of noise that is not an emission specified in an environment protection policy to be an environmental nuisance, the emission is to be taken to unreasonably interfere with a person's enjoyment of the environment if it is unreasonable having regard to –*
- (a) *its volume, intensity or duration; and*
- (b) *the time, place and other circumstances in which it is emitted; and*

In determining if a noise is deemed unreasonable, the following documentation may be referenced:

THE TASMANIAN ENVIRONMENTAL PROTECTION POLICY (NOISE) 2009

The policy provides acoustic environment guideline levels which may be assumed to protect the environmental values defined in the policy, from which the following are extracted:

Outdoor Living,	Serious annoyance	55 dBA, Leq 16hr
	Moderate annoyance	50 dBA, Leq 16 hr

THE NSW NOISE POLICY FOR INDUSTRY

States, at section 2.3, intrusiveness of a noise is generally acceptable if noise from the source does not exceed the background (L90), plus 5 dB. At night this would imply a noise criteria of 48 dBA.

² EMPCA, para 5
³ EMPCA, para 53
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The extended operations occur between 0800 and 2200 hours and sleep disturbance is therefore not relevant. These guidelines are then summarised in Table 3.

Table 3: Environmental Nuisance - External Noise Criteria

REFERENCE	PROTECTED ACTIVITY	EXTERNAL NOISE LEVEL, LEQ, dBA	
		Day Time 0800 and 1800 hrs	Night Time 1800 – 2200 hrs
Planning Scheme	Outdoor amenity	55	40
NSW Noise Policy for Ind.	Outdoor intrusiveness	50 - 57	51 - 65
Tas EPP (Noise)	Outdoor living	55	55

ASSESSMENT

The assessment is driven by the Planning Scheme, which requires noise levels at the boundary of the site to meet either the Acceptable Solution, or if not, the Performance Criteria. The extended use operates between 0800 and 2200 hours and so the assessment is only considered during this period, and is summarised in Table 4. The Table should be read sequentially from top to bottom.

The table indicates the Planning Scheme Acceptable Solution 11.3.1-A2 is met during the daytime but not at night time and hence the Performance Criteria 11.3.1-P2 is referred to for night time noise between 1800 and 2200 hours.

The Tasmanian EPP (Noise) is initially used to define a noise level that will ensure environmental harm does not occur and the table indicates that one location on the boundary (D) does not meet this criterion. In order to have potential to cause harm, the noise must be clearly audible and the NSW intrusive criteria (L90+5), is used to define this. The table shows the noise is not deemed intrusive and therefore the noise will not cause environmental harm.

The table then concludes that the Planning Scheme Acceptable Solution is met during the daytime, and the performance solution during the night time, and as such clause 11.3.1 of the Planning Scheme is satisfied.

CONCLUSION

The proposed use of the extended back yard area at Boodle Beasley, 315 Elizabeth St, has been assessed with respect to its noise emissions, and their impact on surrounding properties. The extended area of use is within an Inner Residential zone under the Hobart Interim Planning Scheme 2015, and hence the assessment is against clause 11.3.1 of the Scheme.

The extended area is to operate between the hours of 0800 – 2200 hrs and only this period is considered in the noise assessment.

Based on noise measurements of the current operations, the sound power of the outdoor patrons has been determined along with the existing ambient and background noise levels. Using the determined patron sound power level for 12 tables in the extended area, boundary noise levels have been predicted at four representative locations around the boundary, and those levels assessed against the Planning Scheme.

The extended use meets the Acceptable Solution during the daytime (0800 – 1800 hrs), but does not meet the Acceptable Solution at night, hence the Performance Criteria is addressed at night time.

Referring to various state and inter-state regulations / policies and comparing the predicted noise against existing noise levels, the Performance Criteria is satisfied in that environmental harm is determined not to be caused by the extended use.

The assessment then concludes that provided:

- The fence height is raised to 2.4m all around the boundary, and
- The operating hours for the extended area are between 0800 and 2200 hrs, then

the use of the extended back yard area at 315 Elizabeth St satisfies clause 11.3.1 of the Planning Scheme.

Table 4: Assessment Summary

		A	B	C	D
Day Time	A2 – Acceptable Solution	55	55	55	55
	Boundary Noise	49	47	48	51
		PASS	PASS	PASS	PASS
Night Time	A2 – Acceptable Solution	40	40	40	40
	Boundary Noise	55	53	55	57
		Fail	Fail	Fail	Fail
	P2 – Performance Criteria				
	TAS EPP	55	55	55	55
		PASS	PASS	PASS	Fail
	Intrusive criteria (L90+5)				65
	Intrusive ?				NO
					PASS
Day + Night		PASS	PASS	PASS	PASS

Should you have any queries, please do not hesitate to call this office directly.

Yours faithfully



Bill Butler

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Heritage Impact Assessment

Backyard Dining Area & Minor Works
315 Elizabeth Street
HOBART TASMANIA

For Irenelnc

January 2019

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This document was written by Brad Williams (BA Hons Archaeology, G.Dip Maritime Archaeology, MA Cultural Heritage Management)
Historical Archaeologist, Heritage Consultant and Director of Praxis Environment.

Praxis Environment is a division of Praxis Synergy Pty. Ltd. ACN 623 700 818.

Unless otherwise stated, all photographs were taken by Brad Williams, January 2019

Unless otherwise stated, the north point (or approximate) of maps and plans is to the top of the page – project north is designated as the laneway-side wall of the building (although technically that wall is the north-western wall).

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1. Introduction, rationale and brief

This report has been commissioned by Irenelnc (Hobart) on behalf of the owners of 315 Elizabeth Street, North Hobart (C/T 10396/1, PID 5662265), in order to assess any possible heritage impact arising from a proposal for an outdoor dining area in the rear yard of that place, some minor internal works as well as consideration of whether that intended use might have a positive heritage outcome in its support of the use of the place.

The place is listed on the Heritage Schedule (Table E13.1, Ref 1053) of the Hobart Interim Planning Scheme 2015 (the *scheme*) and is partially within the NH6 Heritage Precinct (as defined in Table E13.2). The place is listed on the Tasmanian Heritage Register (THR ID 315).



Figure 1.1 - Cadastral boundaries of the site (shaded orange) and wider area. Adapted from www.theilist.tas.gov.au

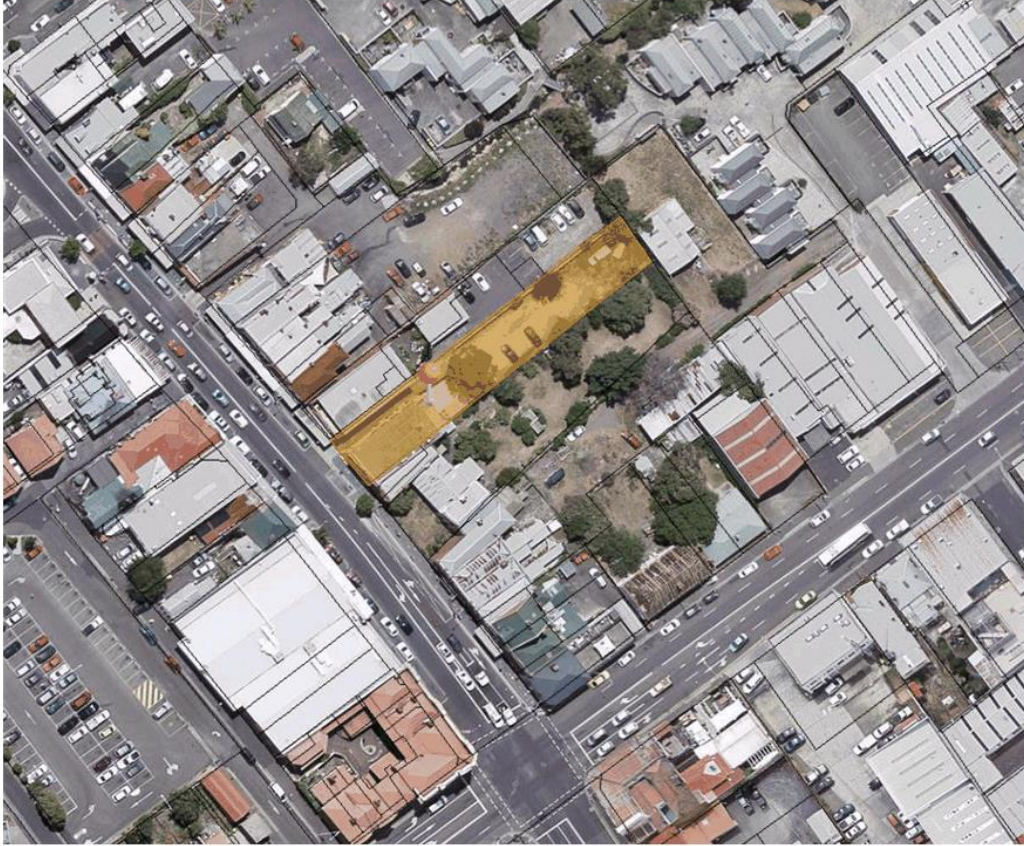


Figure 1.2 – Aerial photograph of the area (the place shaded orange) www.thelist.tas.gov.au

2. Statutory heritage requirements

The following heritage listings and overarching legislative provisions are relevant to the management of the historic cultural heritage values of the place.

Hobart Interim Planning Scheme 2015

Heritage Place

The place is listed as a *Heritage Place* (Place #1053) on Table E13 of the *Hobart Interim Planning Scheme 2015* (the *Scheme*). This listing applies to the whole title/address. Further to Part E13.5.1 of the Scheme, the Planning Authority may require the following to accompany any application for use or development of a Heritage Place:

- (a) a conservation plan;
- (b) photographs, drawings or photomontages necessary to demonstrate the impact of the proposed development on the heritage values of the place;
- (c) a statement of significance;
- (d) a heritage impact statement;
- (e) a statement of compliance;
- (f) a statement of archaeological potential;
- (g) an archaeological impact assessment;
- (h) an archaeological method statement;

Accordingly, any demolition, development or subdivision of the place must be in accordance with the provisions of Part E13.7 of the Scheme (Development Standards for Heritage Places):

	Acceptable Solution	Performance Criteria
E.13.7.1 - Demolition	A1. No Acceptable Solution.	<p>Demolition must not result in the loss of significant fabric, form, items, outbuildings or landscape elements that contribute to the historic cultural heritage significance of the place unless all of the following are satisfied;</p> <ul style="list-style-type: none"> (a) there are, environmental, social, economic or safety reasons of greater value to the community than the historic cultural heritage values of the place; (b) there are no prudent and feasible alternatives; (c) important structural or façade elements that can feasibly be retained and reused in a new structure, are to be retained; (d) significant fabric is documented before demolition.

E.13.7.2 – Building and Works other than Demolition	A1. No Acceptable Solution.	P1. Development must not result in any of the following: (a) loss of historic cultural heritage significance to the place through incompatible design, including in height, scale, bulk, form, fenestration, siting, materials, colours and finishes; (b) substantial diminution of the historic cultural heritage significance of the place through loss of significant streetscape elements including plants, trees, fences, walls, paths, outbuildings and other items that contribute to the significance of the place.
	A2. No Acceptable Solution.	P2. Development must be designed to be subservient and complementary to the place through characteristics including: (a) scale and bulk, materials, built form and fenestration; (b) setback from frontage; (c) siting with respect to buildings, structures and listed elements; (d) using less dominant materials and colours.
	A3. No Acceptable Solution.	P3. Materials, built form and fenestration must respond to the dominant heritage characteristics of the place, but any new fabric should be readily identifiable as such.
	A4. No Acceptable Solution.	P4. Extensions to existing buildings must not detract from the historic cultural heritage significance of the place.
	A5. New front fences and gates must accord with original design, based on photographic, archaeological or other historical evidence.	P5. New front fences and gates must be sympathetic in design, (including height, form, scale and materials), to the style, period and characteristics of the building to which they belong.
	A6. Areas of landscaping between a dwelling and the street must be retained.	P6. The removal of areas of landscaping between a dwelling and the street must not result in the loss of elements of landscaping that contribute to the historic cultural significance of the place.
E.13.7.3 - Subdivision	A3. No Acceptable Solution.	P1. A proposed plan of subdivision must show that historic cultural heritage significance is adequately protected by complying with all of the following: (a) ensuring that sufficient curtilage and contributory heritage items (such as outbuildings or significant plantings) are retained as part of any title containing heritage values; (b) ensuring a sympathetic pattern of subdivision; (c) providing a lot size, pattern and configuration with building areas or other development controls that will prevent unsympathetic development on lots adjoining any titles containing heritage values, if required.

Heritage Precinct

The place is also partially within Heritage Precinct NH6 as defined in Table E13.2 and depicted on Map E13.3 of the Scheme. The associated statements of significance for that precinct include:

1. *The fine quality and quantity of Old Colonial, mid to late Victorian, Federation and Inter War commercial/residential buildings demonstrate its original mixed use nature*
2. *Intact individual houses that are representative examples of Old Colonial and Federation residential architecture.*
3. *The continuous two storey (mostly brick) facades, general uniformity of form and scale together with a distinctive nineteenth century subdivision pattern that create a consistent and impressive streetscape.*
4. *The front gardens of a few properties south of Burnett Street, and more recent street art are important aesthetic features that reinforce its mixed use character.*

The following Figure depicts the extent of the place included in the NH6 precinct:

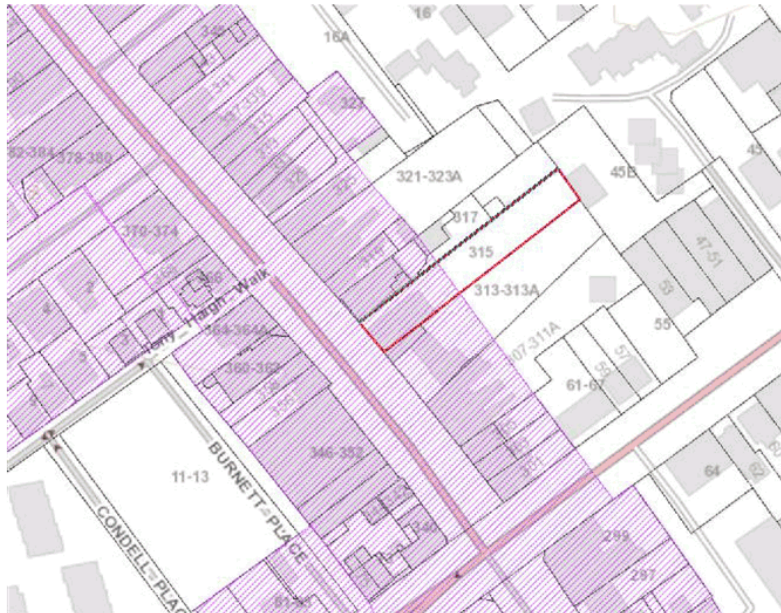


Figure 2.1 – The extent of the NH6 Heritage Precinct (hatched purple) in relation to the place (outlined in red). Adapted from www.thelist.tas.gov.au

Accordingly, the provisions of Part E13.8 (1-3) apply to the place.

	Acceptable Solution	Performance Criteria
E.13.8.1 - Demolition	A1. No Acceptable Solution.	Demolition must not result in the loss of any of the following: (a) buildings or works that contribute to the historic cultural heritage significance of the precinct; (b) fabric or landscape elements, including plants, trees, fences, paths, outbuildings and other items, that contribute to the historic cultural heritage significance of the precinct; unless all of the following apply; (i) there are, environmental, social, economic or safety reasons of greater value to the community than the historic cultural heritage values of the place; (ii) there are no prudent or feasible alternatives; (iii) opportunity is created for a replacement building that will be more complementary to the heritage values of the precinct. (iv)
E.13.8.2 – Building and Works other than Demolition	A1. No Acceptable Solution.	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.
	A2. No Acceptable Solution.	P2. Design and siting of buildings and works must comply with any relevant design criteria /conservation policy listed in Table E13.2, except if a heritage place of an architectural style different from that characterising the precinct.
	A3. No Acceptable Solution.	P3. Extensions to existing buildings must not detract from the historic cultural heritage significance of the precinct.
	A4. New front fences and gates must accord with original design, based on photographic, archaeological or other historical evidence.	P4. New front fences and gates must be sympathetic in design, (including height, form, scale and materials), and setback to the style, period and characteristics of the precinct.
	A5. Areas of landscaping between a dwelling and the street must be retained.	P5. The removal of areas of landscaping between a dwelling and the street must not result in the loss of elements of landscaping that contribute to the historic cultural significance or the streetscape values and character of the precinct.

E.13.8.3 - Subdivision	<p>A3. No Acceptable Solution.</p>	<p>P1. Subdivision must not result in any of the following:</p> <ul style="list-style-type: none"> (a) detriment to the historic cultural heritage significance of the precinct, as listed in Table E13.2; (b) a pattern of subdivision unsympathetic to the historic cultural heritage significance of the precinct; (c) potential for a confused understanding of the development of the precinct; (d) an increased likelihood of future development that is incompatible with the historic cultural heritage significance of the precinct.
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Change of use of a heritage place

Under Part 9.5 of the scheme, the Planning Authority has discretion to approve an ordinarily prohibited use of a heritage place:

9.5.1 *An application for a use of a Heritage Place listed in the Historic Heritage Code or a place on the Tasmanian Heritage Register that would otherwise be prohibited is discretionary.*

9.5.2 *The planning authority may approve such an application if it would facilitate the restoration, conservation and future maintenance of the historic cultural heritage significance of the place.*

9.5.3 *In determining an application the planning authority must have regard to all of the following:*

- (a) *a statement of significance, as defined in the Historic Heritage Code;*
- (b) *a heritage impact statement and a conservation plan, as defined in the Historic Heritage Code, written with regard to the proposed use;*
- (c) *the degree to which the restoration, conservation and future maintenance of the historic cultural heritage significance of the place is dependent upon the commencement of the proposed use;*
- (d) *the extent to which the proposal provides for the active use or re-use of any heritage fabric;*
- (e) *the likely impact of the proposed use on the residential amenity of the area if within a residential area.*

Place of archaeological potential

The place is not defined as a *Place of Archaeological Potential* as defined in Figure E13.4.1 of the Scheme, therefore the provisions of Part E13.10 do not apply.

Historic Cultural Heritage Act 1995

The place is listed on the Tasmanian Heritage Register (ID 315); therefore is subject to the provisions of the Historic Cultural Heritage Act 1995 (HCHA). Part 6 of the HCHA (Heritage Works) sets the process by which approvals for works may be gained from the Tasmanian Heritage Council (THC):

35. Heritage works require heritage approval

- (1) A person must not carry out any heritage works unless those heritage works have heritage approval.*
- (2) For the purposes of subsection (1), heritage works are taken to have heritage approval if, and only if –*
- (a) in a case where a certificate of exemption has been issued, the heritage works are carried out in accordance with –*
 - (i) that certificate of exemption; and*
 - (ii) if a discretionary permit or other permit is required for the heritage works under the Planning Act, that discretionary permit or other permit; or*
 - (b) in a case where a certificate of exemption has not been issued, the heritage works are carried out in accordance with a discretionary permit.*
- (3) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that –*
- (a) the heritage works were carried out in response to an emergency; and*
 - (b) the heritage works were, both as to nature and extent, reasonably necessary for the purposes of responding to the emergency; and*
 - (c) in the circumstances, it was not practicable to seek a certificate of exemption; and*
 - (d) the defendant, before, while or as soon as practicable after carrying out the heritage works, notified the Heritage Council, in writing, of the emergency and the details of the heritage works.*

Sections 36-41 set the process for the lodgment and assessment of applications for a heritage works permit, via a Discretionary Development Application under the Land Use Planning and Approvals Act 1993 (see below). Section 42 describes the process whereby certain works may be exempt from the requirement of s.35:

42. Certificates of exemption for heritage works

- (1) A person may apply to the Heritage Council for a certificate of exemption for heritage works.*
- (2) The exemption certificate application –*
- (a) is to be in a form provided or approved by the Heritage Council; and*
 - (b) is to be supported by such information as the Heritage Council requires, either at the time of lodgment or subsequently.*
- (3) The Heritage Council may –*
- (a) approve the exemption certificate application; or*

(b) refuse the exemption certificate application.

(4) Without limiting its discretion, the Heritage Council must approve the exemption certificate application if it is reasonably satisfied that the heritage works –

- (a) are identified in the works guidelines as works that will have no impact or only negligible impact on the historic cultural heritage significance of the relevant registered place or heritage area; and*
- (b) are capable of being carried out in accordance with the works guidelines.*

Whilst the HCHA provides no specific detail as to how particular proposals are considered, nor does it provide any indicative thresholds of what may be considered to have *no or negligible* heritage impact, the THC/Tasmanian Government publication *Works Guidelines for Historic Heritage Places* (November 2015)¹ provides further detail on the application process, guiding principles and the basis for decisions made by the THC.

In addition, the THC has a series of practice notes and technical guides, available via www.heritage.tas.gov.au which provide useful guiding principles for how the THC are expected to assess and determine applications for heritage works.

Environment Protection & Biodiversity Conservation Act 1999

The place is not included on the National or Commonwealth Heritage Lists, therefore the historic cultural heritage provisions of the Environment Protection and Biodiversity Conservation Act 1999 are not applicable.

¹ http://heritage.tas.gov.au/Documents/Works_Guidelines_FINAL_Nov2015.pdf

3. Assessment methodology

This assessment has been undertaken with regard to the ICOMOS Australia **Burra Charter**, which is considered to be the Australian heritage industry's benchmark for assessing, understanding and managing heritage values.

Figure 3.1 depicts this process:

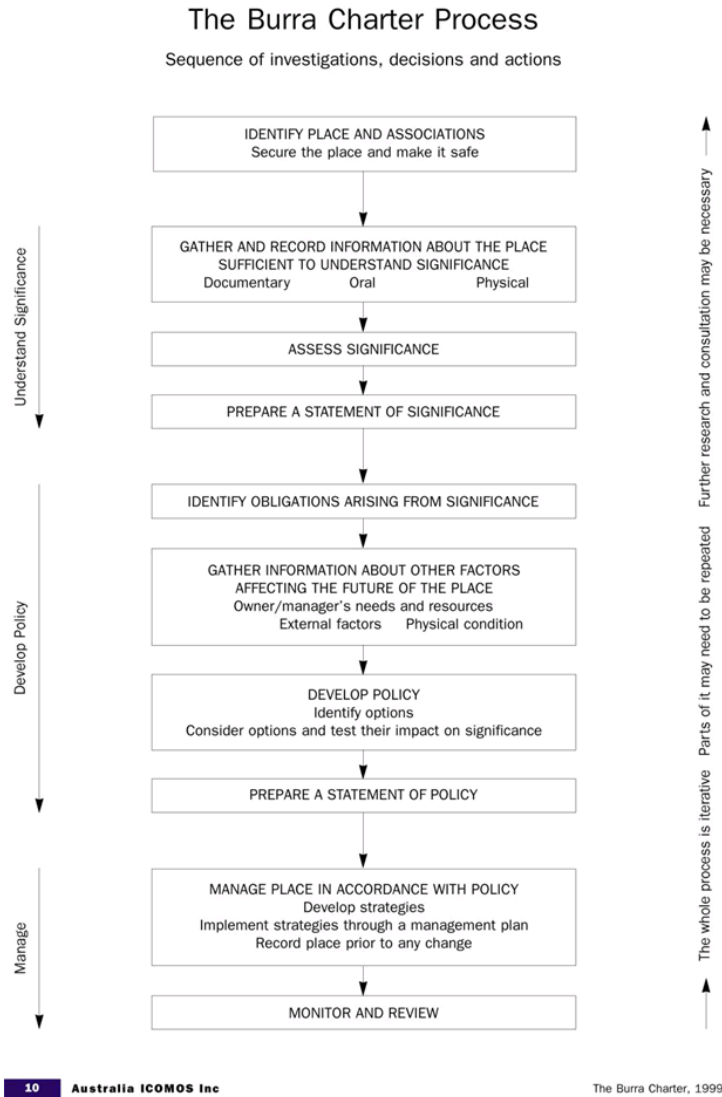


Figure 3.1 – The Burra Charter Process. ICOMOS Australia.

The statutory provisions and consequent responsibilities as outlined in Section 2 have also been considered in formulating this document.

It is intended that this document fulfil the lower portion of the diagram at Figure 3.2, whereby it measures the possible heritage impact of the proposal upon the identified significance and consequent policies and statutory requirements that pertain to the place – further to the existing conservation policy. It is expected that if this document concludes that there is a degree of heritage impact, that the design team will need to respond to such and seek to mitigate or avoid that impact.

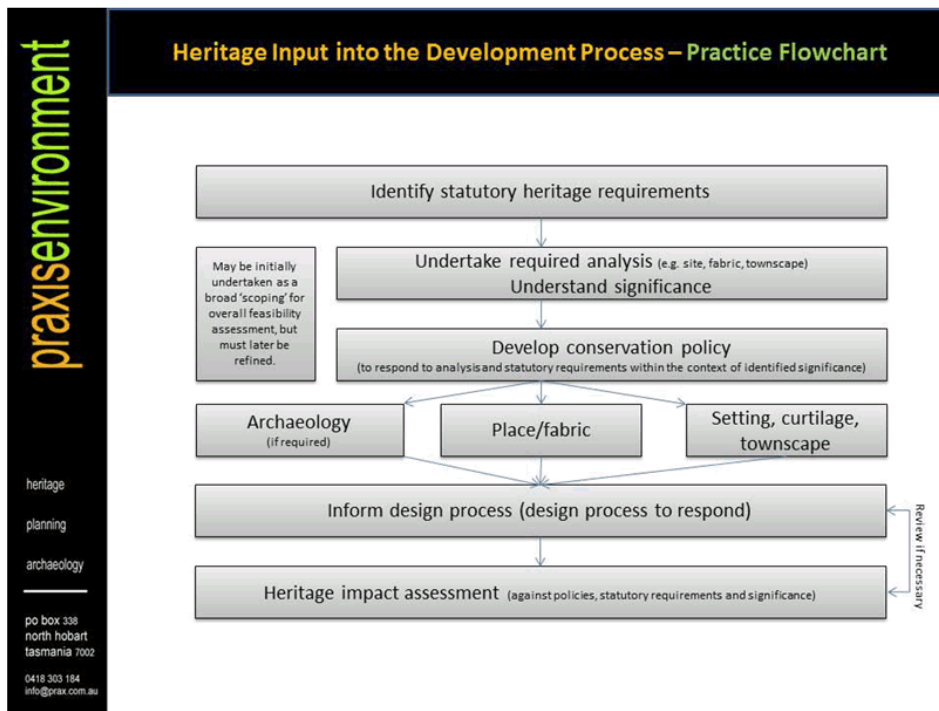


Figure 3.2 – Practice flowchart for the application of the conservation planning process – the current document forming the bottom box of this diagram.

4. Description and background of the site and heritage significance

4.1. Historical background and character of the precinct

A historical background of the NH6 Heritage Precinct is provided in the *North Hobart Heritage Areas: A Detailed Assessment* (Katheryn Bennett, for Hobart City Council, 2005).

The section of Elizabeth Street that crosses this part of North Hobart was laid out by 1828, as were the intersecting cross streets of Warwick, Burnett, and Colville Streets. It was in the later years of the nineteenth century that Tasma, Pitt, Lefroy, and Swan Streets were created. Development along Elizabeth Street appears to have been considerably advanced by the late 1830s, particularly between Warwick Street and Arthur Street (which was the northern town boundary). The importance of Elizabeth Street grew as it became the "Road to the Interior", for it was by this road that places further north could be reached such as New Town, O'Brien's Bridge (Glenorchy) and later Launceston. As a result of this increased focus on Elizabeth Street and a growth in the population of Hobart in the 1830s and 1840s, large stately residences were constructed along this section of the street. There was a particularly striking group of brick and sandstone residences built along the eastern side of Elizabeth Street, namely Melbourne Lodge c1829,34 and Prospect House c1830.

Despite this development, land further north between Arthur and Federal Streets was still largely rural in function by the 1840s. William Shoobridge's farm, part of which fronted onto Elizabeth Street, was established in 1822, and operated until the 1860s. There were also several dairies within the area, one was located at the corner of Elizabeth and Burnett Streets in the 1830s. Market gardens and orchards were also established in the early years. In the 1820s, for example, the licensee of the Dallas Arms Inn (now 313A Elizabeth Street) applied for a further three acres to enable him to establish a market garden.³⁵ Numerous industries were established from the early days. In the 1820s, Henry Condell established a brewery at a site now occupied by Condell Place. A plough manufactory run by Mr Holdship was operating from what is now 279 Elizabeth Street in the 1830s; and a blacksmith's shop was started by Benjamin Holroyd at 350 Elizabeth Street in the 1860s.

Public houses were also an important feature of early commercial development along Elizabeth Street. These establishments serviced both the surrounding residential population, and travellers on the road to the north. The Dallas Arms Inn was the first to be established in 1828. By the 1850s, however, there were 18 public houses in the suburb, most of which were

concentrated along this stretch of Elizabeth Street. In the 1890s, the area became increasingly built up due to the introduction of a tram service to the area, the main line ran along Elizabeth Street. By the early 1900s, both sides of Elizabeth Street were substantially built upon, and had become a densely packed commercial/residential strip. Stores were to be found on nearly every corner, and family businesses, such as Soundy's Department Store (established in 1883), were regularly patronised by the locals.

Other services developed along Elizabeth Street in the late nineteenth/early twentieth centuries. The Elizabeth Street Practising School was constructed in 1911 (this became Elizabeth Matriculation College in 1968); the Baptist Tabernacle was constructed 1887-1889; the North Hobart Post Office was established in 1912; and the State Theatre (originally the Picture Palace) was constructed in c1914.

In recent decades, the commercial function of this part of Elizabeth Street has started to shift. There are increasing numbers of restaurants in the area, and a decline in the number of traditional corner stores and family run businesses. Large scale commercial enterprises, such as supermarkets, and chain stores have replaced many of the traditional businesses.

The character of the precinct is also described in that document:

The land is gently sloping and gradually rises from Warwick Street in the south to Federal Street in the north. Elizabeth Street is an arterial road, which is wide and relatively straight except for a distinctive bend at the intersection of Warwick Street as it skirts the base of Trinity Hill. The immediate view from the street looking north are the surrounding built up commercial/residential areas of North Hobart, whereas looking south the foothills of Mount Wellington are evident in the far distance. Cottage style front gardens are scattered throughout the area, but are mostly evident south of Burnett Street where there are more residences located along Elizabeth Street. There are no permanent street plantings along this route as most buildings are built hard against the footpath edge and have overhanging awnings in line with the street-edge. There are, however, some semi-permanent flower boxes at some intersections. Street art is also a feature of this area, particularly in the commercial core between Burnett and Federal Streets.

There is a mixture of architectural styles along Elizabeth Street, ranging from Colonial Georgian, mid to late Victorian, Federation, Inter War to Late Twentieth Century. Most buildings are two storeys and are of brick and/or sandstone construction. Most of these buildings have a purely commercial function. There are many individual buildings and groups that make a valuable contribution to the streetscape. The North Hobart Post Office is a landmark structure that

symbolises the northern 'gateway' to North Hobart. It is a purpose built post office building executed in the Federation Free Style. There are various other important individual buildings including: the State Theatre at 375 Elizabeth Street, the former Soundy's Department Store at 367-373 Elizabeth Street; the Neo-Classical Baptist Tabernacle at 284-290 Elizabeth Street; the Colonial Georgian buildings at 313A Elizabeth Street; Prospect House, which is a three storey Georgian former residence near the intersection with Warwick Street, and Melbourne Lodge which was built at a similar time.

Important groups include the uninterrupted rows of mid to late Victorian commercial buildings that line either side of Elizabeth Street; and the two pairs of Federation conjoined houses at 312-318 Elizabeth Street which have ornate timber verandahs/balconies. Intrusions include unsympathetic alterations and additions to historic buildings in an attempt to boost their commercial functionality. The use of inappropriate signage is also a problem.

4.2. Description of the place

315 Elizabeth Street is a substantial Federation Free-Classical commercial building in a prominent streetfront location in the centre of the North Hobart 'strip'. The two-storey building has a ground floor shopfront with a sympathetic (if not original) storefront window with a recessed central doorway. The façade features an ornate central gabled pediment and colonnaded parapet, all rendered in concrete. The second floor has a central arched window flanked by two narrower arched windows – all with their original timber sashes and small multi-paned upper sashes. A portion of the upper floor of the façade is rendered in concrete with a portion face brick and featuring prominent arched lintels with central keystones and cornice. Any earlier awning/veranda has been removed.

The side elevation facing the laneway to the rear is blank face-brick for the front bay (with evidence of early signwriting) and features seven arched-top timber sash windows (of diminished detailing to the façade) and a doorway to the rear (former) residential component of the building. The southern elevation is largely obscured by 313A Elizabeth Street which is a smaller building of a similar era and style. The rear elevation has been partially removed and a new two-storey skillion added.

The backyard is a large open space and does not include any notable heritage features. The large backyard space is consistent with the surrounding pattern of development, with the row of buildings from 307-323 Elizabeth Street all having similar large backyards which have not been developed – development being concentrated on the street frontage. This lack of substantial backyard development is indicative of the lack of development pressure on these backyard areas through the c20th.



Figure 4.1 – Elizabeth Street and laneway elevations of 315 Elizabeth Street.



Figure 4.2 – The rear and laneway elevations of 315 Elizabeth Street

The building is a prominent element in the surrounding North Hobart Streetscape, being a largely original and intact commercial shopfront, with two elevations largely visible owing to the laneway at the side. The building sits conformably with its contemporary neighbours, namely 313A Elizabeth Street as well as the row of shops/residences at 303-311A and 321-232A Elizabeth Street – all of which are of a similar era, styling and degree of integrity. Further afield, 340, 331-333 and 362-364 Elizabeth Street are all examples of early c20th brick commercial buildings which represent that era of development in this part of Elizabeth Street. Whilst this particular part of Elizabeth Street represents a variety of architectural styles and eras (e.g. the former Dallas Arms at 313 Elizabeth Street, and earlier/smaller mid-late c19th commercial buildings such as 301, 319, 325 and 356 Elizabeth Street).

Internally, the original portion of the building retains its two-floor configuration, with the ground floor comprising the large shopfront area with the kitchen at rear in a largely modified original rear room. The stairway to the first floor has been modified (albeit probably in the original location) and the rear room configuration surrounding the stairway has been largely modified. Much of the original rear wall has been removed to facilitate access to a narrow rear extension to the original building. On the first floor several internal walls have been removed to form an enlarged space. One rear room remains largely intact and as per the ground floor much of the rear wall has been removed to facilitate access to the rear extension.

4.3. Historic heritage significance of the place

The Tasmanian Heritage Register datasheet provides a brief statement of significance for the place, which is generally a generic set of statements generally used in 'early' listings upon the inception of the Historic Cultural Heritage Act 1995. The datasheet for the place lists the significance as (in line with the criteria prescribed by the HCHA95):

- d) The place is important in demonstrating the principal characteristics of a class of place in Tasmania's history.

315 Elizabeth Street is of historic heritage significance because of its ability to demonstrate the principal characteristics of a Federation Free Style commercial building.

- f) The place has a strong or special association with a particular community or cultural group for social or spiritual reasons.

The building is of historic heritage significance because its townscape associations are regarded as important to the community's sense of place.

The Hobart Interim Planning Scheme 2015 ascribes the following broad statement of significance to the NH6 precinct (based on the North Hobart Heritage Areas report as cited above):

1. *The fine quality and quantity of Old Colonial, mid to late Victorian, Federation and Inter War commercial/residential buildings demonstrate its original mixed use nature*
2. *Intact individual houses that are representative examples of Old Colonial and Federation residential architecture.*
3. *The continuous two storey (mostly brick) facades, general uniformity of form and scale together with a distinctive nineteenth century subdivision pattern that create a consistent and impressive streetscape.*
4. *The front gardens of a few properties south of Burnett Street, and more recent street art are important aesthetic features that reinforce its mixed use character.*

The following expanded statements of significance are based on the national HERCON standard for statements of significance, based on the amount of information currently at-hand. Note that natural history values have not been assessed here, as these are beyond the scope of this assessment. This statement of significance has been based upon the history and character of the area as outlined in the secondary source document cited above, however could be further refined with more detailed investigations into the site history. The statement has also been formulated with consideration to the detailed fabric analysis in Section 1.7.

A. Importance to the course, or pattern of our cultural or natural history.

315 Elizabeth Street is significant as an early c20th two-story commercial premises in the heart of North Hobart, and together with its contemporary neighbours represent the growth of North Hobart as an inner-city suburb and the expansion of the Hobart CBD northwards along the road to Glenorchy/Launceston.

B. Possession of uncommon, rare or endangered aspects of our cultural or natural history.

Neither 315 Elizabeth Street nor the immediately surrounding part of the NH6 Heritage Precinct is considered to exhibit any uncommon, rare or endangered aspects of our cultural history.

C. Potential to yield information that will contribute to an understanding of our cultural or natural history.

Sprent's c1846 survey of Hobart shows a timber building on the streetfront of this site (under the current building) which may indicate that the frontage of the site could have archaeological potential (note that an

archaeological assessment is beyond the scope of the current document). That survey shows the rear yard as devoid of development at that time.

D. Important in demonstrating the principal characteristics of a class of cultural or natural places or environments.

315 Elizabeth Street is a fine and intact example of a well-articulated two-story Federation Free-Classical commercial building and residence which is a predominant architectural theme of this area of North Hobart. The continued use of the place as commercial premises contributes to its significance and allows greater public accessibility. Together with its contemporary neighbours, these buildings provide fine examples of the continuum of the commercial nature of the Elizabeth Street frontages in this area.

E. Importance in exhibiting particular aesthetic characteristics

315 Elizabeth Street, nor the surrounding precinct is considered to exhibit any particular aesthetic characteristics of historic heritage significance.

F. Importance in demonstrating a high degree of creative or technical achievement at a particular period.

315 Elizabeth Street, nor the surrounding heritage precinct are considered to demonstrate any high degree of creative or technical achievement.

G. Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions.

315 Elizabeth Street, as part of a well-recognised and vibrant commercial area is likely to have some community significance as a collective with its contemporary neighbours as a commercial activity centre which has continued and evolved from the mid-c19th. Continued use of the building for commercial activity and public access is a key part of preserving this association.

An assessment of the significance of the place to the Aboriginal community is beyond the scope of this assessment.

H. Special association with the life or works of a person, or group of persons, of importance in our history.

315 Elizabeth Street has no known direct special associations with the life or works of a person or persons of importance in our history. Further research may be required to conclusively rule out such associations.

Summary of historic heritage significance of 315 Elizabeth Street, North Hobart:

315 Elizabeth Street represents a good example of an early c20th Federation Free-Classical two-storey shop/residence which is also a contributory element to the surrounding heritage precinct – representing an important phase in the continuum of the surrounding area as a commercial precinct and the mid-late c19th (onwards) expansion of the Hobart commercial district northward in a number of nodes. The use of the building as commercial premises reinforces that significance and promotes public access and enjoyment of the heritage values.

5. The Proposed Development

A development has been undertaken in the rear yard of the place, which has converted the carpark area to a faux-grassed entertainment and dining area in support of the business within the premises (Boodle Beasley restaurant and bar). An outdoor dining area at the rear of the building is also included in the program of works as is the placement of two converted shipping containers for undercover seating. Note that this area has generally rationalised an earlier outdoor dining area, however has extended that area. A modern pergola has been demolished.

Internally, a range of minor works have been undertaken, including removal of modern seating booths, replacement of exhausts, replacement of modern floorcoverings, modification of modern bars, new lighting as well as addition of lightweight partition walls to the rear areas of the first floor of the building.

These works are detailed on Pinnacle Drafting and Design Job No. 003-2019, Drawings DA01-07 and are further identified in Pitt and Sherry 315 Elizabeth Street Hobart 21/9/18.

The works are subject to enforcement action by Hobart City Council (as Planning Authority) which require a retrospective development application to be submitted for the works and change of use of that part of the place (i.e. from carpark to outdoor entertainment/dining area).

Note that the two outdoor works areas fall within two different zonings and different heritage listings apply to each area:

The outdoor dining area: This is within the General Business zone and is also within the NH6 Heritage Precinct.

The faux-grassed area and shipping containers: This is within the Inner Residential Zone and is outside the NHG heritage precinct.

The local heritage listing (HIPS15 Table E.13.1) and the Tasmanian Heritage Register listing apply to the whole site and also include internal works.



Figures 5.1-5.2 – Overview of the works in the rear (former) carpark (facing east and west, L-R).



Figure 5.3 – The outdoor dining area at the rear of the building.

6. Heritage Impact assessment of the proposed development

6.1. Consideration of the impact of the proposed development on the identified significance of the place

Section 4 has proposed statements of significance for the place and within the context of the NH6 heritage precinct/immediate environs. The following table considers the impact of these works upon that identified significance:

Significance	Possible impact of the development
A) 315 Elizabeth Street is significant as an early c20th two-story commercial premises in the heart of North Hobart, and together with its contemporary neighbours represent the growth of North Hobart as an inner-city suburb and the expansion of the Hobart CBD northwards along the road to Glenorchy/Launceston.	The continued use of the place for commercial purposes perpetuates the traditional and historical use of the site as such. The gentle evolution of the site to accommodate changing commercial needs, balanced with protection of the heritage fabric of the place, is a positive heritage outcome in promoting this cultural continuity.
B) Neither 315 Elizabeth Street nor the immediately surrounding part of the NH6 Heritage Precinct is considered to exhibit any uncommon, rare or endangered aspects of our cultural history.	Not applicable.
C) Sprenst's c1846 survey of Hobart shows a timber building on the streetfront of this site (under the current building) which may indicate that the frontage of the site could have archaeological potential (note that an archaeological assessment is beyond the scope of the current document). That survey shows the rear yard as devoid of development at that time.	Whilst a detailed statement of archaeological potential has not been undertaken, it is likely that such potential is limited to the forward part of the place and in any case no excavation was required for the works therefore if there were archaeological potential in the rear area, this would not be disturbed.
D) 315 Elizabeth Street is a fine and intact example of a well-articulated two-story Federation Free-Classical commercial building and residence which is a predominant architectural theme of this area of North Hobart. The continued use of the place as commercial premises contributes to its significance and allows greater public accessibility. Together with its contemporary neighbours, these buildings provide fine	The development only involves minor works to the existing heritage building and is generally limited to the replacement and modification of modern fabric (e.g. bars, exhaust systems etc.). No original or significant fabric is to be or has been removed. Although the works involve partitioning of the larger space of the rear upstairs room, as well as the partitioning of a small area in the corner of the large upstairs room, this is achieved through lightweight and ephemeral timber stud framed partitioning and would be easily removed in the

examples of the continuum of the commercial nature of the Elizabeth Street frontages in this area.	future if desired, therefore has no impact upon the place to demonstrate a Federation Free-Classical commercial building.
E) 315 Elizabeth Street, nor the surrounding precinct is considered to exhibit any particular aesthetic characteristics of historic heritage significance.	Not applicable.
F) 315 Elizabeth Street, nor the surrounding heritage precinct are considered to demonstrate any high degree of creative or technical achievement.	Not applicable.
G) 315 Elizabeth Street, as part of a well-recognised and vibrant commercial area is likely to have some community significance as a collective with its contemporary neighbours as a commercial activity centre which has continued and evolved from the mid-19th. Continued use of the building for commercial activity and public access is a key part of preserving this association.	The use of the place as vibrant commercial premises that encourages public access and enjoyment is a positive outcome in perpetuating the community values of the place. It is considered that a recreation/entertainment space at the rear of the building is more conducive to the community value of the place than merely parking and reinvigorates what would have been backyard green-space originally. Use of this space to support the ongoing viability of commercial activities in the building itself is a positive heritage outcome in supporting this element of the significance of the place.
H) 315 Elizabeth Street has no known direct special associations with the life or works of a person or persons of importance in our history. Further research may be required to conclusively rule out such associations.	Not applicable.

The following table considers the possible impact of the development upon the identified significance of the NH6 Heritage Precinct as identified in Table E.13.2 of the HIPS15. Note that the majority of the area assessed here is outside the boundary of the NH6 heritage precinct – i.e. the aux-grassed area. The broad references to 'garden space' here are more specifically directed at the courtyard area which is within the precinct boundary.

Significance	Possible impact of the development
a. The fine quality and quantity of Old Colonial, mid to late Victorian, Federation and Inter War commercial/residential buildings demonstrate its original mixed use nature	The minor works involving the rear dining area do not have any impact upon the ability of the place to demonstrate the principal characteristics of a Federation Free-Classical commercial building therefore retains the existing contribution made to the heritage precinct.
b. Intact individual houses that are representative examples of Old Colonial and Federation residential architecture.	The place is predominantly a commercial building, however traditionally had an ancillary residential function. The installation of a garden area at the rear is more conducive to the traditional backyard use of the place than the previous carpark therefore the current development is a positive heritage outcome.
c. The continuous two storey (mostly brick) facades, general uniformity of form and scale together with a distinctive nineteenth century subdivision pattern that create a consistent and impressive streetscape.	The two-storey brick façade of the building will not be altered. The subdivision pattern will also not be altered. In fact, the reinstatement of a garden space at the rear of the place is more complimentary to the traditional pattern of development (i.e. backyard space) in the precinct therefore makes a positive contribution to the precinct.
d. The front gardens of a few properties south of Burnett Street, and more recent street art are important aesthetic features that reinforce its mixed use character.	Not applicable.

6.2. Assessment of the proposed development against statutory heritage requirements

The following tables consider the proposal against the specific Parts of the Hobart Interim Planning Scheme 2015 (as per Section 2). Whilst the Historic Cultural Heritage Act does not have similar prescriptive parts embedded in legislation (i.e. 'impact upon heritage values' is approached more broadly, the Tasmanian Heritage Council's assessment of the proposal is expected to follow the practice notes and guidelines introduced in Section 2 to provide a similarly rigorous assessment framework as that of the planning authority.

Note that it is expected that the Tasmanian Heritage Council's consideration of the proposal would result in the issuing of a certificate of exempt works, given that the works are of a minor/landscaping nature as well as the internal works being wholly reversible and limited to ancillary areas of the building, therefore do not impact upon any heritage fabric and is largely concerned with use, which is not a consideration under the HCHA95.

Part E.13.7 (1-3) – Heritage Place

	Performance Criteria	Assessment
E.13.7.1 - Demolition	<p><i>Demolition must not result in the loss of significant fabric, form, items, outbuildings or landscape elements that contribute to the historic cultural heritage significance of the place unless all of the following are satisfied;</i></p> <ul style="list-style-type: none"> <i>(a) there are, environmental, social, economic or safety reasons of greater value to the community than the historic cultural heritage values of the place;</i> <i>(b) there are no prudent and feasible alternatives;</i> <i>(c) important structural or façade elements that can feasibly be retained and reused in a new structure, are to be retained;</i> <i>(d) significant fabric is documented before demolition.</i> 	<p>The proposal does not involve any demolition of significant heritage fabric.</p>
E.13.7.2 – Building and Works other than Demolition	<p><i>P1. Development must not result in any of the following:</i></p> <ul style="list-style-type: none"> <i>(a) loss of historic cultural heritage significance to the place through incompatible design, including in height, scale, bulk, form, fenestration, siting, materials, colours and finishes;</i> <i>(b) substantial diminution of the historic cultural heritage significance of the place through loss of significant streetscape elements including plants, trees, fences, walls, paths, outbuildings and other items that contribute to the significance of the place.</i> 	<p>The proposed outdoor seating area only involves minor infrastructure such as furnishing and is largely concerned with use, rather than development per-se.</p> <p>The faux-grass ground finish is more conducive to a 'backyard' area of the heritage building than the previous carpark, therefore is a positive heritage outcome.</p> <p>No significant landscape elements are lost as a result of the works.</p> <p>The 'alteration of the original plan form' of the building by the addition to partitioning is the only trigger for application of Part E.13.7 for the internal works (i.e. all other works are exempt from that Part under E.13.4). Given that these are lightweight partitions that are wholly reversible without detriment to heritage fabric, these are not considered to have any appreciable heritage impact. Further, these works contribute to the effective and viable continued use of the building as</p>

	commercial premisses which perpetuate the traditional and significant use as commercial premisses.
<p><i>P2. Development must be designed to be subservient and complementary to the place through characteristics including:</i></p> <ul style="list-style-type: none"> <i>(a) scale and bulk, materials, built form and fenestration;</i> <i>(b) setback from frontage;</i> <i>(c) siting with respect to buildings, structures and listed elements;</i> <i>(d) using less dominant materials and colours.</i> 	The works are considered to be minor landscape works, behind the rear building line, therefore cannot be considered to be anything but subservient. The faux-grass is merely landscaping and is more conducive to a backyard setting to the building than the previous hard surface of the carpark.
<p><i>P3. Materials, built form and fenestration must respond to the dominant heritage characteristics of the place, but any new fabric should be readily identifiable as such.</i></p>	The works do not involve any new built forms or architectural detailing; therefore this is not applicable.
<p><i>P4. Extensions to existing buildings must not detract from the historic cultural heritage significance of the place.</i></p>	The works do not involve any extensions to the building; therefore, this is not applicable.
<p><i>P5. New front fences and gates must be sympathetic in design, (including height, form, scale and materials), to the style, period and characteristics of the building to which they belong.</i></p>	The works do not include any new front fences or gates; therefore, this is not applicable.
<p><i>P6. The removal of areas of landscaping between a dwelling and the street must not result in the loss of elements of landscaping that contribute to the historic cultural significance of the place.</i></p>	No landscape elements are proposed for removal and the existing building is hard to the street; therefore, this is not applicable.

E.13.7.3 - Subdivision	<p><i>P1. A proposed plan of subdivision must show that historic cultural heritage significance is adequately protected by complying with all of the following:</i></p> <ul style="list-style-type: none"> <i>(a) ensuring that sufficient curtilage and contributory heritage items (such as outbuildings or significant plantings) are retained as part of any title containing heritage values;</i> <i>(b) ensuring a sympathetic pattern of subdivision;</i> <i>(c) providing a lot size, pattern and configuration with building areas or other development controls that will prevent unsympathetic development on lots adjoining any titles containing heritage values, if required.</i> 	<p>No subdivision is proposed: therefore this is not applicable.</p>
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Part E.13.8 (1-3) Heritage Precinct NH6

	Performance Criteria	Assessment
E.13.8.1 - Demolition	<p><i>Demolition must not result in the loss of any of the following:</i></p> <ul style="list-style-type: none"> <i>(a) buildings or works that contribute to the historic cultural heritage significance of the precinct;</i> <i>(b) fabric or landscape elements, including plants, trees, fences, paths, outbuildings and other items, that contribute to the historic cultural heritage significance of the precinct;</i> <p><i>unless all of the following apply;</i></p> <ul style="list-style-type: none"> <i>(i) there are, environmental, social, economic or safety reasons of greater value to the community than the historic cultural heritage values of the place;</i> <i>(ii) there are no prudent or feasible alternatives;</i> <i>(iii) opportunity is created for a replacement building that will be more complementary to the heritage values of the precinct.</i> 	<p>The proposal does not involve any demolition of significant heritage fabric or any fabric or elements that are contributory to the heritage precinct.</p>
E.13.8.2 – Building and Works other than Demolition	<p><i>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.</i></p>	<p>The proposed outdoor seating area only involves minor infrastructure such as furnishing and is largely concerned with use, rather than development per-se.</p> <p>Although outside the heritage precinct boundary, the faux-grass ground finish is more conducive to a 'backyard' area of the heritage building than the previous carpark, therefore is a positive heritage outcome in providing a more appropriate setting for the building within the precinct.</p> <p>No significant landscape elements are lost as a result of the works.</p> <p>The works are not visible from any public vantage point in the precinct, being wholly behind the building.</p>

	<i>P2. Design and siting of buildings and works must comply with any relevant design criteria / conservation policy listed in Table E13.2, except if a heritage place of an architectural style different from that characterising the precinct.</i>	The assessment in the above table considered the works against the statements of significance for the NH6 Heritage Precinct. Although these are not states as being 'design criteria' or 'conservation policy' as such, it is considered that these articulate the tenor of why the precinct is important and give some guidance to the characterisation of the precinct.
	<i>P3. Extensions to existing buildings must not detract from the historic cultural heritage significance of the precinct.</i>	The works do not involve any extensions to the building; therefore, this is not applicable.
	<i>P4. New front fences and gates must be sympathetic in design, (including height, form, scale and materials), and setback to the style, period and characteristics of the precinct.</i>	The works do not include any new front fences or gates; therefore, this is not applicable.
	<i>P5. The removal of areas of landscaping between a dwelling and the street must not result in the loss of elements of landscaping that contribute to the historic cultural significance or the streetscape values and character of the precinct.</i>	No landscape elements are proposed for removal and the existing building is hard to the street; therefore, this is not applicable.
Subdivision	<i>P1. Subdivision must not result in any of the following:</i> <i>(e) detriment to the historic cultural heritage significance of the precinct, as listed in Table E13.2;</i> <i>(f) a pattern of subdivision unsympathetic to the historic cultural heritage significance of the precinct;</i> <i>(g) potential for a confused understanding of the development of the precinct;</i> <i>(h) an increased likelihood of future development that is incompatible with the historic cultural heritage significance of the precinct.</i>	No subdivision is proposed: therefore this is not applicable.

The following table considers the use of the rear area of the site further to Part 9.5 of the HIPS15 and in particular considering that the use of the rear garden area in the Inner Residential Zone as an outdoor dining area is prohibited in that zone – however the place being a Heritage Place (i.e. included on Table E.13.1) allows the discretion to consider that use further with regard to all of the following:

Consideration	Comment
<p>a. <i>A statement of significance, as defined in the Historic Heritage Code</i></p>	<p>Section 4.3 of the current document provides a statement of significance for the place, against which heritage impact may be measured as well as, in particular, associative and community values that may be associated with use of the place.</p>
<p>b. <i>A heritage impact statement and a conservation plan, as defined in the Historic Heritage Code, written with regard to the proposed use;</i></p>	<p>The current document is considered to be a sufficient assessment of the proposed use within the context of the significant associations and cultural continuity of use of the building as commercial premises.</p>
<p>c. <i>The degree to which the restoration, conservation and future maintenance of the historic cultural heritage significance of the place is dependent upon the commencement of the proposed use;</i></p>	<p>The active use of a heritage place, in particular a commercial premises, is a key consideration when considering the viable long-term use, management and maintenance of that place. The proposed works allow an expansion of the existing business which is considered to be an appropriate use in perpetuating the cultural continuity of the building for its original purpose – that of commercial premises. By expanding dining into the backyard area, an expansion of business operations may occur without placing undue pressure on the internal spaces and fabric of the building, therefore the proposal for change of use of the backyard area from parking to outdoor dining is considered to be a positive heritage outcome in securing a feasible and viable future for the building, with no impact upon the physical attributes of that building .</p>
<p>d. <i>The extent to which the proposal provides for the active use or re-use of any heritage fabric;</i></p>	<p>As per above, the proposal allows for expansion of the existing business in association with the premises, which allows the perpetuation of commercial activity within the building without any impact upon the fabric, form or spaces of the building. This promotes the continued use of the building for a significant commercial use. As backyard 'green space' the outdoor dining areas is more consistent with the original backyard tenor of the building, and more consistent with the original use of neighbouring backyards, and considered to be a better heritage outcome than as a carpark.</p>
<p>e. <i>The likely impact of the proposed use on the residential amenity of the area if within a residential area.</i></p>	<p>Please refer to the Irenelnc planning report for consideration of any possible amenity impact upon neighbours.</p>

8. Conclusion and recommendations

The above assessment concludes that:

- The proposed works will have no impact upon the historic heritage values of the place or the precinct, therefore adequately meet the performance criteria of Parts E.13.7 and E.13.8 of the Hobart Interim Planning Scheme 2015.
- The internal works will have no appreciable heritage impact and are wholly reversible if ever desired. These works assist in facilitating viable use of the heritage building for a commercial use in the tenor of its original and traditional use.
- The change of use of a portion of the heritage place from a carpark to a landscaped backyard dining area is considered to be a positive heritage outcome and assists in perpetuating the ongoing use of the heritage place as commercial premises, as originally intended, and to perpetuate the associative and community values of the place as part of a collective group of early c20th commercial premises in the popular North Hobart strip. Expansion of the existing use is likely to assist in the long-term viability of such use and is likely to have positive consequences on the maintenance of that building. It is concluded that this is a valid consideration under Part 9.5 of the scheme.
- It is further concluded that the proposed works should be eligible for a Certificate of Exempt Works from Heritage Tasmania, under delegation by the Tasmanian Heritage Council, as the proposal is not considered to have any possible adverse heritage impact.

Overall it is considered that the proposal complies with all applicable statutory heritage requirements, therefore should not be refused by any authority on heritage grounds.



Irene Inc.
49 Tasma Street
North Hobart, TAS 7000

14 February 2019

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Attention: Jacqui Blowfield

315 ELIZABETH STREET – NOISE ASSESSMENT

Boodle Beasley at 315 Elizabeth Street North Hobart are seeking to extend their existing outdoor dining area to include the remainder of the back yard. As part of the DA for this extension, a noise assessment of the impact this will have on the amenity of surrounding neighbours is required. This letter provides such an assessment, conducted by NVC in January 2019.

SITE DESCRIPTION

The site and surrounds are shown in Figure 1. The site (yellow in figure) has a two-storey building at the front of the block, with a small facilities building extending down the southern boundary that has toilet and store spaces. The northern boundary has a driveway along it that accesses the back yard area and also provides access to the back of 317 Elizabeth Street. Neighbours on each boundary are residential, with some car parking areas and commercial spaces also present.

The land is zoned General Business for the front section, while the rear section is zoned Inner Residential; the proposed extension of operations is within the Inner Residential zone.



Figure 1: Site and surroundings

The existing outdoor use comprises tables with seating, nominally 4 – 6 people per table, Figure 2. Background music is played through small outdoor speakers.



Figure 2: Existing Operations

The extended use is intended to be lower density than the current operation and will similarly use tables and seating with nominally 8 to 10 tables throughout the extended space. The hours of operation for the extended space are 8 am to 10 pm and no outdoor music will be played in the extended space. The noise from the extended space will then be patron noise only.

NOISE MEASUREMENTS

Existing noise levels have been logged over a 4-day period at two locations on the boundary (B and D in Figure 1), with additional detailed attended measurements of patron noise made on the night of 18th January. The measurements are summarised in Figure 3, and Table 1, with the following comments relevant:

- For the existing operations when outdoor dining was occurring it was the dominant boundary noise at D. At B patron noise was audible as a background with general urban noise being the main noise.
- From the detailed measurements, the patron noise was determined to have a sound power level of 79 dBA. This is the same level as a raised voice as defined by ANSI¹ and gives credence to the measurements and their use in deriving the patron sound power level.
- Current patron noise typically extends to between 2200 hours and midnight.

Table 1: Measured Noise Levels

		Sound Pressure Level, dBA		
		L10	L90	Leq
Location B	Day Time *	51	45	49
	Night Time *	53	46	50
Location D	Day Time *	60	52	58
	Night Time *	71	60	68

* Day time 0800 – 1800 hours, Night time 1800 – 2200 hours.

¹ ANSI 3.5-1997. American National Standard – Methods for calculation of Speech Intelligibility Index

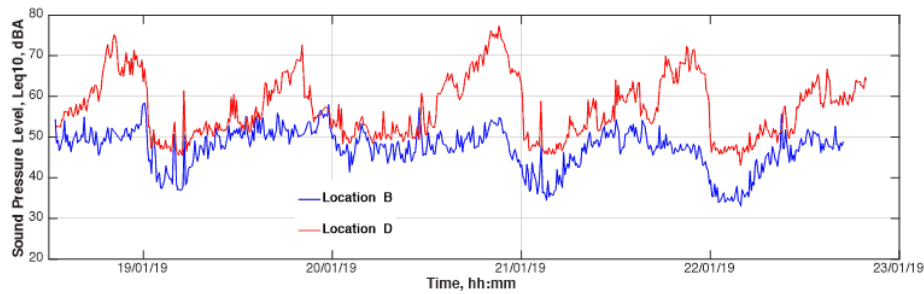


Figure 3: Existing Noise Levels

NOISE PREDICTIONS

Noise levels at the boundary of the site have been predicted using iNoise software, which implements the ISO9613 algorithms for environmental noise. The predictions account for geometric spreading, barrier attenuation, atmospheric absorption, reflections off buildings, and ground absorption. The following assumptions have been made in the predictions:

- Existing operations are included as 8 occupied tables.
- Extended operations have 12 tables dispersed throughout the back yard.
- Based on measurements for current operations, a sound power of 85 dBA is assigned to each table for night time operations (6pm until 10pm), and 77 dBA during the daytime (normal rather than raised voice level used during the day).
- The fence has been increased in height from 1.7 to 2.4 metres.
- As per the Tasmanian Noise Measurement Procedures Manual, noise levels are predicted at 1.5m above ground.

The model for extended operations is shown in Figure 4, with the red stars being the noise sources (tables), and the grey areas buildings.



Figure 4: Acoustic Model of Extended Operations

Noise levels are predicted for the four locations (A to D in Figure 1) that are within the residential zone, and for three scenarios; the existing use during the night time, the extended use during the day, and the extended use during the night. The results are summarised in Table 2.



315 ELIZABETH STREET – NOISE ASSESSMENT

Table 2: Predicted Boundary Noise Levels from Boodle Beasley

		Sound Level, Leq dBA			
		A	B	C	D
Baseline	Night Time	60	50	52	65
Extended Use	Day Time	49	47	48	51
	Night Time	55	53	55	57

CRITERIA

The extended operations are within the inner residential zone and so clause 11.3.1 of the Hobart Interim Planning Scheme 2015 applies which provides criteria “To ensure that non-residential use does not unreasonably impact residential amenity.” In particular:

“ A1:

Hours of operation must be within 8.00 am to 6.00 pm, except for office and administrative tasks or visitor accommodation.

A2:

Noise emissions measured at the boundary of the site must not exceed the following:

- (a) *55 dBA (Leq) between the hours of 8:00 am and 6:00 pm;*
- (b) *5 dBA above the background (L90) level or 40 dBA (Leq), whichever is the lower, between the hours of 6:00 pm and 8:00 am;*
- (c) *65 dBA (Lmax) at any time*

A1 is not met by the extended use and after 6pm noise levels are already higher than 40 dBA and so A2 is not met in the night. The performance criteria must then be referred to which states:

P2:

“ *Noise emissions measured at the boundary of the site must not cause environmental harm* “

Environmental harm is defined in the Act² as “ *..any adverse effect on the environment and includes an environmental nuisance* ”. Environmental nuisance is further defined in the Act³ as:

- “ (3) *Where an offence under subsection (1) or (2) is constituted by the emission of noise that is not an emission specified in an environment protection policy to be an environmental nuisance, the emission is to be taken to unreasonably interfere with a person's enjoyment of the environment if it is unreasonable having regard to –*
- (a) *its volume, intensity or duration; and*
- (b) *the time, place and other circumstances in which it is emitted; and*

In determining if a noise is deemed unreasonable, the following documentation may be referenced:

THE TASMANIAN ENVIRONMENTAL PROTECTION POLICY (NOISE) 2009

The policy provides acoustic environment guideline levels which may be assumed to protect the environmental values defined in the policy, from which the following are extracted:

Outdoor Living,	Serious annoyance	55 dBA, Leq 16hr
	Moderate annoyance	50 dBA, Leq 16 hr

THE NSW NOISE POLICY FOR INDUSTRY

States, at section 2.3, intrusiveness of a noise is generally acceptable if noise from the source does not exceed the background (L90), plus 5 dB. At night this would imply a noise criteria of 48 dBA.

² EMPCA, para 5
³ EMPCA, para 53
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The extended operations occur between 0800 and 2200 hours and sleep disturbance is therefore not relevant. These guidelines are then summarised in Table 3.

Table 3: Environmental Nuisance - External Noise Criteria

REFERENCE	PROTECTED ACTIVITY	EXTERNAL NOISE LEVEL, LEQ, dBA	
		Day Time 0800 and 1800 hrs	Night Time 1800 – 2200 hrs
Planning Scheme	Outdoor amenity	55	40
NSW Noise Policy for Ind.	Outdoor intrusiveness	50 - 57	51 - 65
Tas EPP (Noise)	Outdoor living	55	55

ASSESSMENT

The assessment is driven by the Planning Scheme, which requires noise levels at the boundary of the site to meet either the Acceptable Solution, or if not, the Performance Criteria. The extended use operates between 0800 and 2200 hours and so the assessment is only considered during this period, and is summarised in Table 4. The Table should be read sequentially from top to bottom.

The table indicates the Planning Scheme Acceptable Solution 11.3.1-A2 is met during the daytime but not at night time and hence the Performance Criteria 11.3.1-P2 is referred to for night time noise between 1800 and 2200 hours.

The Tasmanian EPP (Noise) is initially used to define a noise level that will ensure environmental harm does not occur and the table indicates that one location on the boundary (D) does not meet this criterion. In order to have potential to cause harm, the noise must be clearly audible and the NSW intrusive criteria (L90+5), is used to define this. The table shows the noise is not deemed intrusive and therefore the noise will not cause environmental harm.

The table then concludes that the Planning Scheme Acceptable Solution is met during the daytime, and the performance solution during the night time, and as such clause 11.3.1 of the Planning Scheme is satisfied.

CONCLUSION

The proposed use of the extended back yard area at Boodle Beasley, 315 Elizabeth St, has been assessed with respect to its noise emissions, and their impact on surrounding properties. The extended area of use is within an Inner Residential zone under the Hobart Interim Planning Scheme 2015, and hence the assessment is against clause 11.3.1 of the Scheme.

The extended area is to operate between the hours of 0800 – 2200 hrs and only this period is considered in the noise assessment.

Based on noise measurements of the current operations, the sound power of the outdoor patrons has been determined along with the existing ambient and background noise levels. Using the determined patron sound power level for 12 tables in the extended area, boundary noise levels have been predicted at four representative locations around the boundary, and those levels assessed against the Planning Scheme.

The extended use meets the Acceptable Solution during the daytime (0800 – 1800 hrs), but does not meet the Acceptable Solution at night, hence the Performance Criteria is addressed at night time.

Referring to various state and inter-state regulations / policies and comparing the predicted noise against existing noise levels, the Performance Criteria is satisfied in that environmental harm is determined not to be caused by the extended use.

The assessment then concludes that provided:

- The fence height is raised to 2.4m all around the boundary, and
- The operating hours for the extended area are between 0800 and 2200 hrs, then

the use of the extended back yard area at 315 Elizabeth St satisfies clause 11.3.1 of the Planning Scheme.

Table 4: Assessment Summary

		A	B	C	D
Day Time	A2 – Acceptable Solution	55	55	55	55
	Boundary Noise	49	47	48	51
		PASS	PASS	PASS	PASS
Night Time	A2 – Acceptable Solution	40	40	40	40
	Boundary Noise	55	53	55	57
		Fail	Fail	Fail	Fail
	P2 – Performance Criteria				
	TAS EPP	55	55	55	55
		PASS	PASS	PASS	Fail
	Intrusive criteria (L90+5)				65
	Intrusive ?				NO
					PASS
Day + Night		PASS	PASS	PASS	PASS

Should you have any queries, please do not hesitate to call this office directly.

Yours faithfully



Bill Butler

**RESULT OF SEARCH**

RECORDER OF TITLES

Issued Pursuant to the Land Titles Act 1980

SEARCH OF TORRENS TITLE

VOLUME	FOLIO
109396	1
EDITION	DATE OF ISSUE
4	27-Jun-2011

SEARCH DATE : 14-Jan-2019

SEARCH TIME : 01.37 PM

DESCRIPTION OF LAND

City of HOBART
 Lot 1 on Diagram 109396
 Being the land described in Conveyance 68/8069
 Derivation : Part of location to Morris
 Derived from Y16662

SCHEDULE 1

C222590 TRANSFER to VENEZIANO ENTERPRISES PTY LTD
 Registered 26-Jun-2000 at 12.01 PM

SCHEDULE 2

Reservations and conditions in the Crown Grant if any
 68/8069 BENEFITING EASEMENT: Right of Carriageway over the
 Right of Way shown on Diagram number 109396

UNREGISTERED DEALINGS AND NOTATIONS

No unregistered dealings or other notations



FOLIO PLAN

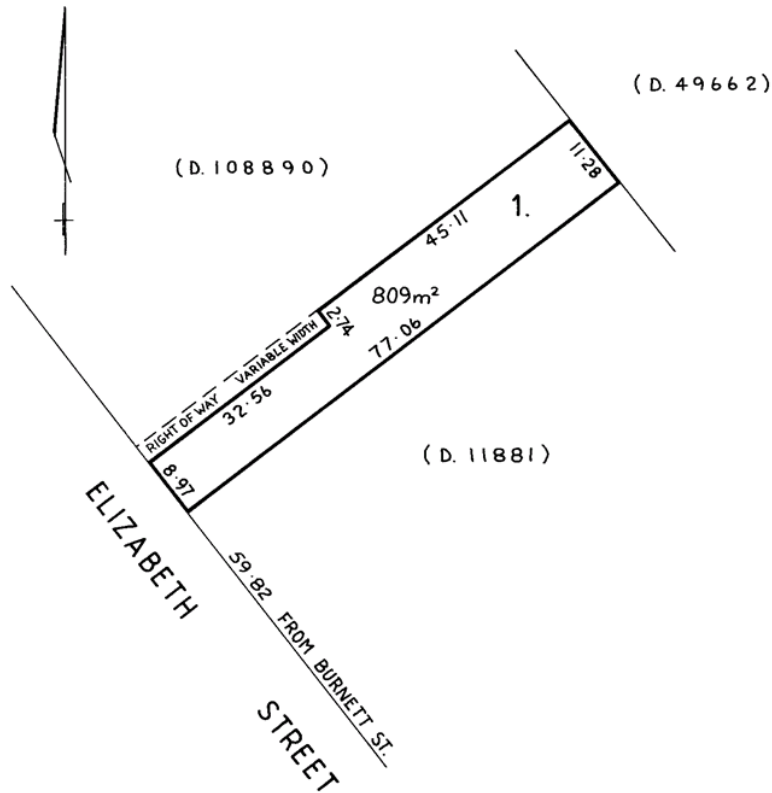
RECORDER OF TITLES

Issued Pursuant to the Land Titles Act 1980



FILE No. Y. 16662		CONVERSION PLAN	REGISTERED NUMBER
GRANTEE PART OF LOC. TO MORRIS			D.109396
		LOCATION	APPROVED 4 FEB 1991
		CITY OF HOBART SEC. - K2	<i>Michael Dine</i> Recorder of Titles
		CONVERTED FROM 15/9843	
		NOT TO SCALE LENGTHS IN METRES	
TASMAP SHEET No. 21	LAST UPI No. 3930	ALL EXISTING SURVEY NUMBERS TO BE CROSS REFERENCED ON THIS PLAN	DRAWN BY: ASM.

SKETCH BY WAY OF ILLUSTRATION ONLY
"EXCEPTED LANDS"





Tasmanian Heritage Council
GPO Box 618 Hobart Tasmania 7000
Tel: 1300 850 332
enquiries@heritage.tas.gov.au
www.heritage.tas.gov.au

PLANNING REF: PLN-19-103
THC WORKS REF: 5858
REGISTERED PLACE NO: 153
FILE NO: 10-55-76THC
APPLICANT: Ireneinc obo Boodle Beasley
DATE: 19 November 2019

NOTICE OF HERITAGE DECISION

(Historic Cultural Heritage Act 1995)

The Place: 315 Elizabeth Street, North Hobart.
The Proposed Works: New signage, internal alterations and new landscaping work to the rear of the site, including an extension to the existing timber deck, new gates, and the addition of two repurposed shipping containers.

Under section 39(6)(a) of the *Historic Cultural Heritage Act 1995*, the Heritage Council gives notice that it consents to the discretionary permit being granted in accordance with the documentation submitted with Development Application PLN-19-103, advertised on 21/10/2019.

Please ensure the details of this notice are included in any permit issued, and forward a copy of the permit or decision of refusal to the Heritage Council for our records.

Should you require clarification of any matters contained in this notice, please contact Deirdre Macdonald on 6165 3712 or 1300 850 332.

A handwritten signature in purple ink, consisting of several fluid, overlapping strokes.

Ian Boersma
Works Manager – Heritage Tasmania
Under delegation of the Tasmanian Heritage Council



Contact: Karen Abey
Our Ref: KMA.IC:190767

28 March 2019

Mr Tom Rolfe
Hobart City Council
GPO Box 503
HOBART TAS 7001

By email rolfet@hobartcity.com.au

Dear Mr Rolfe

**Advice - 315 Elizabeth St North Hobart - DA non-conforming use clause 9.1.1
HIPS 2015**

1. You have sought advice in relation to the development application which has been made for the property at 315 Elizabeth Street North Hobart (the **Property**), which relies upon clause 9.1.1 of the *Hobart Interim Planning Scheme 2015* (the **Scheme**). You have sought advice on the following specific issues:
 - (a) what is the meaning and scope of "minor development" as it appears within the clause and in the context of the application; and
 - (b) what is the meaning and scope of "substantial intensification" as it appears within the clause and in the context of the application.
2. Our opinion, in summary, is that:
 - (a) the "restaurant" use rights were only granted up to and including the land adjacent to the old carport;
 - (b) it was a condition of the Permit which allowed the "restaurant" use that there were four parking spaces provided;
 - (c) any use of the rear of the Property for "restaurant" use prior to the commencement of the Scheme was unlawful, and would not be protected as an existing use right; and
 - (d) cl.9.1.1 should not be used to allow the proposed development and the associated use unless it is demonstrated by the applicant

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- › Insurance Law, Personal Injury Law
- › Building, Construction & Engineering Law

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that the use should be extended into the rear of the Property, pursuant to subclause (b) (the first occurring).

3. In response to the specific issues you have raised:
 - (a) the proposal satisfies the "minor development" requirement; and
 - (b) the proposal would be a substantial intensification of the use of the Property.
4. Based on these matters, in our view, the development application must be refused.
5. We note that the planning report includes an assessment of the proposal against other parts of the Scheme. We have not considered those aspects of the proposal, but can do so if required. We have also not considered the internal works to the property. It is also worth noting that cl.9.1.1 requires that the Council may have regard to "the purpose and provisions of the zone and any applicable codes", which is outside the scope of this advice.

Background

"Restaurant" use & associated development

6. The Property was the subject of a planning application in 1993 for change of use to "restaurant", which was approved on 6 July 1993 (permit reference 930526) (the **Permit**). Prior to that time, the Property was used as a second-hand furniture shop.
7. We are instructed that at the time the Permit was granted, the Property was split into two zones pursuant to the *City of Hobart Planning Scheme 1982 (1982 Scheme)*, as follows:



8. The part of the Property which had frontage onto Elizabeth Street was zoned "local business" and the back part of the block was zoned

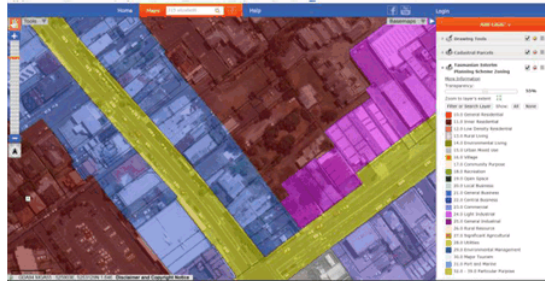
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- "residential 3". "Restaurant" use, which was part of use group X was prohibited in the "Residential 3" zone.
9. The planning report which analyses the development application in early 1993 (the **1993 report**) does not make any distinction between the part of the Property which fronts Elizabeth Street, and the back part of the Property.
10. We note that there are plans on the Council's file which post-date the Permit, which are stamped with the Council's "Planning and Development Dept." stamp as having been received. It is worth noting plan RKH 9302, dated Nov 1993, received by the Council on 6 Dec 1993 and stamped 934317, which is called "Amendment No.2" (the only plan in that series). It shows development beyond the footprint of the building; it is the only plan which does so. It is marked as "office copy". The Council file on 934317 states:
- (a) the proposal is for a covered walkway, which will allow patrons to access the detached toilet block;
 - (b) this is for patrons' comfort only and there is no change to the restaurant, its operating hours or its use;
 - (c) the proposal is a simple adjunct to the building;
 - (d) it has no impact on the use of the site and is not visible from the street;
 - (e) it is consistent with both the desired future character and zone objective the area; and
 - (f) it was approved without conditions.
11. There are also later plans on the Council file for 930526 but they relate to the interior of the restaurant, rather than the land beyond it.

Change in planning scheme

12. In 2015, the Scheme came into force. The Property continued to have a split zone with "general business" on the Elizabeth Street frontage and "inner residential", as follows:

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13. The zones under the Scheme are in approximately the same location as they were under the 1982 Scheme.
14. Under the Scheme, "restaurant" use corresponds to "food services" use, which is:
 - (a) permitted in the general business zone (with some exceptions which do not apply here);
 - (b) discretionary in the inner residential zone but only *if in an existing building and not displacing a residential or visitor accommodation use, unless occupying floor area previously designed and used for non-residential commercial purposes (excluding visitor accommodation)*; and
 - (c) otherwise prohibited in the inner residential zone.

Current development application

15. In late August 2018, Council was made aware that a new tenant "Boodle Beazley" had moved in to the Property and were undertaking some refurbishment works in preparation for opening.
16. In September 2018, Council officers attended the property with Pitt & Sherry Building Surveying for the purposes of investigating the works. During the investigation it was made apparent that works had occurred to the rear of the Property in preparation for use of the area as an extended outdoor dining/drinking area.
17. Those works are:
 - (a) alterations to the existing bathroom facilities (moving partitions and refurbishment of fixtures);
 - (b) the removal of a roof pergola which was over the "patio" area;
 - (c) the replacement and extension of the deck (with steps), which is uncovered;

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-
- (d) installation of artificial turf beyond the deck, into the rear garden area;
 - (e) installation of a shipping container for storage;
 - (f) installation of a modified shipping container to be used for shelter for patrons; and
 - (g) replacing the existing fence with a 2.4m wooden paling fence.
18. In October 2018, the Council issued a Notice of intention to Issue an Enforcement Notice in relation to the use of the rear area without a planning permit. It has been the position of Council that the use of the area to the rear of the Property would be properly classified as food services, which is prohibited in the inner residential zone.
19. In December 2018, Council issued an Enforcement Notice on the same terms.
20. On 19 December 2018, the proponent lodged an appeal against the issuing of the Enforcement Notice in the Resource Management and Planning Appeals Tribunal, which was subsequently adjourned pending the lodgement of a planning application.
21. On 27 February 2019 a planning application was lodged to regularise the use of the rear of the premises as food services (PLN-19-103).
22. In support of the planning application, a report was provided by Irenelnc Planning, dated 18 February 2019. The report assesses the proposal against cl.9.1.1 of the Scheme and states:
- (a) the Permit approval for use as a restaurant applied to the entire site, and "is therefore existing";
 - (b) the current proposal is for a minor development and relies upon cl.9.1.1(c);
 - (c) the proposal does not have a detrimental impact on adjoining uses or the amenity of the locality, given the historical activity on this site and the current use of the surrounding properties, and with reference to the accompanying noise report;
 - (d) in relation to the requirement that there is *no substantial intensification of the use of any land, building or work*, the report states:

The development associated with the proposed use in the garden area are generally minor structures and ephemeral works, such as the installation of the artificial grass and furniture. The intensity of the use of the area is generally intended to supplement and support the main use of the existing restaurant by providing an alternative outdoor space suitable in warmer, sunny daylight hours, and

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therefore primarily through summer and shoulder seasons. The area is in this way intended to provide seating options which broaden the appeal of the venue across the year and at different times of the day rather than significantly changing the intensity of the customer numbers at peak periods. It is therefore considered that the proposed use will not substantially [intensify] the use in accordance with subclause (c).

23. The report provided to the Council by Pitt & Sherry refers to an existing deck, as does the plans by Pinnacle Drafting & Designs. The Council does not have any records of that deck receiving planning or building approvals, if they were required.
24. While it is known generally that the Property has been used as a café or restaurant since 1993, the operators of Boodle Beasley have not provided a history of the use of the Property.

Scheme

25. The planning report accompanying the development application relies upon a favourable exercise of the Planning Authority's discretionary under clause 9.1.1 of the Scheme which reads:

9.1 Changes to an Existing Non-conforming Use

9.1.1

Notwithstanding any other provision in this planning scheme, whether specific or general, the planning authority may at its discretion, approve an application:

- (a) *to bring an existing use of land that does not conform to the scheme into conformity, or greater conformity, with the scheme; or*
 (b) *to extend or transfer a non-conforming use and any associated development, from one part of a site to another part of that site; or*
 (c) *for a minor development to a non-conforming use,*

where there is –

- (a) *no detrimental impact on adjoining uses; or*
 (b) *the amenity of the locality; and*
 (c) *no substantial intensification of the use of any land, building or work.*
In exercising its discretion, the planning authority may have regard to the purpose and provisions of the zone and any applicable codes.

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Advice

26. In order to provide advice on the application of cl.9.1.1 to the Property, we need to first understand what existing use rights exist (if any), the extent of those rights and the nature of them.

Existing use rights – generally

27. If a person wishes to rely upon existing use rights, then the obligation is upon them to prove that those rights exist.¹
28. As you know, the *Land Use Planning and Approvals Act 1993 (LUPAA)* provides protection for the continued lawful use of land in circumstances where a planning scheme is introduced to prevent or restrict that type of use from being carried out pursuant to s.12.²
29. It is important to note that s.12 is quite restricted on which part of the land the existing use rights will attach to, which are as follows:
- (a) use of land (upon which buildings or works are not erected): s.12(1)(a);
 - (b) use of any building which was erected and being lawfully used: s.12(1)(b); and
 - (c) use of any works (as defined in s.3 of LUPAA) which have been constructed: s.12(1)(c).
30. As Crawford J noted in *Calvary Health Care Tasmania Inc v Hobart City Council* [2006] TASSC 10 at [20]:

On a particular piece of land there may be a building or buildings and some works and there may also be bare land, that is to say land on which no building has been erected and no works have been constructed. If so, then all of pars(a), (b) and (c) might apply to the piece of land in question, although individually each paragraph would only apply to a part of it.

¹ *Morris v Woollahra Municipal Council* (1966) 13 LGRA 117

² An almost identical provision was previously contained in s.20(3) of LUPAA; the transitional provisions in cl.3(2) of Schedule 6 apply to provide continuous protection for those rights

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31. And at [21]:

With those exceptions, the use of land, whether it consists of bare land or has a building or works upon it, is provided with no relevant protection from the application of a planning scheme that relates to it.

32. There are further limitations on the circumstances in which the protection by s.12 will be provided:

- (a) only lawful uses are protected, so if there are parts of the site which were being used without a planning permit, in circumstances where a permit was required, there will be no existing use rights;
- (b) the uses must have been carried out "immediately" before the Scheme came into effect; and
- (c) those uses must not be "substantially intensified".

33. LUPAA provides protection in s.12³ for use only; it does not protect the ability to carry out any development. In order to carry out development associated with existing use rights, or to alter the activities associated with those use rights, an application may be made pursuant to cl.9.1.1 of the Scheme. Through that clause, the Scheme allows for some flexibility for existing use rights.

34. In terms of the nature of the existing use rights, there is authority that existing use rights should not be analysed by individual activities, transactions or processes; the focus should be on the "real and substantial purpose". That test was:

fairly generous from the standpoint of the rights of the owners. There seems no reason to believe, as a matter of principle, that permit applications should be considered by reference to some more onerous test.⁴

35. The approach has been summarised as follows:⁵

1. Defining the "existing use" depends upon a detailed examination of the facts of each case. Inevitably there will be borderline cases

³ Formerly s.20(3)

⁴ *Royal Agricultural Society of New South Wales v Sydney City Council* (1987) 61 LGRA 305 at 309-310, *Cascone v Whittlesea Shire Council* (1993) 80 LGERA 367 at 380

⁵ *North Sydney MC V Boyts Radio & Elec* (1989) 16 NSWLR 50 at 59

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where the characterisation of the use which is protected will be controversial and upon which minds may differ.

2. Nevertheless, the general approach to be taken is one of construing the "use" broadly. It is to be construed liberally such that confining the user to precise activity is not required. What is required is the determination of the appropriate genus which best describes the activities in question.

3. In determining that genus, attention should be focused on the purpose for which the determination is being made. This is a town planning purpose. It therefore considers the use from the perspective of the impact of the use on the neighbourhood. This is because the regulation of the use within the neighbourhood is the general purpose for which planning law is provided.

36. The High Court has endorsed an approach to interpreting statutory provisions designed to protect and preserve existing rights so that they are construed as liberally as the language used, in its context, allows.⁶ However that principle must be applied in the light of the provisions of the particular statute and planning scheme under consideration.
37. Finally, there is High Court authority that land may be "used" in a planning sense despite not being actively used physical way at the time of the change of planning scheme.⁷

Extent of the existing use rights on the Property

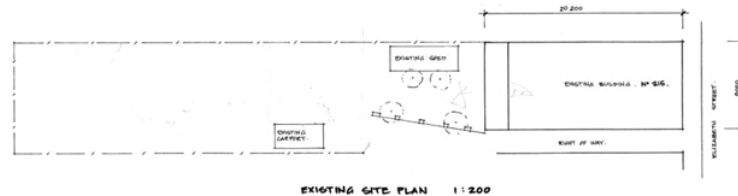
38. We understand that the following plans form part of the development application made in 1993 (all other plans which have been provided to us post-date the Permit):⁸
- (a) two hand-drawn, undated plans marked with "existing" which show the second-hand furniture show room and corresponding "proposed" plans which identify rooms which would be used for a restaurant; and
 - (b) a plan dated May 1993 which shows the existing building along with "existing shed" (which is identified in subsequent plans as the bathroom facilities) and "existing carport", as follows:

⁶ *Dorrestijn v South Australian Planning Commission* [1984] HCA 76; (1984) 56 ALR 295 at p 300; *Parramatta City Council v Brickworks Ltd* [1972] HCA 21; (1972) 128 CLR 1 at p 25; *Woollahra Municipal Council v Banool Developments Pty Ltd* [1973] HCA 65; (1973) 129 CLR 138 at p 144

⁷ *Parramatta City Council v Brickworks Ltd* [1972] HCA 21; *Eaton & Sons Pty Ltd v Warringah Shire Council* [1972] HCA 33

⁸ There is a 2-page set of plans dated July 1993 but they are stamped as received by the Council in August 1993

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39. None of the plans which pre-date the Permit show a deck at the rear of the building.
40. The 1993 report states that there is room for “at least” four parking spaces on the Property, “one being in the carport and the others located on the gravelled area adjacent”. The 1993 report goes on to contemplate further parking at the rear of the Property. It concludes that this is not feasible, given the limited size of the access and that the rear of the Property is also accessed by the adjacent property. A requirement for payment in lieu of parking was required as part of the Permit.
41. It is therefore plain from the Permit that the use of the Property for “restaurant” use was, in a practical sense, limited to the location of the carport (which has since been demolished) and the adjacent land. The rear of the Property – approximately half of the Property – was not identified as land which would be used in any sense for the “restaurant” use rights allowed pursuant to the Permit.
42. Given that at the time the Permit was granted a “restaurant” use was prohibited on the rear of the Property, the Permit did not grant those use rights on that part of the Property. The Council, as planning authority, was not able to do so. Any use of the Property for “restaurant” use beyond that point was not lawful.
43. Based on our instructions, there has been no further planning permit granted in relation to the Property since the Permit. Subsequent plans show an awning (which was, as we understand it, actually built). This covered the area between the rear of the main building and covering the land adjacent to the bathroom facilities. We understand that a deck was also subsequently built over the land adjacent to the main building and bathroom facilities.
44. It may be that the pergola and deck were exempt from obtaining planning permission. If they were exempt, then that development would be lawful and subject to the same use rights. However, at best this would have changed the nature of the use rights and not extended them into the rear of the Property. This probably does not make much difference in that the land

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upon which those structures sat would have been used anyway for the restaurant use, in that patrons would have used that land to access the adjacent bathroom facilities and parking.

45. The development application suggests that the "restaurant" use rights attach to the whole of the Property. This is an assertion and there is no effort made to establish those rights; it is assumed that they exist, without addressing the extent or nature of any existing use rights. Further, the current application is not made on the basis that the restaurant use needs to be transferred or extended, pursuant to cl.9.1.1(b) of the Scheme. The applicant is the one which bears the onus of proving that the rights exist, including the extent and nature of them.
46. In our opinion, in summary, the extent of the use rights on the Property are limited to the location of the (now demolished) carport and the adjacent land. The plan extracted above shows the carport in a location which approximately corresponds to the point where the zoning changes from general business to inner residential. If the applicant says it extends further, they should provide evidence to support this contention.
47. Approaching this matter from an existing use rights point of view is, in that context, probably inappropriate. The change in planning scheme has not altered the ability of the applicant to operate a restaurant on the Property. The rights under the 1982 Scheme are generally the same as those under the Scheme. This differs from the usual claim for existing use rights where a use which was once allowed becomes, through a change in the planning scheme, prohibited. As cl.9.1.1 states, it is relevant to "non-conforming" use rights. The applicant is effectively seeking to take advantage of cl.9.1.1 to extend the use rights it has under the Permit by asserting that they are existing use rights. Based on the materials we have been provided, that claim cannot be substantiated.
48. The authorities regarding the protection of existing use rights on land which is not being actively used in a physical way at the time of the change of planning scheme, do not assist the applicant here. In order for those use rights to be protected, they have to exist in the first place.

Nature of the existing use rights on the Property

49. The "restaurant" use rights granted by the Permit attach to the land described in paragraph 46. In our view, it does not matter that some of the land was used for parking, moving between the restaurant and the parking, or moving between the restaurant and the bathroom facilities. The car parking component of the Permit is part of the "restaurant" use; it does not have a separate use classification. The parking requirements were

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triggered by the application of the Traffic, Access and Parking Schedule to the 1982 Scheme.

50. When considering the nature of the use rights, the authorities referred to above must be taken into account. That is, the protections for existing use rights should be given a liberal interpretation, and the use class should not be analysed by individual activities, transactions or processes.
51. This does not change the fact that the Permit requires that there are four parking spaces on the Property which are made available to patrons of the restaurant. The Permit does not expressly incorporate the proposal in the development application but that is clearly the intent. We refer to condition 5, which requires payment in lieu of the parking which is required on the Property that "cannot be provided on site". That calculation was carried out taking into account the four spaces which were proposed.
52. So while the part of the Property which is made available for parking would have "restaurant" use rights, this does not mean that this land can be used for other activities falling within that use class, since they are required to provide parking on that land (unless a subsequent permit overrides this requirement).

Application of cl.9.1.1

53. Given our views above, cl.9.1.1 has no role to play in the assessment of the activities on rear of the Property. Since a "restaurant" use was prohibited at the rear at the time the Permit was granted and the subsequent use of "food services" is also prohibited on that land, the applicant cannot rely on that provision to extend those use rights into that part of the Property unless it satisfies subclause (b) (the first occurring).
54. That subclause provides the ability "to extend or transfer a non-conforming use and any associated development from one part of a site to another part of that site". The Tribunal has held that it is possible to both extend and transfer existing use rights pursuant to that subclause,⁹ but there are no decisions on the exercise of a discretion pursuant to cl.9.1.1(b).
55. Given the background to this matter, it is difficult to see how an extension of any existing use rights to include the whole of the Property would be appropriate. The Council may have regard to the purpose of provisions of the inner residential zone, which are generally not conducive to an extension of the use. We can revisit this issue if the applicant make an application on that basis.

⁹ *United Petroleum Pty Ltd v West Tamar Council* [2018] TASRMPAT 14 at [16]

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56. An application is not made pursuant to cl.9.1.1(b). It is made on the basis that there is a "minor development" associated with a non-conforming use. That will only be allowed where there is no "substantial intensification" of the use of the land, building or works. These issues (as identified in our instructions), which are addressed below, only become relevant if the applicant is able to demonstrate existing use rights for the whole of the Property.

Is the proposal for a "minor development"?

57. We have not been able to identify any authorities which have considered the meaning of this phrase. Of course, "development" is defined in LUPAA and there is no doubt that what is proposed falls within that definition. The real issue is whether it is "minor", which can be defined as "lesser in importance, seriousness, or significance".¹⁰
58. The development, which is described in paragraph 17 above, is not significant. The fence is only 300mm higher than what is permitted, the shipping containers can (presumably) be removed, the deck is low and is a natural extension to the building, and the internal bathroom renovations have no impact on the appearance of the Property.
59. On balance, it is our view that the proposal satisfies this requirement.

Will the proposal be a "substantial intensification"?

60. The Tribunal has recently made the following comments about substantial intensification:¹¹
- (a) "substantial" is a relative term and lacks precision, and can be defined as "corporeal or material nature, real or actual, of ample or considerable amount, quantity, size etc"¹²;
 - (b) "substantial intensification" does not incorporate any consideration of protections of local amenity and the impact on adjoining uses;
 - (c) the considerations are largely subjective and depend on the facts and circumstances of each case;
 - (d) the following matters can be indicative of substantial intensification:
 - i) the number of vehicles on site, the frequency of arrivals and departures to and from the site;

¹⁰ Oxford English Dictionary

¹¹ *United at [23] – [28]*

¹² *Macquarie Dictionary* definition

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- ii) the extended hours of operation;
 - iii) increasing intensity of use;
 - iv) levels of activity, area of land subject to use, levels of traffic and extent of material involved in the use.
61. Presumably Boodle Beasley serves alcohol which would limit how useful traffic generation is as a measure of intensification. A more accurate measure in our view is capacity, as reflected in the increased area which may be used by patrons and the way in which the alterations may change the way the Property is used. The inclusion of the back half of the Property would increase the space which could be used by patrons in dramatic way. It may also allow for the Property to be used for different types of events such as outdoor music performances etc.
62. We have only been provided with a very brief analysis by the applicant on how the development would change the way the Property is used, as extracted in paragraph 22(d).
63. If the application was made only for the deck at the rear of the Property, that explanation may hold. However, the proposal includes resurfacing with artificial turf and gravel for roughly half of the Property and the installation of the shipping container on the back boundary makes it clear that the whole of that area is intended to be used. This impacts the capacity of the venue and, it seems to us, is likely to increase the number of patrons. It may also change the way that the venue is used; rather than being a place where people go for something to eat and drink, it may become somewhere where people linger and enjoy a relaxed afternoon in the sun, enjoying many alcoholic drinks.
64. Based on these factors, in our opinion, the proposal would create a substantial intensification of the use on the Property.
65. Please contact us if you wish to discuss this advice.

Yours faithfully
Simmons Wolfhagen



Karen Abey
Senior Associate | Local Government, Environment, Planning & Development Law
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GEN

The use and/or development must be substantially in accordance with the documents and drawings that comprise PLN-19-103 315 ELIZABETH STREET NORTH HOBART TAS 7000 - Final Planning Documents except where modified below.

Reason for condition

To clarify the scope of the permit.

THC

The use and/or development must comply with the requirements of the Tasmanian Heritage Council as detailed in the Notice of Heritage Decision, THC Works Ref: 5858 dated 19 November 2019, as attached to the permit.

Reason for condition

To clarify the scope of the permit.

PLN 6

The use must not be open to the public outside of the following hours:

Venue, courtyard and deck areas:

- 8:00am to 12:00 midnight, Monday - Saturday
- 8:00am to 11:00pm, Sunday

Rear Garden Area

- 8:00am to 6:00pm, Monday - Sunday

Reason for condition

To ensure that non-residential use does not unreasonably impact on residential amenity

PLN s1

The proposed use of the Rear Garden Area (ie. the area to the rear and the western side of the New Decking Area) is approved for one (1) year from the date of the approval by the City of Hobart's Director City Planning of the Management Plan required by condition PLN s2 of this planning permit. Following that date, use of the Rear Garden Area in association with the Food Services use of the site must cease unless prior, separate planning approval has been granted allowing that use to continue.

Reason for condition

To clarify the scope of the permit

PLN s2

Prior to the commencement of the approved use of the New Decking Area and Rear Garden Area, a Management Plan for the operation of the New Decking Area and Rear Garden Area must be submitted and approved, to the satisfaction of the City of Hobart's Director City Planning. The Management Plan must include measures to minimise detrimental impacts on adjoining uses and the amenity of the locality. These measures must include, but are not limited to, the following requirements:

1. The hours of operation of the New Decking Area being confined to 8:00am to 12:00 midnight, Monday - Saturday and 8:00am to 11:00pm, Sunday;
2. The hours of operation of the Rear Garden Area being confined to 8:00am to 6:00pm, Monday - Sunday;
3. That the operators of the Food Services use introduce measures to minimise the likelihood of noise from the New Decking Area and Rear Garden Area creating a noise nuisance (as defined under the provisions of the *Environmental Management and Pollution Control Act 1994*) to adjoining properties. Those measures could include but are not limited to the installation of outdoor acoustic insulation. Prior to the commencement of the use of the New Decking Area and Rear Garden Area, the operators of the Food Services use must provide certification from a qualified Acoustic Engineer to the satisfaction of the City of Hobart's Director City Planning that such measures have been installed to minimise the likelihood of noise from the New Decking Area and Rear Garden Area creating a noise nuisance (under the provisions of the *Environmental Management and Pollution Control Act 1994*) to adjoining properties. Once approved by the Director City Planning, the measures referred to in the certification must be maintained on the site for as long as the New Decking Area and Rear Garden Area are being used in association with the use of the site for Food Services;
4. Details of how any amplified music will be located and/or managed within the New Decking Area and Rear Garden Area to minimise impacts upon adjoining uses and the amenity of the locality;
5. Details of how any open fires, including fire pots, will be located and/or managed within the New Decking Area and Rear Garden Area to minimise impacts upon adjoining uses and the amenity of the locality;
6. Details of how any lighting will be located and/or managed within the New Decking Area and Rear Garden Area to minimise impacts upon adjoining uses and the amenity of the locality;
7. Details of how the area between the rear boundary of the property and the new fence located approximately 3.0m in from the rear boundary of the property will be managed to minimise impacts upon adjoining uses and the amenity of the locality;
8. The side gate between the Rear Garden Area and the Right of Way to Elizabeth Street being closed after 6:00pm every day, with access to the venue after 6:00pm only being via the front door onto Elizabeth Street unless patrons are accompanied by a staff member;
9. The name/s and the phone number/s of the person/s responsible for the management of the operation of the Food Services use being provided, so that nearby residents have a 24 hour point of contact in relation to any complaints regarding the impact of the New Decking Area and Rear Garden Area upon adjoining uses and the amenity of the locality;
10. The operators of the Food Services use actively managing the behaviour of patrons within the New Decking Area and Rear Garden

Area to minimise impacts upon adjoining uses and the amenity of the locality;

11. That no parking (other than for delivery purposes) will occur in the Rear Garden Area.

Once approved by the City of Hobart's Director City Planning, the Management Plan must be provided, at a minimum, to all owners/occupiers of all adjoining properties by the operators of the Food Services use.

Once approved, the Management Plan must be implemented prior to the commencement of the approved use of the New Decking Area and Rear Garden Area. The New Decking Area and Rear Garden Area must be operated in accordance with the approved Management Plan for as long as they are being used in association with the use of the site for Food Services.

Reason for condition

To minimise detrimental impacts to adjoining uses and the amenity of the locality

ENG 5

No car parking (other than for delivery purposes) is approved on-site under this permit.

Reason for condition

To ensure the provision of parking for the use is safe and efficient.

ENG 1

Any damage to council infrastructure resulting from the implementation of this permit, must, at the discretion of the Council:

1. Be met by the owner by way of reimbursement (cost of repair and reinstatement to be paid by the owner to the Council); or
2. Be repaired and reinstated by the owner to the satisfaction of the Council.

A photographic record of the Council's infrastructure adjacent to the subject site must be provided to the Council prior to any commencement of works.

A photographic record of the Council's infrastructure (e.g. existing property service connection points, roads, buildings, stormwater, footpaths, driveway crossovers and nature strips, including if any, pre-existing damage) will be relied upon to establish the extent of damage caused to the Council's infrastructure during construction. In the event that the owner/developer fails to provide to the Council a photographic record of the Council's infrastructure, then any damage to the Council's infrastructure found on completion of works will be deemed to be the responsibility of the owner.

Reason for condition

To ensure that any of the Council's infrastructure and/or site-related service connections affected by the proposal will be altered and/or reinstated at the owner's full cost.

ADVICE

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

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

BUILDING PERMIT

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

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

PLUMBING PERMIT

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

OCCUPATION OF THE PUBLIC HIGHWAY

You may require a permit for the occupation of the public highway for construction (e.g. placement of skip bin, crane, scissor lift etc). Click [here](#) for more information.

GENERAL EXEMPTION (TEMPORARY) PARKING PERMITS

You may qualify for a General Exemption permit for construction vehicles i.e. residential or meter parking/loading zones. Click [here](#) for more information.

STORM WATER

Under section 23 of the Urban Drainage Act 2013 it is an offence for a property owner to direct stormwater onto a neighbouring property.

RIGHT OF WAY

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

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

FEES AND CHARGES

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

