



City of **HOBART**

APPLICATION UNDER HOBART INTERIM PLANNING SCHEME 2015

Type of Report: Committee
Council: 28 January 2020
Expiry Date: 29 January 2020
Application No: PLN-19-794
Address: 95 HAMPDEN ROAD , BATTERY POINT
Applicant: Stuart Bowling (Stuart Bowling Building Design)
PO Box 321
PO Box 321
Proposal: Intensification of Previously Approved Use (Food Services), Partial Demolition, Alterations and Signage
Representations: Nine (9)
Performance criteria: Use standards, historic heritage code, signs code

1. Executive Summary

- 1.1 Planning approval is sought for Intensification of Previously Approved Use (Food Services), Partial Demolition, Alterations and Signage.

1.2 More specifically the proposal includes:

- The use of the commercial tenancy on the corner of Hampden Road and Stowell Avenue as 'food services' (pizza restaurant).
- The proposed hours of operation are Monday to Thursday 7am to 10pm and Friday to Sunday 7am to 11pm.
- The advertised documents indicate that there will be 20 seats for patrons who dine-in. Takeaways will also be available. The applicant has since advised that there will only be 12 seats. If a planning permit is granted, this reduced number will be limited by condition.
- There is no onsite parking for the 'food services' use. The two existing parking spaces are allocated to the two existing visitor accommodation units on the site.
- The business will have three (3) employees.
- There will be no outdoor dining, and any music will be quiet music played inside only.
- No additional outdoor lighting is proposed.
- There will be one (1) pizza delivery vehicle.
- Garbage collection will be by Council collection of garbage bins and additional refuse will be disposed of by the business owners in their own vehicles.
- Restaurant supplies will be by the restaurant owners in their own vehicle, with no commercial deliveries or collection to or from the site.
- Rubbish removal and restaurant stock vehicle movements will be during the day, and generally between 9am and 5pm.
- The existing Bahr's horizontal projecting wall sign will be removed and replaced with a new sign ("Lord of Pizzas & Cafe"). One side of the Bahr's sign will be relocated to the foyer that leads to the two visitor accommodation units and the other side will be on the wall in the restaurant.
- The sign will be illuminated between 5pm and 10pm Monday to Thursday and 5pm to 11pm Friday to Sunday.
- Some minor work is proposed to the commercial kitchen, including new vinyl wall sheeting, new exhaust canopy and relocating a hand washing basin.
- External alterations including an exhaust duct and repositioning of cold water pipes and the gas water heater.

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

- 1.3.1 Inner Residential Zone Use Standards - Hours of Operation, Noise Emissions
- 1.3.2 Historic Heritage Code
- 1.3.3 Signs Code

- 1.4 Nine (9) representations objecting to the proposal were received within the statutory advertising period between 2 and 16 December 2019.
- 1.5 The proposal is recommended for approval subject to conditions.
- 1.6 The final decision is delegated to the Council.

2. Site Detail

2.1 The property is located on the corner of Hampden Road and Stowell Avenue. It was previously Bahr's Chocolate Shop and Milk Bar and most recently Cafe Auslan.



Fig. 1. Subject property.



Fig. 2. Subject property showing the last tenant (Cafe Auslan). Source: VeronikaWild.com



*Fig. 3. Subject property showing the previous tenant (Bahr's Chocolate Shop and Milk Bar).
Source: GoogleMaps.*

3. Proposal

- 3.1 Planning approval is sought for Intensification of Previously Approved Use (Food Services), Partial Demolition, Alterations and Signage.

3.2 More specifically the proposal includes:

- The use of the commercial tenancy on the corner of Hampden Road and Stowell Avenue as 'food services' (pizza restaurant).
- The proposed hours of operation are Monday to Thursday 7am to 10pm and Friday to Sunday 7am to 11pm.
- The advertised documents indicate that there will be 20 seats for patrons who dine-in. Takeaways will also be available. The applicant has since advised that there will only be 12 seats. If a planning permit is granted, this reduced number will be limited by condition.
- There is no onsite parking for the 'food services' use. The two existing parking spaces are allocated to the two existing visitor accommodation units on the site.
- The business will have three (3) employees.
- There will be no outdoor dining, and any music will be quiet music played inside only.
- No additional outdoor lighting is proposed.
- There will be one (1) pizza delivery vehicle.
- Garbage collection will be by Council collection of garbage bins and additional refuse will be disposed of by the business owners in their own vehicles.
- Restaurant supplies will be by the restaurant owners in their own vehicle, with no commercial deliveries or collection to or from the site.
- Rubbish removal and restaurant stock vehicle movements will be during the day, and generally between 9am and 5pm.
- The existing Bahr's horizontal projecting wall sign will be removed and replaced with a new sign ("Lord of Pizzas & Cafe"). One side of the Bahr's sign will be relocated to the foyer that leads to the two visitor accommodation units and the other side will be on the wall in the restaurant.
- The sign will be illuminated between 5pm and 10pm Monday to Thursday and 5pm to 11pm Friday to Sunday.
- Some minor work is proposed to the commercial kitchen, including new vinyl wall sheeting, new exhaust canopy and relocating a hand washing basin.
- External alterations including an exhaust duct and repositioning of cold water pipes and the gas water heater.

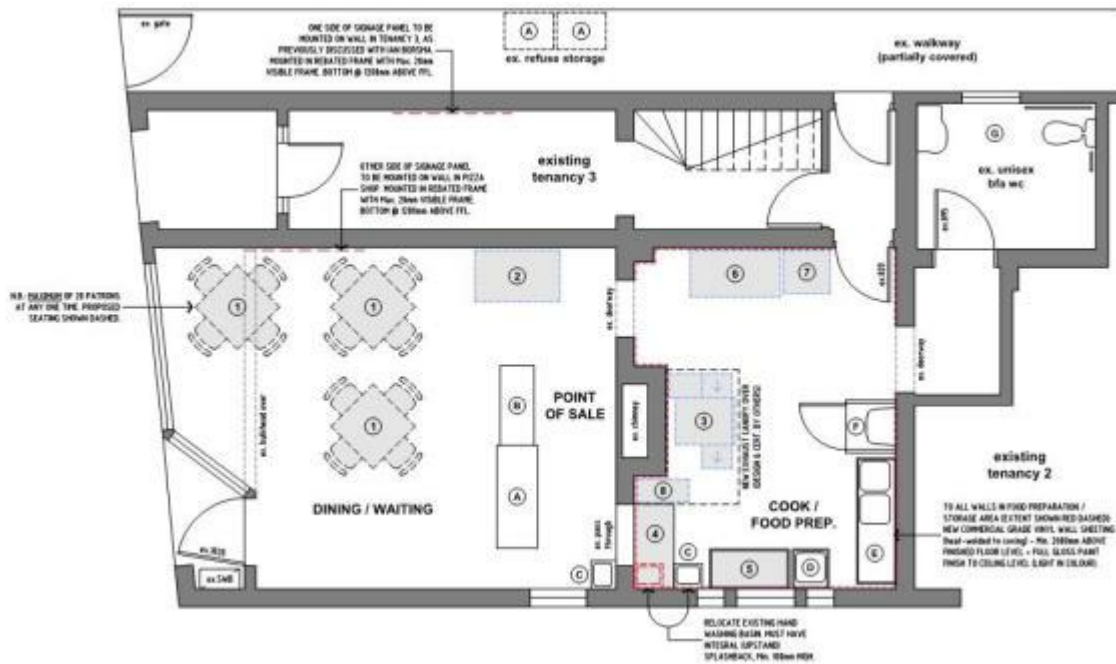


Fig. 4. Proposed floor plan.

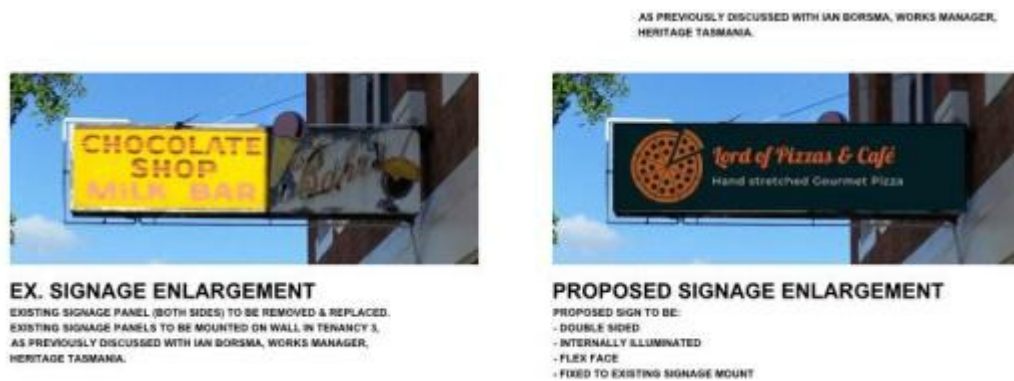


Fig. 5. Existing and proposed sign.

4. Background

4.1 The most recent and relevant planning permits relating to 95 Hampden Road are as follows:

- PLN-17-165 - approved a change of use to food services and two dwellings. Conditions were placed on the permit restricting the hours of operation to Monday to Sunday 8am to 6pm (PLN 6) and the number of seats to 30 (PLN s1). Council's Cultural Heritage Officer placed a condition on the permit (HER s1) requiring that no shop fittings or shelving attached to the walls of the ground floor shop are to be removed or altered in association with the approved use or subsequent uses. Another condition (HER s2) required that the Bahr's shop sign on the front facade remain in situ, conserved and repaired in association with the approved use or subsequent uses. Two on-site parking spaces were approved under this permit, both allocated to the dwellings on the site, and none allocated to the commercial tenancy.
- PLN-18-367 - approved the change of use of the two dwellings approved under PLN-17-165 from residential to visitor accommodation.

5. Concerns raised by representors

5.1 Nine (9) representations objecting to the proposal were received within the statutory advertising period between 2 and 16 December 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 development will cause significant traffic congestion because of the narrowing of Hampden Road at this corner and the existing traffic flows.
•	The business will cause traffic chaos in Hampden Road for some distance on either side of Stowell Avenue as traffic in this area is already high, slow and often difficult, particularly entering and exiting Stowell Avenue.
•	Parking is limited for residents and delivery vehicles and customers will add significantly to an existing problem.
•	This business will attract customers in cars, adding to parking and traffic stress in the area.

<ul style="list-style-type: none"> • It is unclear how the traffic generated by the business will not "cause any detriment to the current operation of the street". 20 customers would be expected to travel by 5 to 10 vehicles unless travelling on foot or by public transport. Added to this would be take-away pick-ups which are proposed to form the bulk of the business, again often involving a vehicle.
<ul style="list-style-type: none"> • Take-away customers will queue for parking spaces, linger in spaces where parking is prohibited (e.g. driveways and yellow lines), and drive around the streets to find a close available parking space.
<ul style="list-style-type: none"> • Where will the delivery vans park? To say that the owners will do their own commercial deliveries is unrealistic.
<ul style="list-style-type: none"> • Battery Point is already well provided for this type of service.
<ul style="list-style-type: none"> • Any commercial activities should be daytime only in the residential zone. It would be the only business open in the evenings and the proposed operating hours are therefore incompatible with the area and would greatly affect amenity.
<ul style="list-style-type: none"> • Other restaurants in the area open later into the evening (e.g. D'Angelo's); however these are closely located next to each other in a stretch of Hampden Road occupied by a number of restaurants, which is considered to be the commercial precinct in Hampden Road. The proposed development is distantly removed from these other restaurants and located in a part of Hampden Road which is primarily residential, and will cause greater disruption to residents and occupiers than other restaurants in the area.
<ul style="list-style-type: none"> • The hours of operation will lead to unacceptable levels of street noise from patrons going to and from the business.
<ul style="list-style-type: none"> • The area for patrons dining-in and waiting for take-away food is small and will likely cause patrons to congregate on the footpath outside Hampden Road or around the corner in Stowell Avenue. Smoking, drinking and use of mobile phones outside the premises by patrons will adversely affect us.
<ul style="list-style-type: none"> • Both the chocolate shop and the coffee shop were an unobtrusive use of the premises.
<ul style="list-style-type: none"> • The smells from the pizza oven will be unreasonable.
<ul style="list-style-type: none"> • The size of the pizza oven is not commercially viable. The logistics of the prep area in relation to the oven is very dangerous and illogical.
<ul style="list-style-type: none"> • Closing times will dramatically change the dynamic of the area, like Legs and Breasts did on Montpelier Street.

•	A takeaway creates lots of rubbish. One small plastic green bin will not cope. The next closest big bin is in Francis Street, hundreds of metres away.
•	To compare this takeaway to D'Angelo's is an insult. D'Angelos is a proper sit-down restaurant. They do takeaways, but this is a minor percentage of their revenue.
•	The cost of works and number of employees is unrealistic.
•	The Bahr's Chocolate Shop Milk Bar sign is of heritage significance and is a landmark in the area, and should stay. If it is removed and hung inside the building there is no guarantee that once removed it will remain there and intact.
•	The large illuminated pizza sign will degrade the heritage value of Battery Point.
•	The development affects the historical context of 95 Hampden Road and nearby properties.
•	The development will result in a loss of property values.
•	Amenity will be lost through the visual impact of the development, additional noise and fat and food effluent from the exhaust.

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 Inner Residential Zone of the *Hobart Interim Planning Scheme 2015*.
- 6.3 The existing and proposed use is visitor accommodation and food services. Visitor accommodation is a prohibited use in the zone (the use was approved under PLN-17-391 when Planning Directive 2 designated visitor accommodation as a permitted use in heritage precinct Battery Point 1: it is now a prohibited use under Planning Directive 6). Food services is a discretionary use in the zone. The proposal is for an intensification of the approved food services use.
- 6.4 The proposal has been assessed against:
- 6.4.1 Part D - 11.0 Inner Residential Zone Standards

- 6.4.2 Part E - 6.0 Parking and Access Code
- 6.4.3 Part E - 13.0 Historic Heritage Code
- 6.4.4 Part E - 17.0 Signs Code
- 6.5 The proposal relies on the following performance criteria to comply with the applicable standards:
- 6.5.1 Hours of Operation – Part D 11.3.1 P1
- 6.5.2 Noise Emissions - Part D 11.3.1 P2
- 6.5.3 Historic Heritage Code – Part E 13.7.1 P1, 13.7.2 P1, P2 and P3, 13.8.1 P1 and 13.8.2 P1
- 6.5.4 Signs Code - Part E 17.7.2 P1
- 6.6 Each performance criterion is assessed below.
- 6.7 Hours of Operation – Part D 11.3.1 P1
- 6.7.1 The acceptable solution at clause 11.3.1 A1 for hours of operation is:
- Monday to Sunday 8am to 6pm.
- 6.7.2 The proposal is to extend the hours of operation for the food services use to:
- Monday to Thursday 7am to 10pm
 - Friday to Sunday 7am to 11pm
- 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 11.3.1 P1 provides as follows:
- Hours of operation must not have an unreasonable impact upon the residential amenity through commercial vehicle movements, noise or other emissions that are unreasonable in their timing, duration or extent.*
- 6.7.5 The tenancy has a valid planning permit to be used for 'food services'

which was issued under PLN-17-165. The previous occupant of the tenancy was the Auslan Cafe which was a day-time food services use that had both an eat-in and take-away component and was restricted to the hours of operation approved under PLN-17-165 (8am to 6pm Monday to Sunday). The use was approved under this permit to have up to 30 seats.

6.7.6 The new operator (Lord of Pizzas and Cafe) is also a 'food services' use with a take-away and eat-in component, and is proposing to operate between 7am to 10pm Monday to Thursday and 7am to 11pm Friday to Sunday. The number of seats is reduced to 12. The new use is still 'food services'; however the use has intensified because the hours of operation are extended to beyond those approved under PLN-17-165.

6.7.7 The Objective of the Non-Residential Use Standards is:

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

6.7.8 The performance criterion (clause 11.3.1 P1) requires Council to assess this impact in terms of "commercial vehicle movements, noise or other emissions that are unreasonable in their timing, duration or extent". It is considered that the operation of the business until 10pm Monday to Thursday and 11pm Friday to Sunday has the potential to cause an unreasonable impact upon residential amenity in the vicinity.

6.7.9 The tenancy has been used for commercial purposes for a long time, predominantly as the Bahr's Chocolate Shop and then as a day-time cafe/restaurant. It is located in the Inner Residential Zone, with the Urban Mixed Use Zone (where D'Angelo's, the Prince of Wales Hotel and other commercial uses are sited) being approximately 71m to the east. The existing use of the tenancy (food services) is considered to be an appropriate non-residential use in the zone, has a valid planning permit, and is not being re-assessed under this planning assessment. The issue is whether the intensification of the use via the increase in trading hours is unreasonably detrimental in the zone.

6.7.10 The property is surrounded by residential buildings, both in Hampden Road and Stowell Avenue. The zoning provisions prioritise residential amenity, but also seek to provide a balance between residential amenity and the operational needs of commercial uses within the zone. The restaurant does not have any outdoor dining facilities and the applicant has stated that "any music provided inside the premises will be low volume background music (i.e. atmospheric restaurant music)".

Customers eating within a restaurant or waiting inside for their take-away orders do not generally make loud, anti-social noises, with noise generally at the level of conversational talking. Many take-away customers would not even visit the premises, instead getting their orders delivered by the business' pizza delivery vehicle. It is considered that noise from within the premises (music, talking, food preparation) would not have an unreasonable impact upon residential amenity in the vicinity and so meets the performance criterion.

6.7.11 The main noise impact from the business would come from customers arriving at and leaving the premises, closing car doors and talking as they walk up the street to the business. The level of impact from this (that is, how much it would affect or annoy the average person living in the area) stems from the hours that this noise would occur, with the level of impact increasing the later into the evening that noise occurs. People living in the vicinity would not be unreasonably impacted by the level of noise created by car doors opening and closing and pedestrians talking while they are preparing and eating dinner or watching evening television; however they would be impacted while they are trying to get to sleep later in the evening.

6.7.12 Whilst it is acknowledged that the time that people go to bed varies from person to person, and different people have different tolerances to noise, the noise from car doors and from people talking as they walk up the street would not be overly loud, would not occur constantly, and would vary between customers: customers would not all park outside the same houses, some would close car doors loudly, some quietly, and some would talk as they walk, some would not. It is considered that if the premises were conditioned to close earlier than proposed this would strike a reasonable balance between maintaining residential amenity and allowing a business which wants to sell dinner-time food to reasonably operate.

Council recently approved a restaurant located within the Inner Residential Zone at 98 Augusta Road. This permit was conditioned so that the business closed at 9.30pm in order to protect residential amenity. With this example as a guide, a suggested closing time of 9.30pm was put to the applicant for the current proposal, who then requested that Council consider the following alternative hours:

- Sunday to Thursday - 7.00am to 9.00pm
- Friday and Saturday - 7.00am to 10.00pm

These hours are considered to provide a reasonable balance between residential amenity and the operation of the business. The business would close to customers at 9.00pm five days a week. The last customers would need to sit down well before then (say by 8.30pm) to allow time to have their meal cooked and eaten before closing time, and would leave at or before 9.00pm. Take-away customers would need to arrive before 9.00pm to collect their meal. This is on the evenings where most people living in the area would be working the next day, with any potential customer street noise ceasing around or before bedtime. On Fridays and Saturdays the business would open until 10pm. These are nights when most people are more tolerant to noise and are potentially going to bed later. Other businesses in the area also open at this time, and so the local area would already experience noise from customers parking and coming and going - D'Angelo's for example is advertised to close at 11pm on Fridays and Saturdays (and 10pm on the other nights), the Prince of Wales Hotel is advertised to close at 12 midnight on Fridays and 11pm on Saturdays (and 10pm on the other nights).

- 6.7.13 The other potential noise impacts from a business comes from the background operation of the business: commercial garbage collection, goods deliveries and the emptying of hard waste (such as bottles, jars and cans) into outdoor garbage bins. The applicant has stated that there will not be any commercial garbage collection. Their rubbish will be collected by Council in standard wheelie bins on normal collection days. This will have no impact on neighbours as their residential rubbish would be collected by the Council at the same time. The applicant has stated that refuse that won't fit into the Council bins will be disposed of by the restaurant owners in their own cars. Again, this would not impact on neighbours. There is therefore not considered to be any unreasonable impact on residential amenity by rubbish collection. The applicant has stated that there will be no commercial goods deliveries to the site, with all produce transported in the restaurant owners' own cars. Food will be stored in the shed at the rear of the site. This would not unreasonably impact on residential amenity in the vicinity. The rubbish bins are stored in an undercover area between 95 and 97 Hampden Road and hidden from Hampden Road by a gate. So long as noisy rubbish (jars, bottles, cans, etc) was not emptied into these bins in the early morning or later in the evening, the use of these bins would not unreasonably affect residential amenity. The Council determined that hard waste into garbage bins was acceptable at 98 Augusta Road between 7am and 8pm Monday to Friday and 9am to 8pm on weekends, and so the same condition is recommended for 95 Hampden Road.

6.7.14 Some of the representors have raised concerns about smell and other emissions coming out of the kitchen ducts. The ducting comes out of the external wall between 95 and 97 Hampden Road. This neighbour has not raised any concerns. A planning permit cannot control what types of food are cooked within a restaurant. Menus can change or different types of restaurants can move in, without any reference to the planning scheme. Smells, and whether they are considered to be a nuisance, are more properly controlled under the *Environmental Management and Pollution Control Act 1994* on a case by case basis. The potential emission of pizza smells through the external ducting is not considered to be a grounds of refusal.

6.7.15 Subject to conditions, the proposal is considered to comply with the performance criterion.

6.8 Noise Emissions - Part D 11.3.1 P2

6.8.1 The acceptable solution at clause 11.3.1 A2 requires that noise emissions measured at the boundary of the site be limited to the following:

- (a) 55 dB(A) (LAeq) between the hours of 8.00 am to 6.00 pm;
- (b) 5dB(A) above the background (LA90) level or 40dB(A) (LAeq), whichever is the lower, between the hours of 6.00 pm to 8.00 am;
- (c) 65dB(A) (LAm_{ax}) at any time.

Measurement of noise levels must be in accordance with the methods in the Tasmanian Noise Measurement Procedures Manual, issued by the Director of Environmental Management, including adjustment of noise levels for tonality and impulsiveness.

Noise levels are to be averaged over a 15 minute time interval.

6.8.2 The proposal does not include a noise assessment as per the acceptable solution.

6.8.3 The proposal does not comply with the acceptable solution; therefore assessment against the performance criterion is relied on.

6.8.4 The performance criterion at clause 11.3.1 P2 provides as follows:

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

- 6.8.5 The business does not have any outdoor dining, will only play quiet background music, and if approved should be conditioned to close at 9.30pm. The use of the outdoor bins should also be conditioned. Any noise emissions from the business within the site and measured at the boundary of the site would be very low level and would not cause environmental harm.
- 6.8.6 The proposal complies with the performance criterion.
- 6.9 Historic Heritage Code - Part E 13.7.1 P1, 13.7.2 P1, P2 and P3, 13.8.1 P1 and 13.8.2 P1
- 6.9.1 There is no acceptable solution for works to a listed place or in a heritage precinct.
- 6.9.2 The proposal includes works to a place that is listed in the planning scheme, located in heritage precinct Battery Point 1, and is listed with the Tasmanian Heritage Council.
- 6.9.3 There are no acceptable solutions; therefore assessment against the performance criterion is relied on.
- 6.9.4 The relevant performance criteria provide as follows:

E.13.7.1 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;

- (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 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.*

E.13.7.2 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.*

E.13.7.2 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.

E.13.8.1 P1

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.*

E.13.8.2 P1

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

6.9.5 The Council's Cultural Heritage Officer has advised as follows:

This place is heritage listed in table E13.1 of the Historic Heritage Code of the *Hobart Interim Planning Scheme 2015*. It is also located in the Battery Point 1 Heritage Precinct. This proposal follows on from numerous applications for modifications and alterations to the property that prior to a change of ownership, operated for a long period of time as a small local shop and was well known as a local sweet shop.

This application is for signage, works to the interior for new ducting from the kitchen to the exterior. The ducting is to be through the property to the exterior on the side of the building adjacent to 97 Hampden Road such that it is on the side of the building that is for side access. The proposal is to accommodate a new dine-in/take away pizza shop and to change the existing Bahr's sign with a pizza sign.

Nine (9) representations were received during the advertising period. The following heritage issues were raised:

- Please keep the sign its current size and do not permit it to be illuminated. The current Bahrs chocolate bar sign has a small amount of illumination but it is of a vintage character. A bigger, internally illuminated, new orange pizza sign will look garish rather than vintage.
- It represents the destruction of history and amenity.
- The last business, a coffee shop, was required by Council, to leave the Bahr's Milk Bar sign. The Bahr's Milk Bar sign is of historic significance.
- The development affects the historical context of the property at 95 Hampden Road and every nearby property including Narryna.
- Not in keeping with the historical significance of the Battery Point precinct.

Heritage Tasmania records the Bahr family as long-term owners of the building from 1920s, maybe earlier, until at least 1949, and the building continued to operate as a chocolate shop and milk bar until very recently. This shop and sign are a longstanding landmark in the area. Many people know "the chocolate shop on Hampden Rd" and it is part of the area's/city's cultural heritage not to be tampered with. Whilst it currently needs repair it is completely salvageable at this stage. Even if approval

for its removal was granted with the proposal of hanging it in the interior of the shop or attached dwelling there is no guarantee once removed that it will remain there and intact.

The exact date of the Bahr's chocolate shop/milk bar sign is not known, however Charles and Esther Bahr owned the building from the 1920s and was still owned by their confectioner daughter Winifred at the time of her death in 1976. Stylistically, the sign is from the c.1950s with its curved neon writing and pictures of an icecream and sundae.



Fig. 6. Sign from the Bahr's shop (estimated to be c.1950). Council image.

The following condition was included in the permit issued for PLN-16-00334 and also for PLN-17-165. This position has been held firmly based on the heritage values of the sign. The most recent condition was not appealed and remains current.

HER s2: The Bahr's shop sign on the front façade is to be retained in situ, conserved and repaired as necessary during works and subsequent uses.

Reason for condition: To ensure that demolition in whole or part of a heritage place does not result in the loss of historic cultural heritage significance.

The proposed works and signage must be assessed against E.13.7.1 P1 and E.13.8.1 Demolition, E.13.7.2 P1, E.13.7.2 P2, E.13.8.2 P1, new work, and E.17.7.2 standards for signs in Heritage Places subject to the Heritage Code or within Heritage Precincts.

The removal of the sign remains problematic and it is the firm view of Council's heritage officer that the removal of the sign for relocation internally is problematic. The representations raise concerns about the loss of the sign and raise the fact that the sign was required to be retained as part of the previous conversion of the shop to a cafe. As an aside, the above condition has not been complied with as no conservation or repair work has been undertaken as part of previous planning permits. When assessed against E.17.7.2, the proposed pizza sign will obscure and be of a size and design that will impact on the heritage values of the place and does not satisfy all of the sub clauses of E.17.7.2 P1 (a) to (i), particularly (a), (c) and (e). It is recommended that the same condition be included in any permit issued.

Alternative signage solutions are recommended.

The proposed demolition is for the removal of the sign and works associated with the installation of the exhaust flue.

Demolition is defined in the Scheme and "means the intentional damaging, destruction or removal of any building or works in whole or in part."

The historic Bahr's sign is an external sign and is integral to the building and can be classified as a significant sign with external detailing, finishes and materials that demonstrate the Battery Point character as an historically self contained suburb. Therefore, the removal of the sign results in the loss of heritage values of the place and precinct and does not satisfy E.13.7.1 P1. A permit of condition retaining the sign with alternative sign solutions would result in an acceptable outcome.

The demolition associated with a new exhaust system is acceptable and satisfies E.13.7.1 P1 and E.13.8.1 P1.

The new works associated with the exhaust system and the kitchen fitout is also acceptable for the place and precinct and satisfies E.13.7.2 P1 and P2 and E.13.8.2 P1.

With a condition of permit the proposal satisfies the relevant provisions of

the Historic Heritage Code of the Scheme.

6.9.6 The Tasmanian Heritage Council has approved the proposal subject to conditions.

6.9.7 Subject to conditions, the proposal complies with the performance criterion.

6.10 Signs Code - Part E 17.7.2 P1

6.10.1 The proposal is for the removal of the Bahr's sign, and its replacement, within the existing frame, with a new horizontal projecting wall sign reading "Lord of Pizzas and Cafe". The new sign is double-sided and internally illuminated. The removal of the Bahr's sign has been recommended for refusal by the Council's Cultural Heritage Officer; however in the event that its removal is approved by the Council, the new sign must be assessed against the provisions of the planning scheme.

6.10.2 The new sign is not considered to meet exemption E.17.4.3 as it is more than "changes to the graphics of a legally existing sign including text, graphic design and colour". Whilst the new sign box will fit within the existing frame, it is an internally illuminated light box, whereas the previous sign was not internally illuminated, but had neon strips. This is considered to be beyond the scope of the exemption.



Fig. 7. The existing and proposed signs.

6.10.3 The new sign is located within the existing frame, so its dimensions are not changing. It is an existing approved sign type (horizontal projecting wall sign) and it will not contain flashing or moving parts. It therefore meets the relevant acceptable solutions under E.17.6.1 A1 and E.17.7.1 A1.

6.10.4 The new sign will be located on a heritage listed building and within a heritage precinct, so clause E.17.7.2 A1 is relevant to the assessment:

A sign on a Heritage Place listed in the Historic Heritage Code or within

a Heritage Precinct or Cultural Landscape Precinct must satisfy all of the following:

- (a) be located in a manner that minimises impact on cultural heritage significance of the place or precinct;*
- (b) be placed so as to allow the architectural details of the building to remain prominent;*
- (c) be of a size and design that will not substantially diminish the cultural heritage significance of the place or precinct;*
- (d) be placed in a location on the building that would traditionally have been used as an advertising area if possible;*
- (e) not dominate or obscure any historic signs forming an integral part of a building's architectural detailing or cultural heritage values;*
- (f) have fixtures that do not damage historic building fabric, including but not restricted to attachments to masonry and wood, such as to using non-corrosive fixings inserted in mortar joints;*
- (g) not project above an historic parapet or roof line if such a projection impacts on the cultural heritage significance of the building;*
- (h) be of a graphic design that minimises modern trademark or proprietary logos not sympathetic to heritage character;*
- (i) not use internal illumination in a sign on a Heritage Place unless it is demonstrated that such illumination will not detract from the character and cultural heritage values of the building.*

6.10.5 The Council's Cultural Heritage Officer has advised as follows:

The removal of the sign remains problematic and it is the firm view of Council's heritage officer that the removal of the sign for relocation internally is problematic. The representations raise concerns about the loss of the sign and raise the fact that the sign was required to be retained as part of the previous conversion of the shop to a cafe.

When assessed against E.17.7.2, the proposed pizza sign will obscure and be of a size and design that will impact on the heritage values of the place and does not satisfy all of the sub clauses of E.17.7.2 P1 (a) to (i), particularly (a), (c) and (e).

Alternative signage solutions are recommended.

6.10.6 The proposal does not comply with the performance criterion.

7. Discussion

- 7.1 Planning approval is sought for Intensification of Previously Approved Use (Food Services), Partial Demolition, Alterations and Signage.
- 7.2 The application was advertised and received nine (9) representations. The representations raised concerns including parking, traffic, hours of operation, noise, smells, impact on residential amenity and loss of heritage values.
- 7.3 The proposal has been assessed against the relevant provisions of the planning scheme and is considered to perform well, subject to conditions to reduce the potential for impact on residential properties in the area, and to protect the heritage values of the Bahr's sign. A number of the representations have raised concerns relating to parking and traffic movements in the area. The parking discretion associated with the 'food services' use was assessed under PLN-17-165 and deemed to meet the relevant provisions of the planning scheme. The increase in the trading hours does not trigger a discretion under the Parking and Access Code (that is, the scheme does not require additional onsite parking because of the new hours), and so parking and traffic has not been reassessed. The on-site parking requirement for 'food services' is based on the floor area or the number of seats. The floor area has not changed, and the number of seats has been reduced from 30 to 12, so there is no increase in the on-site car parking requirement under clause E.6.6.1 A1. The impact that the trading hours may have on residential amenity (including from noise associated with customers parking in the street) has been assessed under the Use Standards in the Inner Residential Zone.
- 7.4 The proposal has also been assessed by other Council's Cultural Heritage Officer. The officer has raised no objection to the proposal, except in relation to removal of the Bahr's sign and the new replacement sign, and so has recommended approval subject to conditions relating to the signage.
- 7.5 The Tasmanian Heritage Council has recommended approval subject to conditions, including the proposed sign changes.
- 7.6 The proposal is recommended for approval subject to conditions.

8. Conclusion

- 8.1 The proposed Intensification of Previously Approved Use (Food Services), Partial Demolition, Alterations and Signage at 95 Hampden Road BATTERY POINT satisfies the relevant provisions of the *Hobart Interim Planning Scheme 2015*, and as such is recommended for approval.

9. Recommendations

That: Pursuant to the *Hobart Interim Planning Scheme 2015*, the Council approve the application for Intensification of Previously Approved Use (Food Services), Partial Demolition, Alterations and Signage at 95 Hampden Road BATTERY POINT for the reasons outlined in the officer's report and a permit containing the following conditions be issued:

GEN

The use and/or development must be substantially in accordance with the documents and drawings that comprise PLN-19-794 - 95 HAMPDEN ROAD BATTERY POINT TAS 7004 - Final Planning Documents except where modified below.

Reason for condition

To clarify the scope of the permit.

TW

The use and/or development must comply with the requirements of TasWater as detailed in the form Submission to Planning Authority Notice, Reference No. TWDA 2019/01660-HCC dated 18 November 2019 as attached to the permit.

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: 6088 dated 20 December 2019 as attached to the permit.

Reason for condition

To clarify the scope of the permit.

PLN 14

The noise generated by the use, including from music played inside, must not cause environmental harm when measured at the boundary of the subject site. This planning permit does not approve the playing of any music externally from the building.

Reason for the condition

To ensure noise emissions do not cause environmental harm and do not have an unreasonable impact on residential amenity.

PLN 6

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

- **Sunday to Thursday 7.00am to 9.00pm**
- **Friday and Saturday 7.00am to 10.00pm**

Reason for condition

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

PLN 7

There is no outdoor dining approved under this planning permit.

Reason for condition

To reduce the likelihood of any unreasonable impact upon the amenity of the adjacent residential property through noise emissions, and to ensure compliance with the non-residential use standards in the *Hobart Interim Planning Scheme 2015*.

PLN s1

The food services use must not have more than 12 seats for customers.

Reason for condition

To clarify the scope of the permit

PLN s2

The removal of hard waste (e.g. glasses and cans) to the garbage bins located

outside the building is prohibited before 7.00am and after 8.00pm Monday to Friday and before 9.00am and after 8.00pm on weekends and public holidays.

Reason for condition

To avoid unreasonable impact on surrounding residential amenity through noise emissions that are unreasonable in their timing, duration or extent.

HER s2

The Bahr's shop sign on the front façade is to be retained in situ, conserved and repaired as necessary during works and subsequent uses.

Reason for condition

To ensure that demolition in whole or part of a heritage place does not result in the loss of historic cultural heritage significance.

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.

SPECIAL CONNECTION PERMIT

You may need a Special Connection Permit (Trade Waste) in accordance with the *Plumbing Regulations 2014* and the Tasmanian Plumbing Code. Click [here](#) for more information.

PUBLIC HEALTH

You may be required to provide approved/endorsed plans for a food business fit out, in accordance with the National Construction Code - Building Code of Australia including Tas Part H102 for food premises which must have regard to the FSANZ Food Safety Standards. Click [here](#) for more information.

FOOD BUSINESS REGISTRATION

Food business registration in accordance with the *Food Act 2003*. 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.

NOISE REGULATIONS

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



(Liz Wilson)

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 Manager Development Appraisal

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

Date of Report: 7 January 2020

Attachment(s):

Attachment B - CPC Agenda Documents

Attachment C - Referral Officer Report (Cultural Heritage Officer)