



CITY OF HOBART

AGENDA

City Planning Committee Meeting

Open Portion

Monday, 16 March 2020

at 5:00 pm

Lady Osborne Room, Town Hall

SUPPLEMENTARY ITEM

ORDER OF BUSINESS

COMMITTEE ACTING AS PLANNING AUTHORITY 3

APPLICATIONS UNDER THE SULLIVANS COVE PLANNING SCHEME 1997

- 11 2 / 19 - 21 Castray Esplanade, Battery Point Adjacent Road Reserve
 - Outdoor Dining Furniture - PLN-20-4 4

The General Manager reports:

“That in accordance with the provisions of Part 2 Regulation 8(6) of the *Local Government (Meeting Procedures) Regulations 2015*, these supplementary matters are submitted for the consideration of the Committee.

Pursuant to Regulation 8(6), I report that:

- (a) information in relation to the matter was provided subsequent to the distribution of the agenda;
- (b) the matter is regarded as urgent; and
- (c) advice is provided pursuant to Section 65 of the Act.”

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.

**11 2 / 19 - 21 Castray Esplanade, Battery Point Adjacent Road Reserve
- Outdoor Dining Furniture - PLN-20-4
File Ref: F20/27977**

Memorandum of the Manager Development Appraisal of 12 March 2020
and attachments.

Delegation: Council



City of **HOBART**

MEMORANDUM: CITY PLANNING COMMITTEE

2 / 19 - 21 Castray Esplanade, Battery Point Adjacent Road Reserve - Outdoor Dining Furniture - PLN-20-4

This memo provides further information in relation to PLN-20-4, a development application for outdoor dining on the footpath adjacent to 2 / 19-21 Castray Esplanade, Battery Point.

The following documents are attached:

1. PLN-20-4 – 2 _ 19-21 Castray Esplanade Battery Point – Planning Committee Report and Attachments
2. email from Alex Lazarou, the applicant, to Council officers dated 6 March; and
3. a response to Mr Lazarou's email:
 - (a) a memo by Nick Booth, Council's Cultural Heritage Officer ; and
 - (b) a copy of Mr Booth's full report on this proposal.

Process

The following points respond to the suggestion that the applicant has been disadvantaged by the processes which the Council officers have followed.

- The applicant was first offered an extension of time on 3 March. The applicant chose not to do so. As a consequence, a special Committee meeting was arranged for 10 March due to the expiry of the statutory time frame that day.
- The email from Mr Lazarou to Mr Ikin (Council's Senior Statutory Planner) was received on 6 March at 3.24pm (Friday). Mr Ikin, who does not work on Fridays, responded to the email at the first opportunity at 8.44am on 10 March (Tuesday, after the long weekend).

- Despite efforts by Mr Ikin during the day on 10 March, the applicant chose not to request an extension until well through the special Committee meeting.
- Prior to the special meeting, the applicant did not request to make a deputation at the special Committee meeting. If he had done so, the representors would have been informed of this may have also requested to do so.
- It is not the usual process to circulate emails from applicants to the Committee. The email of 6 March raised certain points criticising Mr Booth. The applicant could have raised these points in an open forum at the special Committee meeting. Mr Booth was present and was able to respond. Instead, the applicant requested a written response to those issues. The report containing the recommendation for refusal is contained in the agenda for the special Committee meeting on 10 March.
- This memo will be published on the Council's website as part of the agenda for the meeting on 16 March, and will also be provided directly to the applicant. The applicant and representors have been informed that the Committee will consider the application on 16 March and that they have the opportunity to attend the meeting to make a deputation.

Recommendation

The application is recommended for refusal. Prior to finalising the report to the Committee, very careful consideration was given to the Scheme provisions and discussions were had with Mr Booth to ensure that his opinion was fully reasoned and considered.

In particular, consideration was given to the decision of the Full Court of the Supreme Court regarding the proposed development at 1 Montpelier Retreat.¹ That decision clearly states that the requirements of the Activity Area (clause 16) are a basis for refusal which is separate from the other parts of the Scheme. On that basis, the references by Mr Lazarou to other parts of the Scheme (included that they are supported by other Council officers) do not overcome the requirement to also satisfy the heritage provisions in clause 16.

Further, consideration was given to the decision of the Resource Management and Planning Appeals Tribunal in relation to this property. The owners of the property applied to place solar panels on the roof, which Mr Booth opposed on heritage grounds. The application was refused by the Council and the Tribunal upheld that decision, accepting Mr Booth's opinion in relation to heritage characteristic of the property and the extent to which they are protected by the Scheme.

¹ *Sultan Holdings Pty Ltd v John Fuglsang Developments Pty Ltd* [2017] TASFC 14

The following is an extract from that decision. The criterion which is being referred to (clause 22.4.5, criterion 1) is that a proposal must “complement and contribute” to the cultural significance of the relevant building. For the current proposal, the test which must be met is most likely a higher test, that the proposal must “contribute to, and enhance” the cultural heritage of the building.

The Tribunal stated:²

Clause 22.4.5 Criterion 1, places a very high evidentiary burden upon an applicant for development within the area. It can be inferred, reasonably, that the authors of the Scheme intended that there should be little or no development within the Cove except in circumstances where a contribution to its intrinsic cultural heritage values could be delivered. Examples of where a development might achieve that objective include appropriate conservation/restoration works, the removal of prior work that has an adverse impact on a building's significance, or perhaps, work intended to prolong the life of a building which would otherwise become derelict if not so improved. The obligation upon the Tribunal is to do the best it can to give meaning to the Scheme in a way which is consistent with the language used and the objectives within which those words appear. But an application for works to a place of heritage significance is very severely constrained by the words in this provision. Typically, works which appropriately conserve or restore a heritage place will more easily and comfortably sit within the scope of the discretion conferred by those words; anything else is likely not to comply.

The concluding remark is a very strong statement about the type of proposal would be acceptable.

Heritage expertise

Mr Booth responds to the issues raised by Mr Lazarou in the attached memo. In summary:

- there was no heritage expert report provided with the DA;
- the only supporting document provided:
 - was only an extract – despite a full copy being requested;
 - was prepared in 1996 and made no reference to the current DA;
 - relates to a different property; and
 - no information about the author or who commissioned it was provided.

² James Richard Gandy v Hobart City Council and Tasmanian Heritage Council [2016] TASRMPAT 36 at [36]

For those reasons, the document had no influence on Mr Booth's opinion.

Mr Booth is the only heritage expert who has provided a professional opinion in relation to the proposal.

Conflict

Mr Lazarou has implied that Mr Booth's opinion is compromised or influenced by both his membership of a group known as "Better Hobart" and by his "personal association" with the representors.

Mr Booth addresses his link with Better Hobart in his memo. It had no bearing on his opinion in relation to this DA.

Mr Booth has confirmed today that he has no relationship with any of the representors. The list of representors opposing this DA includes Mr Gandy and a number of other co-owners of the property. In the Tribunal decision referred to above, Mr Booth opposed the application by Mr Gandy (which was made on behalf of the building's co-owners) for solar panels to be placed on top of this property. This demonstrates that Mr Booth is not influenced by the representors and is simply forming a professional opinion in relation to this property.

RECOMMENDATION

Pursuant to the *Sullivans Cove Planning Scheme 1997*, the Council refuse the application for outdoor dining furniture at 2/19-21 Castray Esplanade and the adjacent road reserve Battery Point for the following reasons:

1. The proposal does not meet the objective or the performance criterion with respect to clause 16.2(a) of the *Sullivans Cove Planning Scheme 1997* because it does not respect the cultural heritage and character of the Activity Area by not demonstrably contributing to, and enhancing the cultural heritage, built form and spatial characteristics of the activity area.
2. The proposal does not meet the objective or the performance criterion with respect to clause 16.2(b) of the *Sullivans Cove Planning Scheme 1997* because it does not conserve and enhance the amenity, character and cultural heritage values of the Cove's roads, because it will detract from the Cove's heritage value.

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.



Karen Abey
**MANAGER DEVELOPMENT
APPRAISAL**

Date: 12 March 2020
File Reference: F20/27977

- Attachment A: PLN-20-4 - 2_19-21 CASTRAY ESPLANADE BATTERY POINT
TAS 7004 - Planning Committee Report and Attachments ↓
- Attachment B: Response to Mr Lazarou's email - Memorandum from N Booth
with copy of Planning Referral Officer Cultural Heritage Report
↓
- Attachment C: Email from Mr Lazarou, the applicant, to Council officers dated
6 March 2020 ↓

**APPLICATION UNDER SULLIVANS COVE PLANNING SCHEME 1997**

Type of Report: Committee
Council: 10 March 2020
Expiry Date: 10 March 2020
Application No: PLN-20-4
Address: 2 / 19 - 21 CASTRAY ESPLANADE , BATTERY POINT
ADJACENT ROAD RESERVE
Applicant: ALEXANDER LAZAROU
60 FERRY ROAD
Proposal: Outdoor Dining Furniture
Representations: Eight
Performance criteria: Activity Area Controls, and Public Urban Space Schedule

1. Executive Summary

- 1.1 Planning approval is sought for outdoor dining furniture at No.2 19-21 Castray Esplanade and the adjacent road reserve.
- 1.2 More specifically the proposal includes:
 - Outdoor dining furniture in the road reservation adjacent to an existing eating establishment.
- 1.3 The proposal relies on performance criteria to satisfy the following standards and codes:
 - 1.3.1 Activity Area Controls - Use clause 16.3 and 16.2
 - 1.3.2 Public Urban Space Schedule - Commercial and Community Furniture clause 24.5.2B
- 1.4 Eight representations objecting to the proposal were received within the statutory advertising period between the 12th and 26th February 2020.
- 1.5 The proposal is recommended for refusal.
- 1.6 The final decision is delegated to the Council.

2. Site Detail

- 2.1 No.2/19-21 Castray Esplanade is within Activity Area 2.0 Sullivans Cove Mixed Use under the Sullivans Cove Planning Scheme 1997. The site is a ground floor tenancy in the Ordnance Building, which comprises a mix of commercial and residential uses.



Figure 1 above: location plan with site in centre of image.



Figure 2 above: aerial photograph of subject site and Castray Esplanade frontage.



Figure 3 above: subject site on left, No. 17A Castray Esplanade (Salamanca Wharf Hotel with outdoor dining furniture) to right.

3. Proposal

- 3.1 Planning approval is sought for outdoor dining furniture at No.2 19-21 Castray Esplanade and the adjacent road reserve.
- 3.2 More specifically the proposal is for outdoor dining furniture in the road reservation adjacent to an existing eating establishment. The outdoor dining furniture would include:
- Two umbrellas measuring 1.8m wide by 1.2m deep and 2.8m maximum height (2.4m clearance to bottom side of the umbrella about the footpath).
 - Three round tables with chairs.
 - Screening to 1m high, 4m long and 2m deep.
- 3.3 The furniture is described as being non-permanent, that is, it is removed or capable of being removed at least every three months.
- 3.4 Note that the plan approved as part of the General Manager's consent to lodge the planning application shows three umbrellas. The applicant has confirmed this was an earlier iteration of the proposal, and that the two umbrellas described above and depicted below are what planning approval is being sought for. The footprint of the umbrellas remains the same, and as such it is not considered that the change in the umbrella design is an issue for the consent issued by the General Manager.

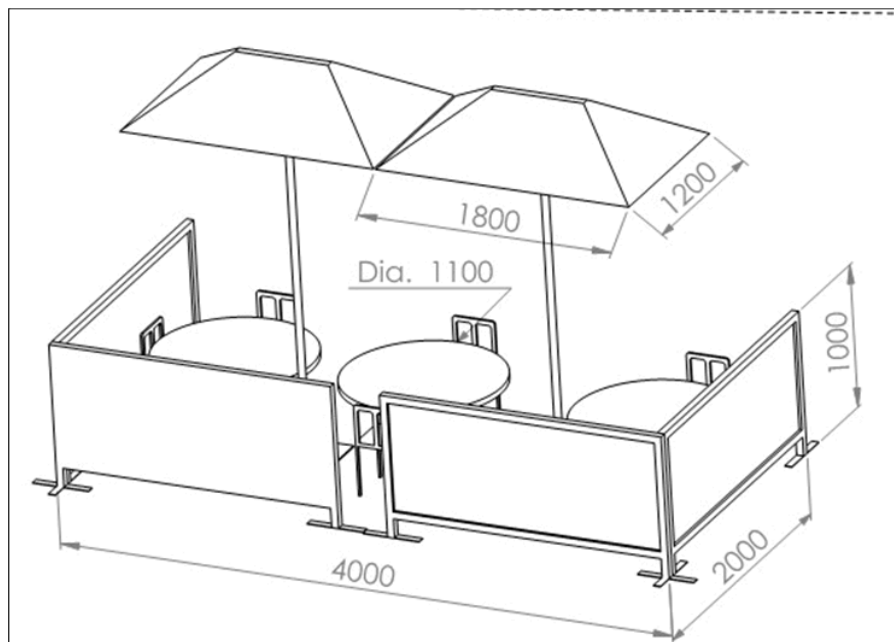
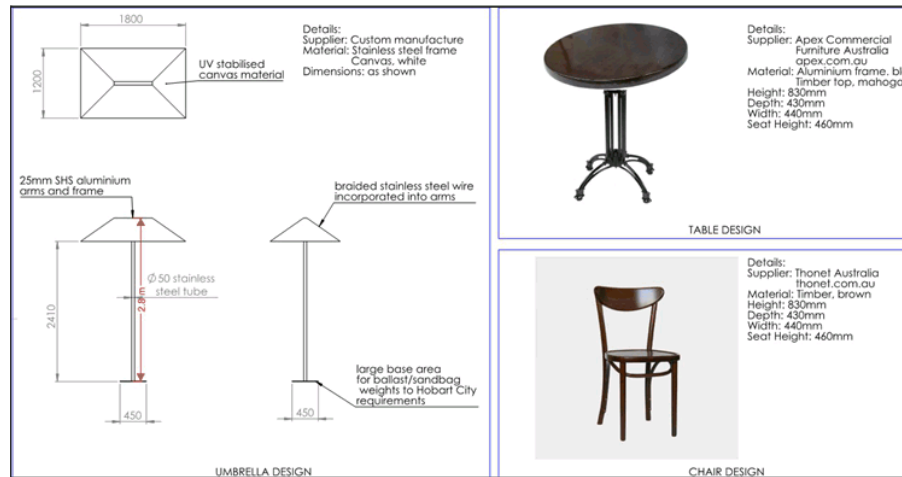


Figure 4: The proposed outdoor dining furniture arrangement.



4. Background

- 4.1 A partial change of use to eating establishment at No.2/19-21 Castray Esplanade under PLN-18-757 was approved by Council dated the 6th December 2018.
- 4.2 The approval was mediated at subsequent appeal.
The approval of PLN-18-757 is subject to conditions including the following.
- The use must not be open to the public outside of the following hours: Monday – Sunday 7am to 7pm
 - All deliveries to the site must be undertaken between 8am and 5pm.
- 4.3 A partial change of use to convenience restaurant was approved by Council as a Section 58 application (non-advertised) under PLN-19-646 dated the 16th October 2019. More specifically the proposal includes a partial change of use to the existing eating establishment use occurring on the site to allow for the limited sale of food for consumption on or off the premises. The following advice was included on the planning permit:
- This permit should be read in conjunction with that issued for an eating establishment on the site (Council's reference: PLN18757), with particular regard to the conditions placed upon the latter permit regarding hours of operation and delivery times.*
- 4.4 Outdoor dining furniture exists on the frontage of the adjacent site at No.17A Castray Esplanade, and was approved under PLN-12-01345 dated the 25th February 2013.

5. Concerns raised by representors

- 5.1 Eight representations objecting to the proposal were received within the statutory advertising period between the 12th and 26th February 2020.
- 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.

<p>Heritage</p> <ul style="list-style-type: none"> -would detract from heritage status of adjacent site; -would 'diminish the visual experience of the historic heritage context'; -'the visual experience of the historic heritage context should not be compromised'; -objection on heritage principles; <p>-We object to the proposal first on heritage principles. The Ordnance Store is one of the most significant buildings remaining from the Van Dieman's Land colony. It has a spare, utilitarian, industrial aesthetic. The openings at street level create an arcade effect that accentuates the Georgian symmetry of the structure.</p> <p>The proposal would detract from the heritage of the Ordnance Store. The umbrellas would be sited very close to the front façade, denying the public the ability to appreciate the effect of the building in its totality. The tables and chairs and barriers would add to the visual clutter. The siting of a cluster of umbrellas at one end of the building would obscure the arcade effect and disrupt the symmetry of the structure.</p> <p>We note that some of Hobart's leading urban planners and architects, Mr Leigh Woolley and Mr Bevan Rees, have recommended that street furniture be set well back from the facades of our most significant colonial buildings so that the public can enjoy unrestricted sight lines of the structures.</p> <p>We note too that there has been a tendency elsewhere in Hobart for 'temporary' street furniture, once approved by the Council, to evolve into more permanent and elaborate structures;</p> <ul style="list-style-type: none"> -Protection of heritage and cultural values: The Ordnance Store, 19-21 Castray Esplanade, is classified under the Planning Scheme as a special building of historical interest and natural beauty. First commissioned in 1832, the Ordnance Store is one of Battery Point's most prominent heritage listed buildings. The building was designed by the renowned colonial architect, John Lee Archer and features
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magnificent, fine sandstone quarried from the cliffs behind Salamanca by convicts, and includes the original sea-wall at the rear of the building and visible from the street. The building is included in many walking tours, in Open House Hobart and is featured in many blogs and books on Tasmanian heritage. The protection of the heritage and cultural values and integrity of this unique building is of paramount concern. Under the heritage area of the Planning Scheme, it is stated that the heritage values should be "maintained and enhanced". This heritage belongs to all Tasmanians and is widely appreciated by visitors to Battery Point. The placement of any outdoor furniture with tall umbrellas, affixed perspex and metal structures, tables and chairs would markedly detract from the heritage values of the building, by obscuring lines of sight of the building, creating unpleasant visual clutter and allowing for potential damage to the fine sandstone comprising the building by creating obstacles for the passage of people along the narrowing footpath;

- the cafe furniture would become part of the public view of the building, and would detract from photographs;
- furniture 'inappropriate' as it would detract from heritage status;
- Heritage and conservation: Several implications reside within these considerations, specifically:
 - (i) The stated reference to 'potential utilisation of extended pavement area' is for the building adjacent to that of the application: 15-19 Castray Esplanade as stated on the attached document. Not for the building relevant to this planning application.
 - (ii) The applicant has not clearly identified the finished appearance of the proposed wind barrier. Are these to be embellished with 'Coke Cola' type finish, which is relevant to signage issues (next heading, point 7). This is highly prevalent to the overall presentation of the intended 'sitting area' in the context of the visual identity of the existing building and its impact upon the historical significance of the building to the numerous visitors to Hobart who frequent the area during historical excursions.
 - (iii) How is this planned area to be monitored to ensure it continually complies with the historical and cultural significance of the building and area. To ensure the building's integrity is not compromised in the future. Ultimately, ensuring the area is not simply 'seen' as a take-away

location and possibly degraded to a visual appearance that destroys the historical value of the building and its location. How is the value, both historical and cultural, of the building to be preserved?
<p>Conservation Management Plan</p> <p>-Mr Grant's 1996 Conservation Management Plan is used as justification for the proposal. But the Plan refers to the other Ordnance Store at 15-17 Castray Esp. It has no relevance to 19-21 Castray Esp in regard to the street furniture application as the two Ordnance Stores are very different:</p> <p>- 15-17 is entirely commercial while 19-21 is largely owner occupied residential.</p> <p>- The footpath in front of 15-17 is at least 6m wide for the full width of the building allowing a symmetrical arrangement of street furniture with ample room for foot traffic to pass. The footpath in front of 19-21 tapers from about 4m to 2m. Street furniture is only feasible at in a small area at the west end & thus cannot be arranged symmetrically. Thus street furniture outside 19-21 will significantly detract from the Georgian symmetry of the building.</p> <p>- 19-21 is the last commercial scale building on the south side of Castray Esp & thus is the transition between a commercial & a residential zone, whereas 15-17 is entirely within the commercial zone.</p> <p>- 19-21 is much more prominent & more easily viewed in its entirety as a heritage building in very close to its original condition.</p>
<p>Inadequate footpath width</p> <p>-pavement 'bottleneck';</p> <p>-already obstacles of pavement, 'there is no room for further obstruction';</p> <p>-obstruction of footpath;</p> <p>-furniture 'inappropriate' due to inadequate footpath width;</p>
<p>Privatisation of footpath</p> <p>-footpath taken over and privatised;</p> <p>-financial gain from privatisation.</p>
<p>Traffic danger and conflict between vehicular traffic, cyclists and pedestrians</p> <p>-would reduce visibility of traffic exiting rear carpark on site;</p>

-inadequate vehicle sight lines;

-The proposed seating is immediately adjacent to the exit driveway from the building's car park.

- The sight line to the right for vehicles exiting the car park is already limited by the building and by parked cars. The proposed furniture, screens, umbrellas & gathering of people will only exacerbate the danger of vehicles exiting the building not seeing oncoming vehicular traffic & vice versa.

- The location of the driveway immediately beside the building already makes it difficult for drivers to see pedestrians & for pedestrians to see vehicles in the driveway. The proposed narrowing of the pedestrian space closer to the building & the gathering of people around the furniture on the footpath immediately beside the driveway will substantially increase the risk of pedestrians stepping in front of exiting vehicles;

-We object to the proposal on safety principles. The Ordnance Store has an exit driveway that is immediately adjacent to the proposed tables, chairs, umbrellas and barriers where patrons of the café would be congregating. We note that this exit driveway is not shown in the proposal submitted to Council, and the omission of this exit driveway has the potential to mislead council staff and aldermen reviewing the proposal.

The proposal would reduce the visibility of oncoming traffic for the drivers of motor vehicles exiting the Ordnance Store car park. The tables, chairs, umbrellas and barriers would be in the immediate sight line, increasing the risk of accident.

The proposal also has the potential to increase the risk of collision with patrons of the café congregating by the tables and pedestrians and cyclists negotiating the reduced footpath;

- Traffic: The area is generally characterised by pedestrian traffic, contrary to that implied within the planning application. Realistically, Castray Esplanade is a primary route into the historical Battery Point, both pedestrian and vehicular, and is also utilised by coaches, taxis and several commercial ventures: Hobart Hop-on Hop-off Bus Tour etc. Additionally, the planned outdoor sitting area will severely impact the visual line of sight in exiting the residents rear car park by car and likely create a 'bottle-neck' for pedestrians traversing this pavement;

-Hours of delivery: Contrary to the stated 'no effect in relation to

existing
approved delivery times,' couriers/delivery drivers frequently park to
either totally
or partially inhibit exiting of resident's car park: while they quickly
deliver
intended products. Further adding to the congestion of the traffic at
various times,
as per the above comment regarding traffic.

Noise

-noise directly below our windows a nuisance;
-extension of use would significantly increase noise nuisance for
residents;
-We object to the proposal because it would adversely impact the
amenity of the residents of the building, particularly due to intrusive
noise levels.
The Ordnance Store has residential as well as commercial
occupants. The windows of bedrooms, living rooms, studies and
offices are situated within three to four metres of the proposed
outdoor dining area. The café opens 7am to 7pm, seven days a
week, including Saturdays, Sundays and public holidays.
The proposal at present neither makes any mention of, nor takes into
consideration the adverse impact of increased noise levels upon, the
amenity of occupants of the Ordnance Store. This is a matter of
concern. It is a requirement of proposals submitted to Council to
identify any likely effects on adjoining land, and this is a significant
likely effect that has been omitted;
-'The area is fundamentally quiet and not to be considered an inherent
extension of Salamanca Square'.

Public access

-We object to the proposal because it would restrict the ease and
safety of public access in front of the Ordnance Store for pedestrians
and cyclists making their way along Castray Esplanade.
- We encourage Council to review the proponent's site drawings,
which claim - at its widest - a proposed footpath width of just 1400
mm to allow for a barrier (seating) width of 2000 mm, and a kerb set
back of 600 mm.
- Our estimate is that the footpath would be as narrow as 900 mm,
and would in practice be less, for the following reasons.
- The footpath narrows in front of the Ordnance Store. At present,
some patrons already congregate outside the cafe to consume
beverages and foodstuffs on the footpath and the windowsills.

Bicycles of patrons are frequently leant against the facade of the building. Pot plants and signboards obstruct the footpath in places.

- Furthermore, we note that the tables and chairs proposed are freestanding. It is not realistic to expect patrons to remain within the area designated in the proposal;
- Protection of public amenity: The footpath along Castray Esplanade and outside 19-21 Castray Esplanade is used by many as there is no public footpath on the other side of the road in this particular area. Large school groups and infant play-groups are frequently guided along this footpath to the nearby park, and pedestrians, cyclists and tourists all make use of this footpath, to their enjoyment and as is their right.
- The footpath narrows considerably outside 19-21 Castray Esplanade. The dimensions provided by the applicant misrepresent the actual dimensions of the footpath in the area proposed for the outdoor furniture. It is considerably narrower than the figures stated in the application.
- The sole purpose of the applicant's desire for outdoor furniture is for their exclusive financial gain. The use of public footpaths is predominantly for all to "pass and repass along the way", not for private financial gain. In order to provide equally for all members of the public to use the public footpath, it is essential that it remains as an uncluttered walkway, by ensuring the space is for public rather than private, exclusive commercial gain. This is most particularly the case in predominantly residential areas and where heritage values need to be protected.
- The placement of outdoor furniture and the structure outlined in the application will make any free passage by pedestrians, groups, tourists and interested parties stopping to appreciate the building, as well as any member of the public requiring the use of a pram or manual or powered wheelchair for visual or mobility impairment, a considerably more hazardous undertaking. The rights of all such people to enjoy the use of the footpath and unobstructed views of this unique building should take precedence over the desire for the commercial, private financial gain of the applicant.
- In other areas of predominantly or exclusively commercial use, the commercial use of footpaths can contribute to the economic vitality of businesses but is not appropriate outside a predominantly residential heritage building and would create trip hazards, congestion, visual clutter and would deleteriously impinge on public safety and amenity;
- I wish to express an objection to the application number PLN 20-4 for street furniture on the public footpath in front of 19-21 Castray Esplanade.

- Navigating Hobart streets with a non-motorized disability aid is, as I am sure many would understand, a not always easy task. I rely on being able to move from my family's residence to the street outside, using both the footpath for movement and to be assisted into vehicles alighting outside the building, and both these activities would be severely compromised by the placement of any street furniture on the footpath.

- I have had a number of 'close encounters' with staff and patrons moving between the footpath and the eating establishment at the Salamanca Wharf Hotel, next door. I say this because, in comparison, the footpath narrows considerably outside 19-21 Castray Esplanade.

- I also note that the measurements provided to Council by the applicant are inaccurate. The area between where the applicant shows the outdoor furniture and the building is considerably narrower than the measurement cited in the application and would, on this basis, contravene disability access regulations respected in legislation.

- Hobart, and particularly the Salamanca area, has many such venues using outdoor street furniture. Whilst such venues are pleasant to use in themselves, the nature of their development in the Salamanca area has, for many, been far too ad-hoc – many are placed up against the walls of these precious heritage buildings obscuring their architectural appreciation and, very importantly, there is no longer a clear thoroughfare through this area for any disability access. It would be hoped that this provides a number of lessons to be learned as to the appropriate and inappropriate placement of outdoor furniture.

- The footpath outside 19-21 Castray Esplanade - a unique, predominantly residential, heritage building - narrows outside the building to a standard residential footpath – it is not an appropriate position for outdoor street furniture.

Use and hours of operation

-majority of the site at No.19-21 Castray Esplanade is residential;
-outdoor seating next door (Salamanca Wharf Hotel) is not a valid precedent;
-contrary to the stated 'no effect in relation to existing business hours' there is the constant ominous smell of coffee that infiltrates the building during trading hours. The application is contrary to the stated/implied business of the applicant; that of a 'take-away' establishment. Planning approval in 2018 was for a take-away business, excluding consumption on premises or seating! What is the basis of the council licence issued? If operating as a café, are toilets to be provided?

Protection of residential amenity

-It is vital that the residential amenity of the building, 19-21 Castray Esplanade, is protected, otherwise the residential component will not be sustainable into the future. It has become a worrying trend, fortunately noted and acted sensibly upon by many city councils, that residential amenity is repeatedly threatened by individual, ad hoc, private uses for commercial gain, such as with transient, short-term rentals within residential buildings and inappropriate business uses, and street and common property encroachment. 19-21 Castray Esplanade is a predominantly residential building with permanent owner-occupiers. The owners would overwhelmingly like it to be preserved as such. It should be noted that this use conforms to the intention of the original residential conversion of the building;
-Private residential use remains a "first priority": A predominantly residential building has a very different character to other areas, such as Salamanca Place, where people go to socialize, shop and interact with others and where an expectation of the availability of outdoor furniture, even if not currently optimally organized, has been established within one particular, delimited and contained area. A building predominantly occupied by permanent residents has a neighbourly and community feel that the residents of 19-21 Castray Esplanade have been fortunate to experience. Residents of Battery Point have an expectation under the Planning Scheme that their residences remain a place primarily for private residential use and that this remains a "first priority", as the Scheme outlines. The desire for the use of the footpath outside a private residence for the sole financial benefit of the applicant contradicts this first priority given to private residential use.

Compliance

-concern at lack of compliance with Council, Tasmanian Heritage Council and Body Corporate provisions;
 -'Past record of non-compliance by the owners of Lot 2';
 -'I fear that given this track record, if any approval for external furniture is approved, any limits on its extent, hours of use, & permanence will be ignored';
 -Impact on residents' use of amenity/failure of applicant to comply:
 Since a change of use from an art gallery to an eating establishment, the business concerned in the current application has had a considerable impact upon the residents' use of their amenity;
 -The business concerned in the current application has refused to conform to repeated stipulations by the Body Corporate.

Litter and maintenance

-litter concern;
 -The seating for the café (Hotel next door) is for table service & does not present the risk of litter from take away containers that the proposed seating outside the Ordnance Store represents;
 -How is the footpath's visual and inherent cleanliness to be maintained. How will the rubbish be managed? No indication of planned bin(s)? What commercial process is present for the removal of business waste, as the existing bins are of a residential status.

Antisocial behaviour

-Imposition of costs to residents, including serious antisocial behaviour.

Signage

-Are all wind breaks, umbrellas and any other street furniture to be void
 of any and all signage of any form? Effectively, a blank canvas!
 Already, the
 applicant has installed a sign not in accordance with body corporate requirements.
 The sign is not of a design in keeping within the historical context of the building,
 is this to occur again?

Other comments

- The visual experience of the historic heritage context should not be compromised. 'From this consideration alone, a permit for occupation of the footpath should not be granted'.

- Proposal's Potential to Mislead: The proposal as submitted to Council has the potential to mislead council staff and aldermen for the following reasons:

First, the proposal includes as an attachment 'The Ordnance Store Conservation Management Plan'. Council staff and aldermen would be excused for thinking this applies to the building adjacent to the footpath under consideration. The Plan is, however, for another building altogether: 15 – 17 Castray Esplanade, separated from 19 – 21 Castray Esplanade by an intervening building, Salamanca Wharf Hotel. There are significant and relevant differences between the two buildings, including, but not limited to, the predominantly residential nature of 19 – 21 Castray Esplanade; and the narrowing of the road and footpath in front of 19 – 21 Castray Esplanade.

Second, the proposal shows an unauthorized "entrance" to the café, from the footpath. This entrance has neither been approved by the Body Corporate of the building, nor has an application to install an entrance been submitted to the Body Corporate of the building. The Body Corporate has written to the owner of the lot observing that this behaviour contravenes the Strata Title Act and is awaiting a response from Pearl Resources. (Alexander Lazarou represents Pearl Resources, as well as Salamanca Cream and Chancellor Partners.) We believe it is premature for the proponent to submit the proposal until this issue has been resolved.

Third, the proposal omits to show the Ordnance Store driveway immediately adjacent to the proposed "outdoor dining area", which a reasonable person would consider relevant to an assessment process conducted by Council for a proposal of this kind that wishes to take into account public safety.

- The building in question has considerable value to the city of Hobart and the residents. How is this planned amendment to truly enhance the buildings historical value, the resident's rights to quiet and peaceful enjoyment of their property and ensuring the long term impact of his application does not void the building/residents space of occupying/inhabiting such an iconic attribute to Hobart.

6. Assessment

- 6.1 The *Sullivans Cove Planning Scheme 1997* is a performance based planning scheme. This approach recognises that there are in many cases a number of ways in which a proposal can satisfy desired environmental, social and economic standards. In some cases a proposal will be 'permitted' subject to specific 'deemed to comply' provisions being satisfied. Performance criteria are established to provide a means by which the objectives of the planning scheme may be satisfactorily met by a proposal. Where a proposal relies on performance criteria, the Council's ability to approve or refuse the proposal relates only to the performance criteria relied on.
- 6.2 The site is located in the *Sullivans Cove Mixed Use 2.0 Activity Area* of the *Sullivans Cove Planning Scheme 1997*.
- 6.3 The existing use is a discretionary use in the Activity Area. The proposed use is a discretionary use in the Activity Area.
- 6.4 The proposal has been assessed against:
- 6.4.1 Parts A and B – Strategic Framework
 - 6.4.2 Part D – *Sullivans Cove Mixed Use Activity Area 2.0*
 - 6.4.3 Part E – Schedule 1 – Conservation of Cultural Heritage Values
 - 6.4.4 Part E – Schedule 3 – Public Urban Space
 - 6.4.5 Part E – Schedule 8 – Environmental Management
- 6.5 The proposal relies on the following performance criteria to comply with the applicable standards:
- 6.5.1 Activity Area Controls (Use) – clauses 16.2 and 16.3.1
 - 6.5.2 Public Urban Space (Commercial and Community Furniture) – clause 24.5.2B
- 6.6 Each performance criterion is assessed below.
- 6.7 Use Part D 16.3.1
- 6.7.1 An eating establishment not located on leasable floor area is

discretionary in the Activity Area, pursuant to clause 16.3.1.

6.7.2 All use and development must comply with the objectives and performance criteria for the Activity Area as set out in clause 16.2 of the planning scheme.

6.7.3 These objectives relevantly include the following:

(a) To ensure that activities within the Cove respect the cultural heritage and character of the Activity Area.

- *All use and development within the Activity Area must demonstrably contribute to, and enhance the cultural heritage, built form (bulk, height, volume, urban detail) and spatial characteristics of the activity area.*
- *Activities requiring large, undifferentiated floor areas shall be discouraged in the activity area, except where such activities can be accommodated within existing buildings.*
- *New development north of Brooker Avenue must be designed in a manner which protects the cultural heritage and landscape qualities of the Domain including the setting of the Cenotaph.*

(b) To ensure that the amenity, character and cultural heritage values of the Cove's roads and other public spaces are conserved and enhanced.

- *Use and development on road reserves, public parks and other public spaces within the activity area shall only be 'permitted' where they do not detract from the space's amenity or heritage value.*

(c) To encourage use and development which generate pedestrian movement through the activity area.

- *Outdoor dining and other outdoor pedestrian activities are encouraged in appropriate locations.*
- *Activities which generate pedestrian traffic are to be encouraged particularly along Salamanca Place, Hunter Street, the western side of Morrison Street and the block bounded by Davey, Elizabeth, Morrison and Argyle Streets.*
- *All use and development shall facilitate pedestrian access, circulation, amenity and safety within the Cove.*
- *All use and development must facilitate access for the disabled and other pedestrians with restricted mobility.*
- *Parking and vehicle movement within public urban spaces intended primarily to facilitate pedestrian movement shall be discouraged where it conflicts with pedestrian movement and safety.*

(d) To encourage the further development of the Activity Area as a

tourist destination.

- *The existing mix of tourist-oriented uses and facilities, including shops, restaurants and hotels shall continue to be encouraged.*

(e) To promote the use of the roads, other public spaces and buildings within the area for festivals and other public gatherings.

- *Markets and Cultural and Community Events shall be encouraged in spaces designated as having a primarily 'pedestrian' function.*

(j) To ensure sound environmental planning and management for all activities.

- *All use and development to demonstrate the minimisation of on and off site energy requirements resulting from the proposed activity.*

- *All use and development must minimise direct and indirect environmental risk or effects and where possible provide a new environmental gain for the wider environment.*

6.7.5 In a general sense the proposed use is considered to be in accordance with the above, in as much as it contributes to the mix of tourist oriented uses and facilities, encourages pedestrians to move through the Activity Area, and utilises the road reserve for outdoor dining.

6.7.6 However, it is noted that objective (c) states outdoor dining [is] encouraged in appropriate locations. To that end, comment was sought from the Council's Cultural Heritage Officer in relation to the proposed use and development's compliance with objectives (a) and (b). The officer's assessment follows, with the full report provided as Attachment C to this report.

16.2 (a) stipulates that 'All use and development within the Activity Area must demonstrably contribute to, and enhance the cultural heritage, built form....and spatial characteristics of the activity area'. It is considered that this should be interpreted that proposed uses and development should offer some reciprocal and appropriate contribution to the cultural heritage of the area, or, taking the Macquarie Concise Dictionary definition of the word 'enhance', 'raise to a higher degree'. In locations dominated by important culturally significant places, such as the Ordinance Stores, it is suggested that this could best be achieved through uses of high cultural worth that celebrate or at least, sit alongside the existing cultural associations of the location, ideally linked to development that includes works of appropriate refurbishment, re-instatement of original lost features or new development of such high architectural merit that it adds a permanent layer of cultural significance without dominating the original

significance of the site.

Based on the above, it is considered that the proposed commercialisation of the space though the proposed use without an appropriate contribution and enhancement of the activity area as defined in 16.2 (a) would appear to run contrary to the stated objectives and performance criteria. Similarly, the proposed seating, umbrellas and wind barriers, both in of itself and as an expression of the use, would also appear to fail to act as a contribution an enhancement of the cultural significance of the site.

Further, it is considered that given the described benefit of having the new uses within the Ordnance Stores retained within its walls as opposed to spilling out, and the high quality of the Ordnance Stores themselves, the proposed use and the associated development of outdoor furniture standing in front of and partially obscuring the buildings would actively detract from the spaces heritage value, contrary to 16.2 (a) and 16.2 (b).

Under 16.2 (a) and (b) it is required that use and development within the Activity Area of Sullivans Cove 'Mixed Use' within the Cove's road reserves that new uses and development should both demonstrably contribute to and enhance the cultural heritage of the area and should only be 'permitted' where they do not detract from the space's amenity or heritage value.

Given the above, it is considered that due to the exceptionally high cultural heritage of the Ordnance Store at local, City and State level, and its relationship with the proposed site the proposed use and associated development would not adhere to the Objectives and Performance Criteria as set out under 16.2 of the Sullivans Cove Planning Scheme by virtue of both failing to demonstrably contribute to, and enhance the cultural heritage of the area, and would indeed detract from those spaces heritage values.under 16.2 (a) and (b) it is required that use and development within the Activity Area of Sullivans Cove 'Mixed Use' within the Cove's road reserves that new uses and development should both demonstrably contribute to and enhance the cultural heritage of the area and should only be 'permitted' where they do not detract from the space's amenity or heritage value.

Given the above, it is considered that due to the exceptionally high cultural heritage of the Ordnance Store at local, City and State level, and its relationship with the proposed site the proposed use and associated development would not adhere to the Objectives and Performance

Criteria as set out under 16.2 of the Sullivans Cove Planning Scheme by virtue of both failing to demonstrably contribute to, and enhance the cultural heritage of the area, and would indeed detract from those spaces heritage values.

[It is recommended] that the application be refused.

6.7.7 Recent legal decisions (*Sultan Holdings v John Fuglsang Developments, Salamanca Inn and Hobart City Council* 2017 Supreme Court, and *SMG v Hobart City Council* 2018 Resource Management and Planning Appeals Tribunal) have confirmed that the objectives and performance criteria contained in the Activity Area controls (i.e. clause 16.2) can be used as a basis for refusal, even where a proposal is otherwise considered to be compliant with the applicable Schedules in the planning scheme.

6.7.8 The proposal does not comply with objective (a) or (b) and is recommended for refusal on that basis.

6.8 Public Urban Space - Clause 24.5.2B.

The proposal includes outdoor dining furniture, which the planning scheme defines as 'commercial and community furniture', that being ephemeral furniture which is regularly removed, being removed at least every three months, or not otherwise fixed to the ground, building or structure.

6.8.1 Clause 24.5.2B of the planning scheme states as follows.

A permit is required for commercial and community furniture in public urban spaces located anywhere other than the locations specified in Figure 10.

6.8.2 The proposal includes commercial and community outdoor dining furniture on a site which is not within the outdoor dining furniture exempt areas specified under figure 10 of the Scheme.

6.8.3 As such the proposal is discretionary, and must be assessed against the following:

An application for a permit under this clause may be approved or refused. Any application must provide for free unobstructed pedestrian carriage as determined by the Council as Highway Authority.

- 6.8.4 The proposal is for outdoor dining furniture to occupy part of a widened section of footpath in front of a building containing the eating establishment it would serve. The furniture would be positioned approximately parallel to the building frontage having regard to the angle of the footpath kerb with relation to the building. The proposal is not likely to obstruct pedestrian carriage, and no objection has been received from the Council's Development Engineer.
- 6.8.5 The proposal complies with clause 24.5.2B.

7. Discussion

- 7.1 Planning approval is sought for outdoor dining furniture at No.2 19-21 Castray Esplanade and the adjacent road reserve.
- 7.2 The application was advertised and received eight representations. The representations raised concerns including adverse impact on heritage, inadequate footpath width, traffic danger, noise and Body Corporate concerns.
- 7.3 The proposal has been assessed against the relevant provisions of the planning scheme and is not considered acceptable.
- 7.4 The proposal has been assessed by other Council officers, including the Council's Development Engineer, Cultural Heritage Officer, Environmental Health Officer and Environmental Development Planner. The Council's Development Engineer, Environmental Health Officer and Environmental Development Planner have raised no objection to the proposal. Please see the comment of Council's Cultural Heritage Officer comment following, with the officer's full report provided at Attachment C to this report. The officer consideration of the proposal and conclusion is provided below.

Consideration of Proposal

It is noted that the provision of outdoor dining uses and the associated development of outdoor dining furniture has become a well-established feature of the Cove, in particular within Salamanca Place and the new food and beverage uses that have occupied many of the former warehouses that face onto the floor of the Cove. However, this has up to now not occurred to the front of the former Ordinance Stores other than to the area directly in front of the modern Hotel infill between the two. Indeed, other than limited numbers of modest signage and minor alterations to the windows and doors that face onto the roadside, external expression of the new uses, either commercial or residential, that now occupy the former Stores are extremely limited

and restrained.

It is considered that it is precisely this limited expression of the new uses that have had a major impact on retaining the distinctive architectural form and language of the buildings. The buildings are based on classical proportions and omit a grand, robust, dignified and stately character as befitting what was intended to be an expression of Georgian confidence in the new city and wider state. Unlike the later commercial Warehouses of Salamanca Place that were developed by individuals and independent commercial concerns, the Ordnance Stores were designed by Archer, the then State Architect, financed, built and initially occupied by the State and was absolutely built to an exceptional quality in both design and materials. The proposed use and development would allow the internal commercial re-use of the buildings to spill out beyond its grand façade. It is considered that it could be argued that this would essentially reduce the building to a backdrop to the new outdoor dining, effectively acting to downgrade the cultural weight of the Ordnance Stores as merely an ornament to the commercial use of the site.

16.2 (a) stipulates that 'All use and development within the Activity Area must demonstrably contribute to, and enhance the cultural heritage, built form....and spatial characteristics of the activity area'. It is considered that this should be interpreted that proposed uses and development should offer some reciprocal and appropriate contribution to the cultural heritage of the area, or, taking the Macquarie Concise Dictionary definition of the word 'enhance', 'raise to a higher degree'. In locations dominated by important culturally significant places, such as the Ordnance Stores, it is suggested that this could best be achieved through uses of high cultural worth that celebrate or at least, sit alongside the existing cultural associations of the location, ideally linked to development that includes works of appropriate refurbishment, re-instatement of original lost features or new development of such high architectural merit that it adds a permanent layer of cultural significance without dominating the original significance of the site.

Based on the above, it is considered that the proposed commercialisation of the space though the proposed use without an appropriate contribution and enhancement of the activity area as defined in 16.2 (a) would appear to run contrary to the stated objectives and performance criteria. Similarly, the proposed seating, umbrellas and wind barriers, both in of itself and as an expression of the use, would also appear to fail to act as a contribution an enhancement of the cultural significance of the site.

Further, it is considered that given the described benefit of having the new uses within the Ordnance Stores retained within its walls as opposed to spilling out, and the high quality of the Ordnance Stores themselves, the proposed use and the associated development of outdoor furniture standing in front of and partially

obscuring the buildings would actively detract from the spaces heritage value, contrary to 16.2 (a) and 16.2 (b).

Conclusion

In view of the above, it is considered that 22.5.4 'Permitted' 'Building or Works' on sites adjacent to a place of cultural significance provides would, due to its exceptionally accommodating set of criteria, define the proposed Outdoor Dining Furniture as 'Permitted'. However, as set out above, under 16.2 (a) and (b) it is required that use and development within the Activity Area of Sullivans Cove 'Mixed Use' within the Cove's road reserves that new uses and development should both demonstrably contribute to and enhance the cultural heritage of the area and should only be 'permitted' where they do not detract from the space's amenity or heritage value.

Given the above, it is considered that due to the exceptionally high cultural heritage of the Ordinance Store at local, City and State level, and its relationship with the proposed site the proposed use and associated development would not adhere to the Objectives and Performance Criteria as set out under 16.2 of the Sullivans Cove Planning Scheme by virtue of both failing to demonstrably contribute to, and enhance the cultural heritage of the area, and would indeed detract from those spaces heritage values.

[It is recommended] that the application be refused.

- 7.6 There has been applicant and neighbour/representor consultation. The applicant has been requested to consent to an extension of time to allow Council consideration of the proposal. The applicant (2 March 2020) has declined to grant an extension of time.
- 7.7 The proposal is recommended for refusal.

8. Conclusion

- 8.1 The proposed outdoor dining furniture at No.2 19-21 Castray Esplanade and the adjacent road reserve Battery Point TAS 7004 does not satisfy the relevant provisions of the *Sullivans Cove Planning Scheme 1997*, and as such is recommended for refusal.

9. Recommendations

That: Pursuant to the *Sullivans Cove Planning Scheme 1997*, the Council refuse the application for outdoor dining furniture at 2/19-21 Castray Esplanade and the adjacent road reserve Battery Point for the following reasons:

- 1 The proposal does not meet the objective or the performance criterion with respect to clause 16.2(a) of the *Sullivans Cove Planning Scheme 1997* because it does not respect the cultural heritage and character of the Activity Area by not demonstrably contributing to, and enhancing the cultural heritage, built form and spatial characteristics of the activity area.
- 2 The proposal does not meet the objective or the performance criterion with respect to clause 16.2(b) of the *Sullivans Cove Planning Scheme 1997* because it does not conserve and enhance the amenity, character and cultural heritage values of the Cove's roads, because it will detract from the Cove's heritage value.



(Richard Bacon)

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



(Ben Ikin)

Senior Statutory Planner

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

Date of Report: 3 March 2020

Attachment(s):

Attachment B - CPC Agenda Documents

Attachment C - Planning Referral Officer Cultural Heritage Report



Enquiries to: City Planning
Phone: (03) 6238 2715
Email: coh@hobartcity.com.au

6 January 2020

Alexander Lazarou (Salamanca Cream)
21 Castray Esplanade
BATTERY POINT TAS 7004

mailto:service@reliancefm.com.au

Dear Sir/Madam

**2 / 19 - 21 CASTRAY ESPLANADE, BATTERY POINT - WORKS IN ROAD RESERVE
NOTICE OF LAND OWNER CONSENT TO LODGE A PLANNING APPLICATION - GMC-
19-27**

Site Address:

2/19-21 Castray Esplanade

Description of Proposal:

Structures to support proposed outdoor dining within the road reservation

Applicant Name:

Alexander Lazarou
Salamanca Cream

PLN (if applicable):

n/a

I write to advise that pursuant to Section 52 of the *Land Use Planning and Approvals Act 1993*, I grant my consent on behalf of the Hobart City Council as the owner/administrator of the above land for you to make application to the City for a planning permit for the development described above and as per the attached documents.

Please note that the granting of the consent is only for the making of the application and in no way should such consent be seen as prejudicing any decision the Council is required to make as the statutory planning authority.

Hobart Town Hall
50 Macquarie Street
Hobart TAS 7000

Hobart Council Centre
16 Elizabeth Street
Hobart TAS 7000

City of Hobart
GPO Box 503
Hobart TAS 7001

T 03 6238 2711
F 03 6234 7109
E coh@hobartcity.com.au
W hobartcity.com.au

CityofHobartOfficial
ABN 39 055 343 428
Hobart City Council

This consent does not constitute an approval to undertake any works and does not authorise the owner, developer or their agents any right to enter or conduct works on any Council managed land whether subject to this consent or not.

If planning approval is granted by the planning authority, you will be required to seek approvals and permits from the City as both landlord, land manager, or under other statutory powers (such as other legislation or City By-Laws) that are not granted with the issue of a planning permit under a planning scheme. This includes the requirement for you to reapply for a permit to occupy a public space under the City's Public Spaces By-law if the proposal relates to such an area.

Accordingly, I encourage you to continue to engage with the City about these potential requirements.

Yours faithfully



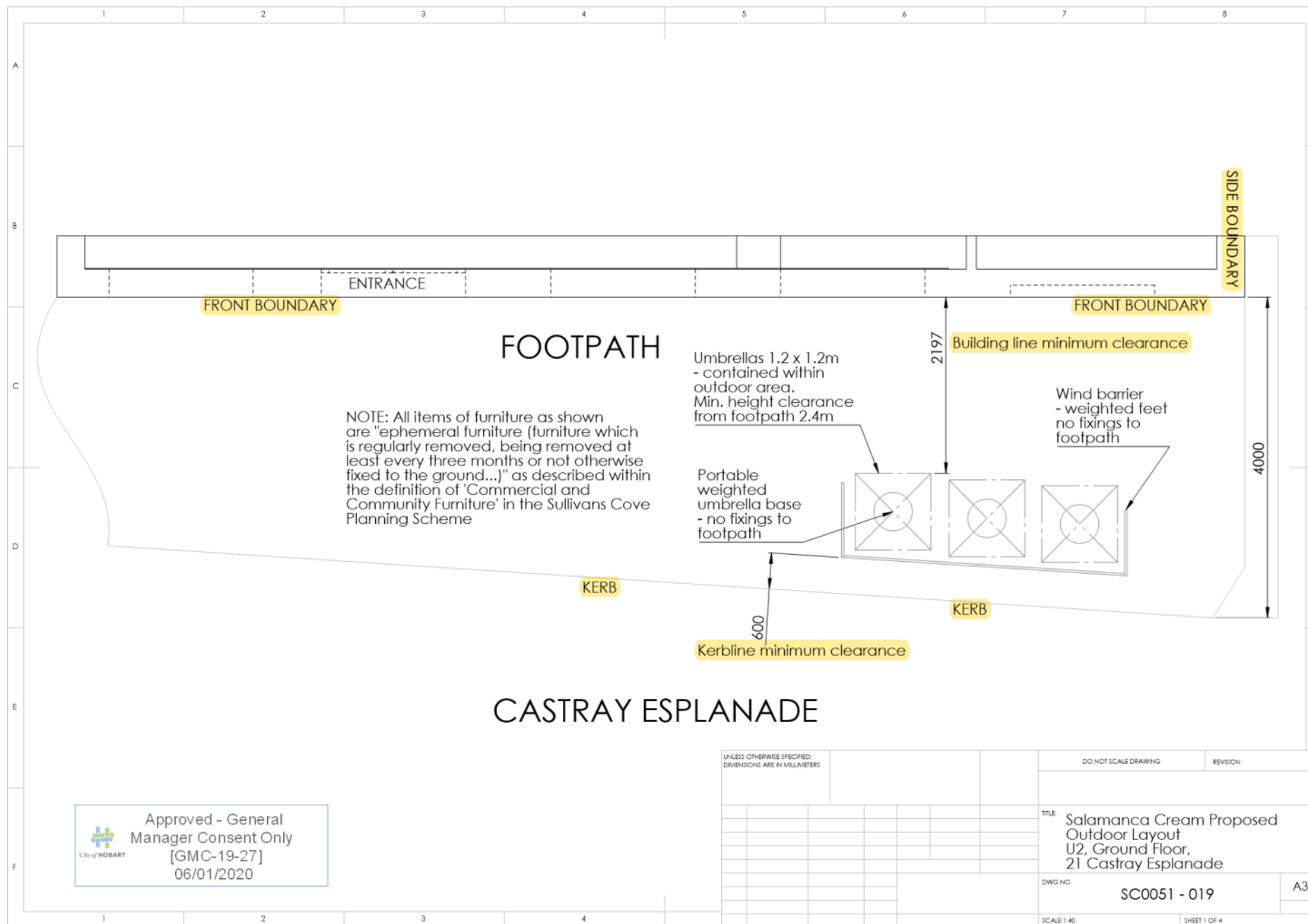
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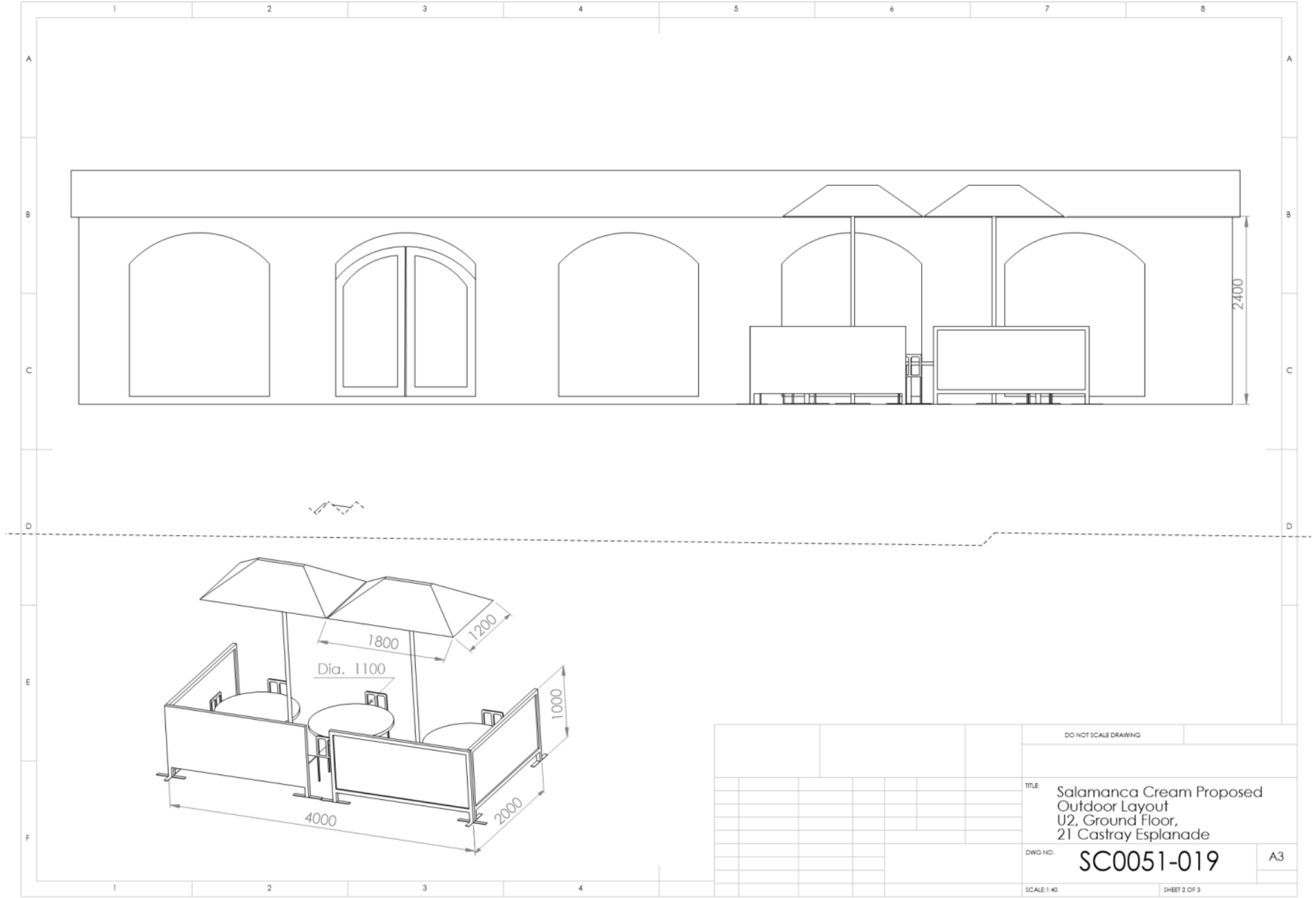
GENERAL MANAGER

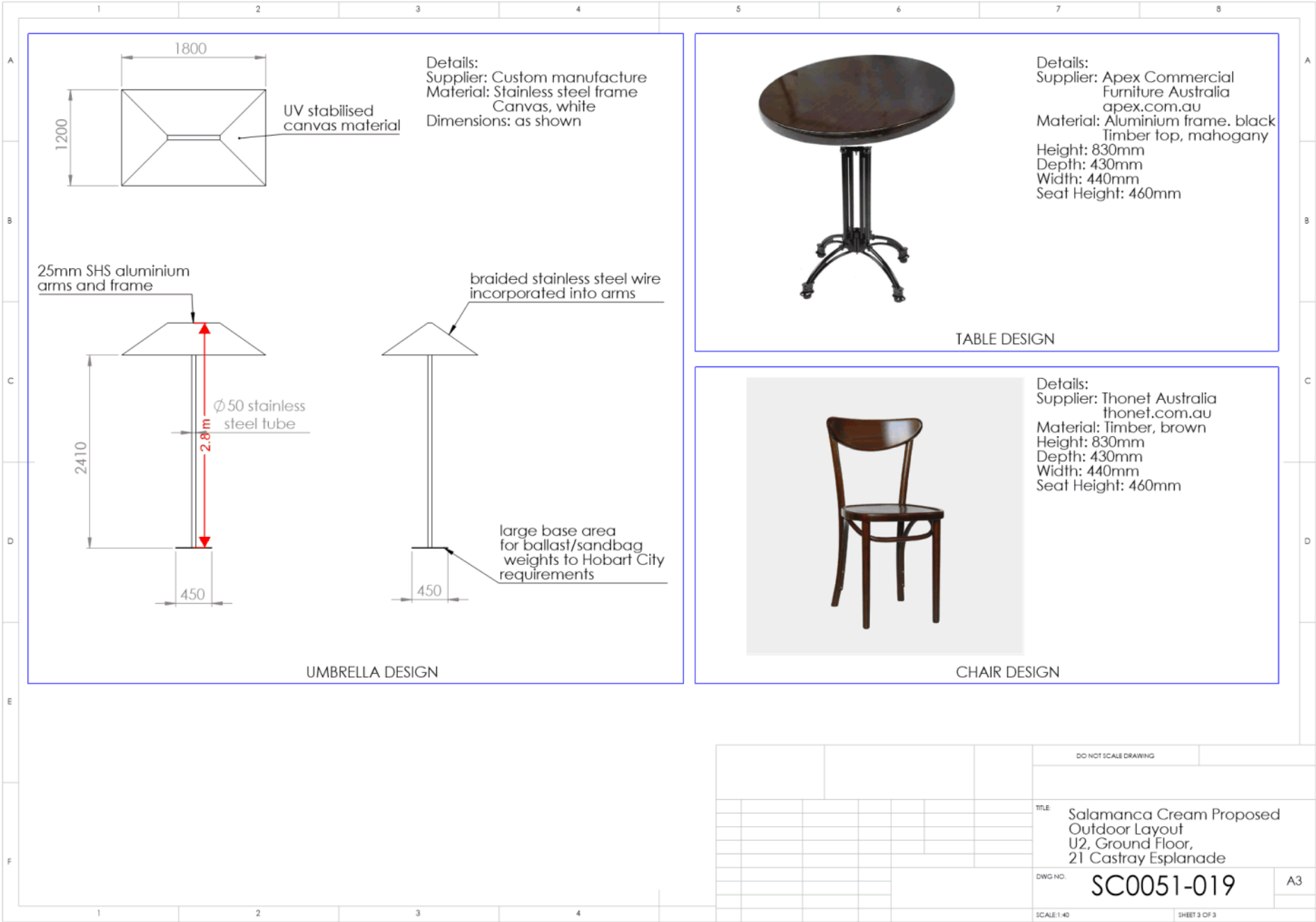
Relevant documents/plans:

Heritage Statement

Proposed Outdoor Layout - dwg no. SC0051-019







Heritage Statement: Shop 2, Ground Floor, 21 Castray Esplanade Battery Point**Proposal for outdoor dining furniture 23 October 2019 – Salamanca Cream**

This statement is prepared by the owner of Shop 2, Ground Floor, 19-21 Castray Esplanade, Battery Point (the "**Property**"), in relation to the above proposal by Salamanca Cream in relation to the existing eating establishment operated at the Property.

The Property is situated within the historic eastern Ordnance Store building completed about 1834 and surrounded by:

- the corresponding western Ordnance building (also known as the Supply & Tender Building); and
- the historic Stone Retaining Wall completed at about the same time and spanning the entire rear boundary behind and between both buildings.

The Property has been in use since March 2019 as a specialty retailer of coffee, tea, ice-cream, honey and pastry products, known as Salamanca Cream.

This statement intends to demonstrate the effect of the proposal for the placement of outdoor dining furniture to the cultural heritage values of the Property and the Activity Area by consideration of the following two questions:

(i) What is significant about the place in terms of its heritage values and are some parts more significant than others?

The significance statements appearing in the **Australian Heritage Commission National Register** for the Ordnance Stores provide a useful and comprehensive summary of the significance of the building and the rear stone Retaining Wall of the same period. They read:

"Significance

The historic significance of the site is focused on The Ordnance Store and other parts of the site which date from the 1830s. The building is significant due to its ability to demonstrate a range of values of the early history of Hobart. These can be summarised as follows:

- *Demonstrates the design requirements of the time and especially those associated with the architect John Lee Archer whose works are widely known.*
- *Demonstrates the construction techniques employed at the time and the use of local material for public buildings.*
- *Demonstrates the design of a government stores building including the use of spaces within the structure, the openings required to transport goods to and from the storage areas and the use of the upper floor storage. It emphasises the importance of stores (including ordnance) in a remote colony with the responsibility for accepting convicted criminals as the building appears to have been constructed with maximum security as a requirement.*
- *Demonstrates the longevity of the needs for a government store with access to the port as the building remained in the one use until now.*
- *Overall the building is significant as an early structure purpose built as a government stores. All the relics and equipment which record this should be considered in the redevelopment of the site so as to retain this significance."*

(ii) Will the proposed use affect the significance and if so how?

The recent authentic restoration and use of the Property has received favourable attention and appreciation by local visitors, tourists, customers and the general public.



Approved - General
Manager Consent Only
[GMC-19-27]
06/01/2020

The proposal is for the placement of ephemeral outdoor dining furniture on the Castray Esplanade footpath directly outside the Property, to enhance customer and visitor amenity.

It is essentially focused on improving the attraction and amenity of the property and in doing so further exhibiting its conservation and architectural and historic significance.

The proposed outdoor seating area shall be utilised by high-quality furniture items of metal and timber construction and uniform, compact style to complement its setting.

The outdoor seating in this way will attract and promote visitor interaction with key elements of the property's recent refurbishment, which include:

- use of the original access and circulation pathway directly through a set of the original cast iron gates of the Property—as constructed by the Royal Engineers with the corresponding intact original markings;
- custom made natural finish Tasmanian Oak counter furniture designed to complement and exhibit the natural style and finish of the Property's original timber column superstructure; and
- an elegant and wide front display and service area spanning the front arcades of the Property for maximum natural light exposure and amenity of occupants and visitors.

• **Ordnance Store Conservation Management Plan**

The proposal has had particular regard to the **Burra Charter** principles of conservation and maintenance as well as the research work of architectural and heritage conservation professionals, such as the **Ordnance Store Conservation Management Plan** (prepared in relation to the western Ordnance building) by Michael Grant, Architectural Historian, in conjunction with Forward Viney Woollan Architects and published in 1996.

An extract from this document, which is particularly relevant in emphasising the complementary nature of the proposal to the current use and as an enhancement of the heritage and cultural values of the Property and the Activity Area, is extracted below:

"6.2.2. Opportunities

*...The opportunity exists to develop the apron area immediately in front of the Ordnance Store... There is the potential to take over more of the road surface for pedestrian usages. This may have the effect of better utilising the arcades of the ground floor of the building. Traditionally the circulation of the building was out from the ground floor, through the arcade openings to the wharf... If a food service function was installed in the ground floor with temporary seating on a widened footpath with the activity moving between the seating and the inside of the building the original nature of the building could be better interpreted by the general public."*¹

Overall, the enhancement of amenity with outdoor seating is specifically pedestrian-oriented and designed to promote direct interaction with and interpretation of the significant architectural elements of the Property and its historic surrounds by the general public.

Pearl Resources

¹ Grant, M. (1996) Ordnance Store Conservation Management Plan



Approved - General
Manager Consent Only
[GMC-19-27]
06/01/2020

ORDNANCE STORE

15 - 17 Castray Esplanade, Hobart.
CONSERVATION MANAGEMENT PLAN



Prepared by

Michael Grant
Architectural Historian
22 Valley Street,
West Hobart.

Ph 62 348 140
Mobile 018 135 035

TL Q
728.1809
94661
GRA

OCT. 1996

6.2.2 Opportunities.

The conservation of the Ordnance Store allows the owners and occupies a prestigious location in a rare building of National Heritage value.

The conservation of the Ordnance Store affords the owners and occupiers the rare opportunity of operating from a building whose permanence, in the public's perception, transcends the immediate giving the occupants a degree acceptability not afforded by structures of recent construction.

The conservation and restoration of the Ordnance Store offers the owners the opportunity of capitalising on the public interest in buildings of heritage value and the good will which that carries.

The opportunity exists to develop the apron area immediately in front of the Ordnance Store. At present there is a large area of land put over completely to pavement for vehicular traffic of which there appears to be quite low densities. There is the potential to take over more of the road surface for pedestrian usages. This may have the effect of better utilising the arcades of the ground floor of the building. Traditionally the circulation of the building was out from the ground floor, through the arcade openings, to the wharf, now the major circulation is across in front of the building. If a food service function was installed in the ground floor with temporary seating on a widened footpath with the activity moving between the seating and the inside of the building the original nature of the building could better be interpreted by the general public.

Salamanca Cream
Shop 2, 19-21 Castray Esp
Battery Point TAS 7004

7 January 2020

Hobart City Council
16 Elizabeth Street
Hobart TAS 7000

Application for ‘Outdoor Dining Furniture’ as per Sullivans Cove Planning Scheme 1997 (the “Scheme”).

Address: Shop 2, 19-21 Castray Esplanade, Battery Point (the “Property”).

The Property is a ground floor retail shop within **Activity Area 2.0 Sullivans Cove ‘Mixed Use’** in the **Sullivans Cove Planning Scheme 1997** (the “Scheme”).

The Property incorporates an eating establishment operating as a specialty provider of coffee, related beverages, ice cream, honey and pastries, known as Salamanca Cream.

This proposal is for the placement of Outdoor Dining Furniture on Castray Esplanade in the area immediately in front the Property.

- **Purpose of the Use and Types of Activities**

The placement of outdoor dining furniture in front of the Property will enhance the amenity of customers and visitors to the Property and the Activity Area.

The proposal is intrinsically connected with enhancing the attractiveness and amenity of both the Property and the Activity Area in a way that customers, visitors and the public generally expect and demand in relation to eating establishments in the Activity Area.

The proposed area and layout is depicted in **Schedule 1**.

The purpose of the proposed design is to improve amenity for visitors while providing efficient and free pedestrian movement.

The proposed area will feature high-quality, custom furniture designed to complement the area and layout in front of the Property. The layout is focused on creating a high quality, integrated and visually attractive area for customers and the general public.

In this way, the proposed site, layout and design of the outdoor area will further promote and generate pedestrian movement in the area.

The proposed outdoor furniture is freestanding and ephemeral as defined by the Scheme.

No works are required to enable the placement of the outdoor furniture in the proposed area.

By enhancing the amenity of customers and visitors to the Property, the proposal will also contribute to the cultural and heritage values of the Activity Area and emphasise the rejuvenation of the Property and its place within the Activity Area.

- **Function of Public Urban Space Types**

The Property, on Castray Esplanade, is located within the area designated as “**Public Urban Space Function 2 – Mixed**” by the Scheme, referred to at clause 24.4.10, which provides that ‘*outdoor dining facilities...are consistent with the designation of this road type.*’

- **Objectives and Performance Criteria for Activities**

The performance of the proposal is categorised according to the applicable Objectives and Performance Criteria for Activity Area 2.0 Sullivans Cove ‘Mixed Use’, found at clause 16.2 of the Scheme, as follows:

<u>Objectives</u>	<u>Performance Criteria</u>	<u>Performance of proposal</u>
“16.2(c) To encourage use and development which generate pedestrian movement through the activity area.”	“Outdoor dining and other outdoor pedestrian activities are encouraged in appropriate locations.”	<p>The footpath area of Castray Esplanade outside the Property exhibits the appropriate space and location to accommodate comfortable outdoor seating while maintaining free and efficient pedestrian movement.</p> <p>Castray Esplanade is designated by the Scheme as a suitable road type for the placement of outdoor dining furniture.</p> <p>The proposed design and layout is focused on the Scheme’s aims for outdoor dining furniture, to “<i>add vitality and interest to the Cove</i>” (clause 24.5), through enhancing amenity and complementing the service offering at the Property, while generating comfortable pedestrian movement.</p>

- **Likely effects, if any, on adjoining land**

As might be expected in the Activity Area, the immediate vicinity and other parts of Castray Esplanade already feature outdoor dining furniture in use by various establishments.

The proposal in the context of the Activity Area is relatively low impact and does not pose any tangible likely effects in relation to the relevant criteria.

The Scheme reinforces, as Performance Criteria at clause 16.2(h), the promotion of the *"economic vitality of...retailing activities"*.

In terms of 'Environmental and Amenity Impacts' in Activity Area 2.0 Sullivans Cove 'Mixed Use', the Scheme considers that only industrial activities, manufacturing and transport terminals have appreciable relative impacts.

- (i) Noise levels: the proposal, as set outdoors, is of a compact size and in an area surrounded by working port facilities, the Salamanca precinct, other eating establishments and various public events and activities. It will not pose any tangible relative effects regarding noise levels.
- (ii) Traffic: no likely effect. The design and layout of the proposal encourages pedestrian activity in an area that is generally characterised by pedestrian traffic.
- (iii) Hours of delivery: No effect in relation to existing approved delivery times.
- (iv) Despatch of goods or materials: Not applicable.
- (v) Hours of operation: No effect in relation to existing business hours 7am-7pm daily.
- (vi) Heritage and conservation: The accompanying Heritage Statement prepared by the Property's owner, is relevant to this proposal. It incorporates references to relevant third-party significance statements and professional conservation management documentation regarding the Property and its surrounding area.
- (vii) Property repair work: No works required.
- (viii) Signage: No signage proposed.

Should you require any further information please do not hesitate to contact me.

Alexander Lazarou

alexlarou@outlook.com

From: alexlarou@outlook.com
To: baconr@hobartcity.com.au
Subject: RE: External Correspondence - PLN-20-4 - 2/19-21 CASTRAY ESPLANADE BATTERY POINT TAS 7004

Hi Richard,

I refer to your email of 20 January 2020 and reply as follows with your numbering:

1. Copy of plan with details of umbrella and furniture details as requested has been uploaded to the portal.
2. Layout details as requested uploaded to the portal.
3. A copy of the title page and relevant page of the Ordinance Store Conservation Management Plan document referred to in the application has been uploaded to the portal. I do not have a copy of the entire document although it is publicly available and located in the State Reference Library Archives Section at "TL Q 728.1809 94661 GRA".

A copy of this email will be uploaded to the portal.

Thankyou

Alexander Lazarou

From: baconr@hobartcity.com.au <baconr@hobartcity.com.au>
Sent: Monday, 20 January 2020 4:19 PM
To: Alexander Lazarou <alazarou@chancellorpartners.com.au>
Subject: External Correspondence - PLN-20-4 - 2/19-21 CASTRAY ESPLANADE BATTERY POINT TAS 7004

Dear applicant

i thank you for the information submitted on the 17/1/2020. Council's Cultural Heritage Officer, Nick Booth (62 382 457), requests further information

<https://HobartCityCouncil.sharefile.com/d/s7f1be5cbb7648e9a>

Regards Richard Bacon

City of Hobart
16 Elizabeth Street, Hobart, Tasmania, Australia, 7000 | hobartcity.com.au
Telephone (03) 6238 2160 | City Planning Admin (03) 6238 2715

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If you receive this communication in error, please advise us by reply email or telephone on +61 3 6238 2711, then delete the communication.
You will be reimbursed for reasonable costs incurred in notifying us.

alexlazarou@outlook.com

From: alexlazarou@outlook.com
To: baconr@hobartcity.com.au
Subject: RE: External Correspondence - PLN-20-4 - 2/19-21 CASTRAY ESPLANADE BATTERY POINT TAS 7004

Hi Richard,

I refer to your email of 8 January 2020 and reply as follows with your numbering:

1. Copy of property title certificates have been uploaded to the portal.
2. Plan as requested has been uploaded to the portal.
3. The application only proposes outdoor seating, it does not propose any change to existing operating hours of 7am-7pm daily.

A copy of this email will be uploaded to the portal.

Thankyou

Alexander Lazarou

From: baconr@hobartcity.com.au <baconr@hobartcity.com.au>
Sent: Wednesday, 8 January 2020 4:09 PM
To: Alexander Lazarou <alazarou@chancellorpartners.com.au>
Subject: External Correspondence - PLN-20-4 - 2/19-21 CASTRAY ESPLANADE BATTERY POINT TAS 7004

Dear applicant

The following is link to a further information request for 2/19-21 Castray Esplanade.

<https://HobartCityCouncil.sharefile.com/d/s5fac7b134e54164b>

Regards Richard Bacon

City of Hobart
16 Elizabeth Street, Hobart, Tasmania, Australia, 7000 | hobartcity.com.au
Telephone (03) 6238 2160 | City Planning Admin (03) 6238 2715

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**RESULT OF SEARCH**

RECORDER OF TITLES

Issued Pursuant to the Land Titles Act 1980

SEARCH OF TORRENS TITLE

VOLUME 107424	FOLIO 2
EDITION 4	DATE OF ISSUE 11-Aug-2017

SEARCH DATE : 17-Jan-2020

SEARCH TIME : 11.45 AM

DESCRIPTION OF LAND

City of HOBART

Lot 2 on Strata Plan 107424 and a general unit entitlement
operating for all purposes of the Strata Scheme being a 180
undivided 1/1000 interest

Derived from Strata Plan 107424

(formerly Lots 1 & 2 on SP107421)

Derivation : Whole of Lot 36320 & Part of Lot 32931 Gtd. to
The Commonwealth of Australia

SCHEDULE 1

M644559 TRANSFER to PEARL RESOURCES PTY LTD Registered
11-Aug-2017 at noon

SCHEDULE 2

243/1 Land is limited in depth to 15 metres, excludes
minerals and is subject to reservations relating to
drains sewers and waterways in favour of the Crown
The registered proprietor holds the lot and unit entitlement
subject to any interest noted on common property
Folio of the Register volume 107424 folio 0
243/1 BURDENING EASEMENT: Right for Her Majesty The Queen
to resume such portions of the said piece of land as
may be required for any roads, railways, tramways, water
races or other public utilities

UNREGISTERED DEALINGS AND NOTATIONS

No unregistered dealings or other notations

**RESULT OF SEARCH**

RECORDER OF TITLES

Issued Pursuant to the Land Titles Act 1980



SEARCH OF TORRENS TITLE

VOLUME 107424	FOLIO 0
EDITION 2	DATE OF ISSUE 14-Jun-2006

SEARCH DATE : 17-Jan-2020

SEARCH TIME : 11.45 AM

DESCRIPTION OF LAND

City of HOBART

The Common Property for Strata Scheme 107424
(formerly Lots 1 & 2 on SP107421)Derivation : Whole of Lot 36320 & Part of Lot 32931 Gtd. to
The Commonwealth of Australia
Prior CT 107421/3SCHEDULE 1STRATA CORPORATION NUMBER 107424, 19-21 CASTRAY ESPLANADE
HOBARTSCHEDULE 2

- 243/1 Land is limited in depth to 15 metres, excludes minerals and is subject to reservations relating to drains sewers and waterways in favour of the Crown
- 243/1 BURDENING EASEMENT: Right for Her Majesty The Queen to resume such portions of the said piece of land as may be required for any roads, railways, tramways, water races or other public utilities
- B665198 Declaration under Section 75CA of the Conveyancing and Law of Property Act 1884, registered 13th October 1993.
- C744280 APPLICATION by body corporate to amend strata plan by amending Lots 3 & 4 and reducing the common property Registered 06-Dec-2006 at 12.01 PM
- C950017 APPLICATION by body corporate to amend Strata 107424 by amending Lots 5 & 6 and amending common property Registered 26-Aug-2011 at noon
- E25643 APPLICATION by body corporate to amend Strata Plan by amending Lots 5 & 6 and common property Registered 24-Aug-2016 at noon
- E120206 APPLICATION for registration of change of by-laws Registered 15-Feb-2018 at noon

UNREGISTERED DEALINGS AND NOTATIONS



RESULT OF SEARCH

RECORDER OF TITLES

Issued Pursuant to the Land Titles Act 1980



No unregistered dealings or other notations



FOLIO PLAN

RECORDER OF TITLES

Issued Pursuant to the Land Titles Act 1980

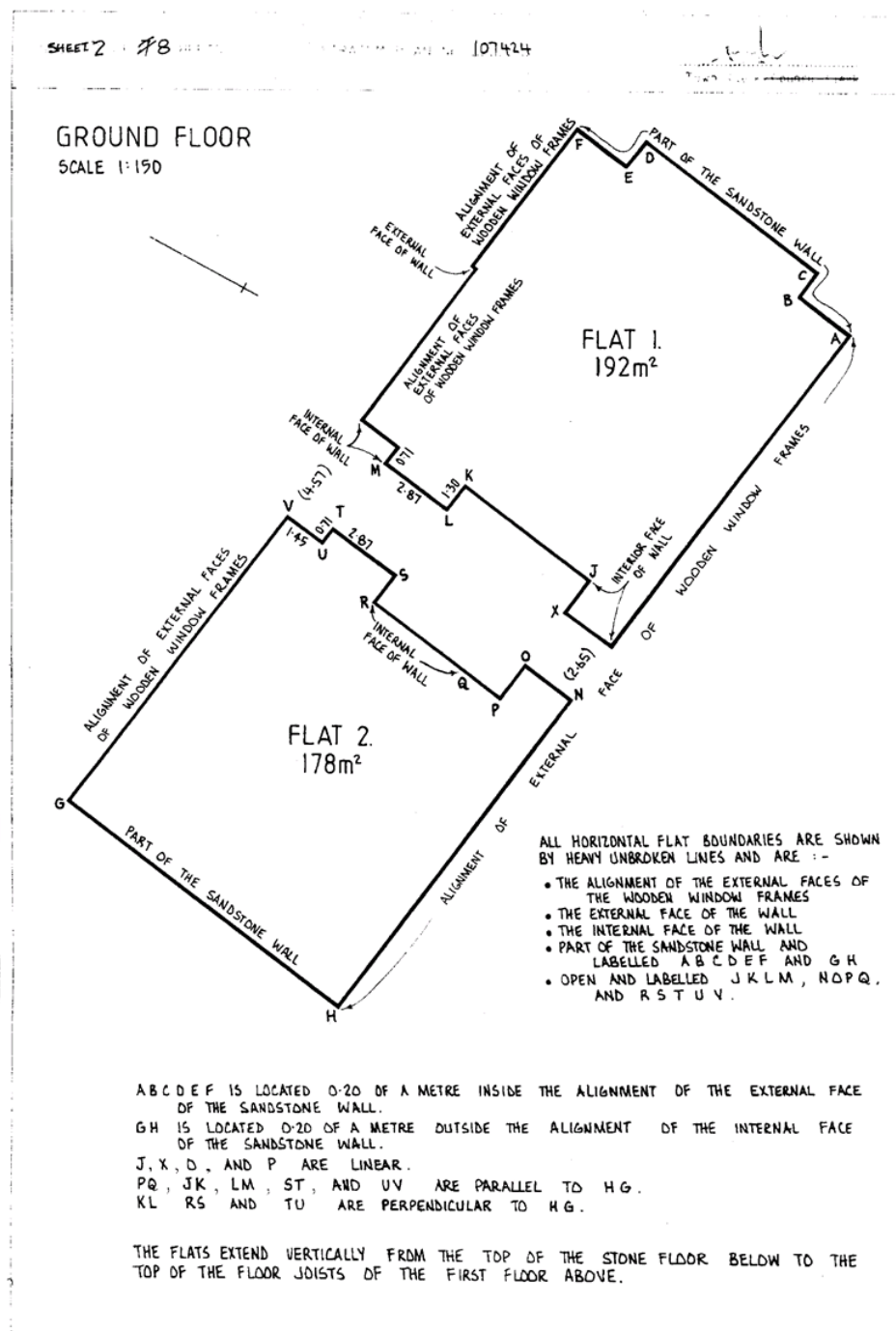


CITY/TOWN HOBART		STRATUM PLAN		REGISTERED NUMBER
SUBURB BATTERY POINT		SHEET 1 OF 18 SHEETS		107424
FOLIO REFERENCE C.T. 107421/3		NAME OF BUILDING		REGISTERED 13 OCT 1993
SITE COMPRISES THE WHOLE OF LOTS 1420N PLAN No SP 107421		19-21 CASTRAY ESPLANADE, HOBART		<i>Michael J. ...</i> Recorder of Titles
TASMAP SHEET No. 21	LAST UPI No.	SCALE 1: 400	LENGTHS IN METRES	

SITE PLAN

DISCLOSURE STATEMENT No. (IF APPLICABLE)	LODGED BY
---	-----------

NOTES: ALL BUILDINGS ON THE SITE TO BE SHOWN ON SHEET 1.
BUILDING TO SITE BOUNDARY OFFSETS OF LESS THAN 2.00 METRES TO BE SHOWN ON SHEET 1.
THE FEE SIMPLE OF THE SITE IS CONTAINED WITHIN THE STRATUM PLAN/BODY CORPORATE FOLIO.
FLAT FOLIOS ARE HELD SUBJECT TO STRATUM PLAN/BODY CORPORATE FOLIO ENDORSEMENTS.

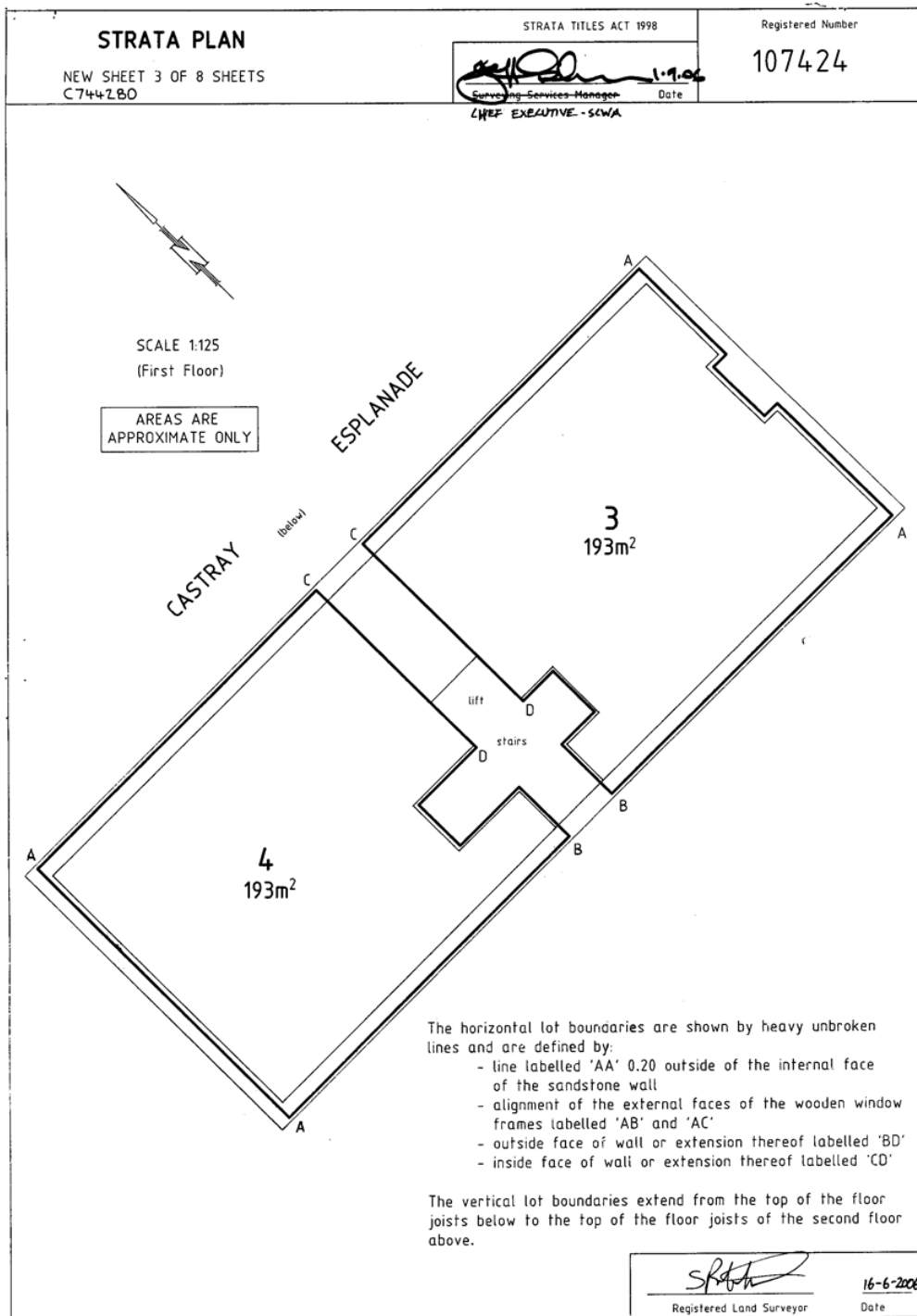




FOLIO PLAN

RECORDER OF TITLES

Issued Pursuant to the Land Titles Act 1980





FOLIO PLAN

RECORDER OF TITLES

Issued Pursuant to the Land Titles Act 1980



<p>STRATA PLAN</p> <p>NEW SHEET 4 OF 8 SHEETS</p> <p>E25643</p>	<p>STRATA TITLES ACT 1998</p>	<p>Registered Number</p> <p style="font-size: 1.2em;">107424</p>
<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;"> <small>Council Delegate</small> </div> <div style="text-align: center;"> <small>11-8-2016</small> <small>Date</small> </div> </div>		

SECOND FLOOR
SCALE 1:150

LOT 5
207m²

LOT 6
185m²

LIFT
STAIRS

THE HORIZONTAL LOT BOUNDARIES ARE SHOWN BY HEAVY UNBROKEN LINES DEFINED BY:

- ALIGNMENT 0.20 OUTSIDE OF THE ALIGNMENT OF THE INSIDE FACE OF EXTERNAL SANDSTONE WALL LABELLED AA
- ALIGNMENT OF THE EXTERNAL FACES OF THE WOODEN WINDOW FRAMES LABELLED AB
- CENTRE OF WALL LABELLED BC, CC

THE VERTICAL LOT BOUNDARIES EXTEND FROM THE TOP OF THE FLOOR JOISTS BELOW, TO THE TOP OF THE FLOOR JOISTS OF THE THIRD FLOOR ABOVE.

4/4/2016
Date

Registered Land Surveyor

FOLIO PLAN

RECORDER OF TITLES

Issued Pursuant to the Land Titles Act 1980

Sheet 5 of 8 Sheets

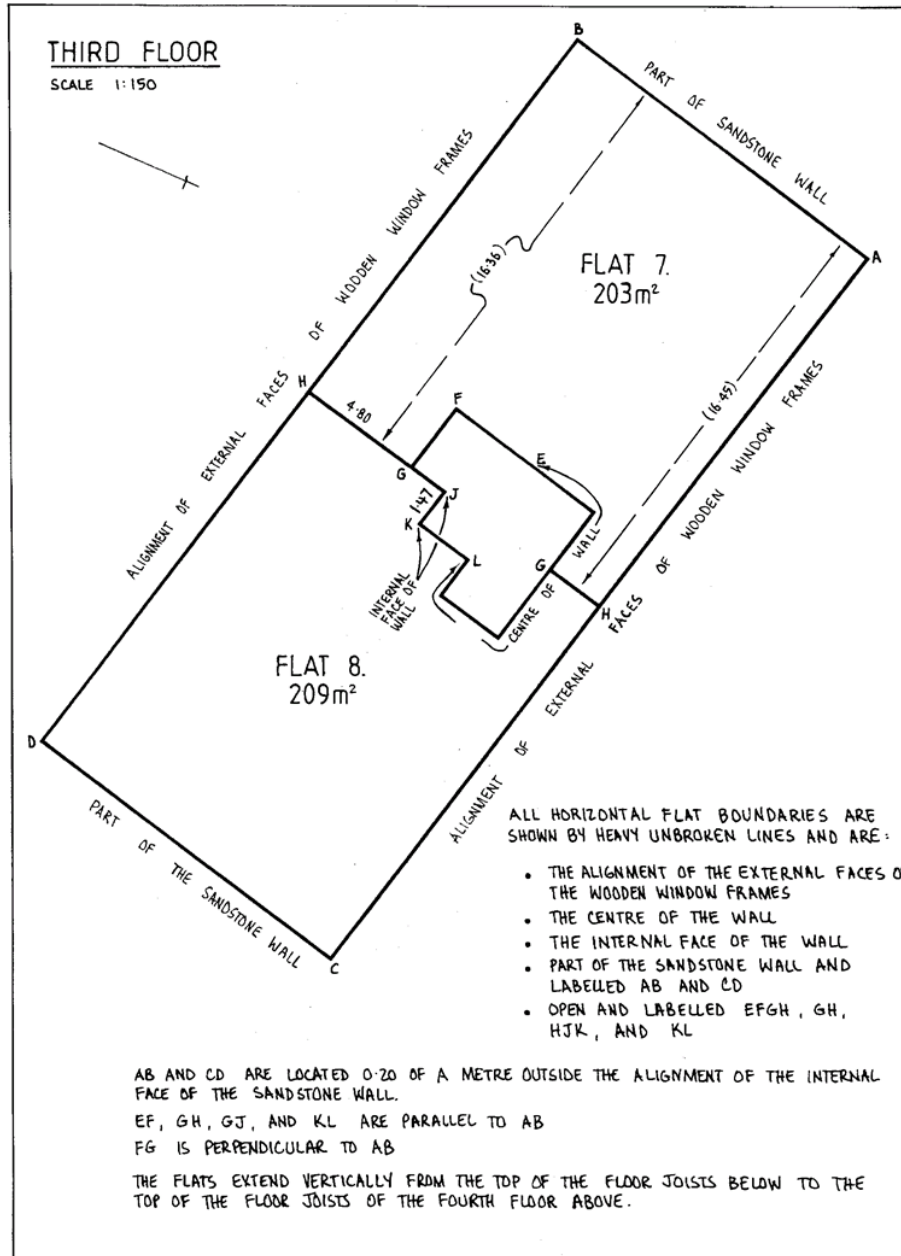
STRATUM PLAN

Town Clerk-Council Clerk

of 19-21 CASTRAY ESPLANADE, HOBART
(insert here name of the building)

THIRD FLOOR

SCALE 1:150

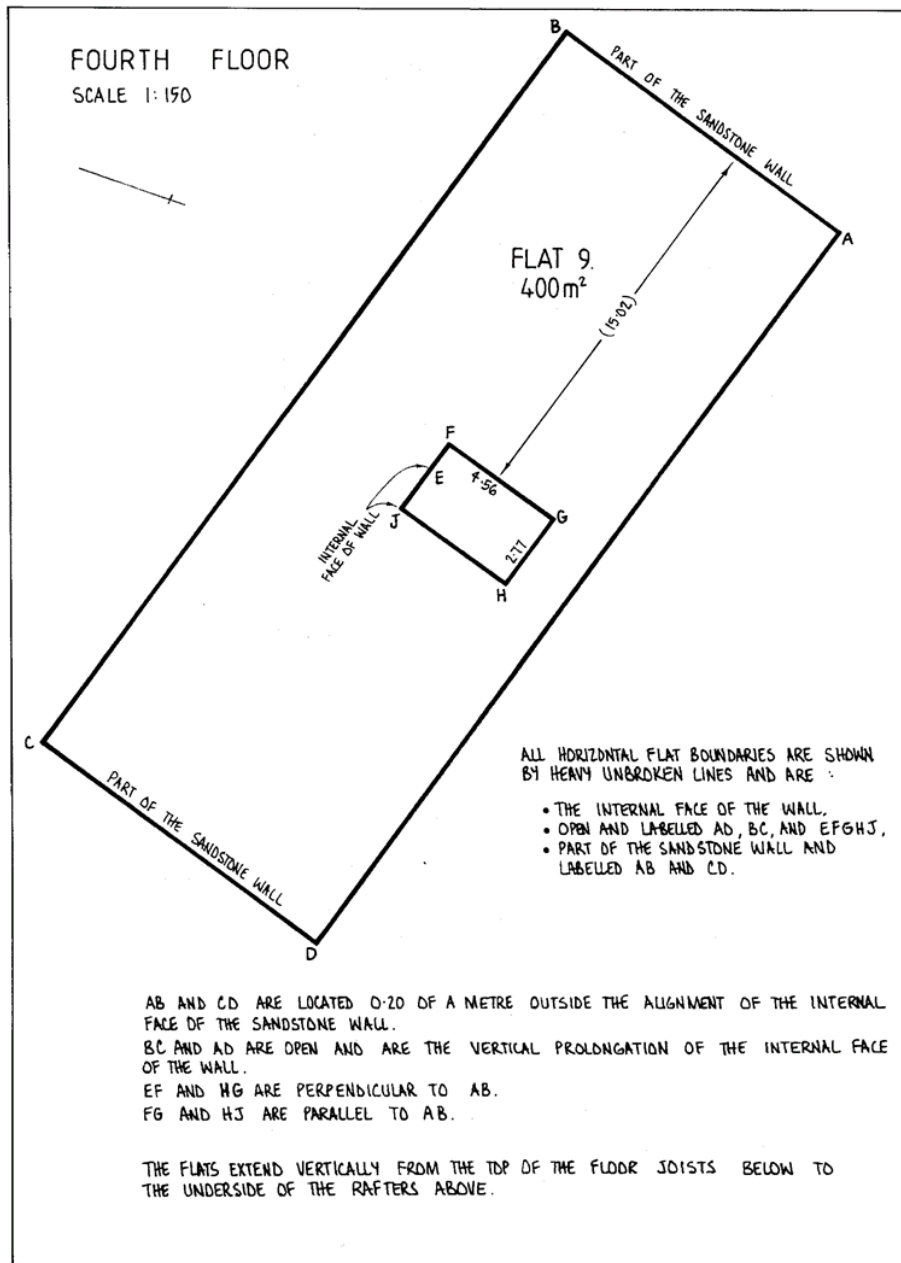


Sheet 6 of 48 Sheets

STRATUM PLAN

Town Clerk ~~Council Clerk~~

of

19-21 CASTRAY ESPLANADE, HOBART
(insert here name of the building)



FOLIO PLAN

RECORDED OF TITLES

Issued Pursuant to the Land Titles Act 1980



SHEET 7 OF 18 SHEETS

STRATUM PLAN No 107424

Gmbw
Town Clerk/Council Clerk

THE ADDRESS FOR SERVICE OF NOTICES
ON THE COMPANY
**STRATUM TITLE MANAGEMENT,
127 BATHURST STREET,
HOBART, TAS. 7000**

UNIT ENTITLEMENTS

FLAT	UNITS	FOR OFFICE USE ONLY
1	180	
2	180	
3	88	
4	88	
5	88	
6	88	
7	88	
8	88	
9	112	
TOTAL	1000	

SURVEYORS CERTIFICATE

I, **DAVID JOHN M'AVOY**
of **ROSETTA**
a surveyor registered under the Land Surveyors Act 1909 hereby certify that the building erected on the site and drawn on sheet 1 of this plan is within the external boundaries of the folio stated on sheet 1, EXCEPT THE PORTION OF THE BUILDING EXTENDING OVER CASTRAN ESPLANADE MARKED ABCDEFG ON SHEET 1.

date **18-8-93**
Registered Surveyor **[Signature]** ref no **2285**

COUNCIL CLERKS CERTIFICATE

I certify that the subdivision shown in this plan has been approved by the
HOBART CITY Council
date **17-9-93**
Town Clerk/Council Clerk **[Signature]** date

FOR OFFICE USE ONLY

DECLARATION NO. B665198 under Section 75CA of the Conveyancing and Law of Property Act 1984

[Signature]
Recorder of Titles.
3/10/1993 at Noon.



FOLIO PLAN

REORDER OF TITLES

Issued Pursuant to the Land Titles Act 1980



STRATA PLAN C744280 SHEET 8 OF 8 SHEETS	STRATA TITLES ACT 1998	Registered Number 107424
--	------------------------	---

STRATA PLAN AMENDMENTS under section 19 of the Strata Titles Act 1998 relating to Strata schemes

SURVEYORS CERTIFICATE

I, **Simon Roberts** of **Hobart**
a Surveyor registered under the Surveyors Act 2002 certify that any new building or buildings shown on the attached amending sheets of this plan are within the site boundaries of the folio stated on sheet 1 and any encroachment beyond those boundaries is properly authorised according to law.

Registered Land Surveyor

16-6-2006

Date

H745C

Ref No.

COUNCIL CERTIFICATE

I certify that the ~~SULLIVANS COVE WATERFRONT AUTHORITY~~
~~HOBART City Council~~ has:
(a) approved the lots shown in this amendment to the Strata plan and
(b) issued this certificate of approval in accordance
with section 19 of the Strata Titles Act 1998

CHIEF EXECUTIVE - SCWA
Surveying Services Manager

1.9.06

Date

Ref No.

AMENDING SHEETS
BEING CERTIFIED

LOTS BEING
CREATED AND CERTIFIED

LOTS BEING
AMENDED AND CERTIFIED

3

3

4

Application Referral Cultural Heritage - Response

From:	Nick Booth
Recommendation:	Proposal is unacceptable.
Date Completed:	
Address:	2 / 19 - 21 CASTRAY ESPLANADE, BATTERY POINT ADJACENT ROAD RESERVE
Proposal:	Outdoor Dining Furniture
Application No:	PLN-20-4
Assessment Officer:	Richard Bacon,

Referral Officer comments:

The development application for the above site relates to the provision of outdoor dining furniture consisting of two separate tables, individual chairs, wind barriers and three umbrellas located on the public footpath 2.2ms forward of the front elevation of 19-21 Castray Esplanade, Battery Point. All of the furniture would not be attached to the footpath.

Under the definitions as set out within the Sullivans Cove Planning Scheme 1997, there is a clear distinction between Public Street Furniture and Outdoor Dining Furniture, the latter being defined as 'the placement or use of tables, chairs benches umbrellas and the like used for the purpose of extending the services of premises whose main function is the provision of food and beverages to the public'. The principal distinction therefore is that one is a public facility, whilst the other is private or be it at times within the public realm.

Under clause 24.4.2 and the associated table, Outdoor Dining Furniture is not specifically identified and as such falls under the definition of 'Other Building Construction or Works' within the Cove Floor, and as such are not deemed 'Exempt' and as such are discretionary. Figure 10. 'Commercial & Community Use of Public Space' identifies where the use of Public Urban Space for outdoor dining furniture should be considered as exempt. This does not include any part of Castray Esplanade. Whilst 24.5 Part B – 'Commercial and Community Furniture' stipulates that the provision of ephemeral furniture can 'add vitality and interest to the Cove', this should be subject to appropriate controls to avoid visual clutter and to ensure that the Cove remains attractive and clause 24.5.2B confirms that it remains within the remit of the Council to determine if a permit can be approved or refused. It is therefore considered that the application is discretionary and that the appropriateness of the proposed location and form of the Outdoor Dining Furniture can be considered against the provisions of the Planning scheme.

With regard to Schedule 1 – 'Conservation of Cultural Heritage Values', 22.1 'Introduction' states that 'Conservation of the cultural heritage values of Sullivans Cove is the primary objective of the Scheme' whilst 22.2 'Objectives' include ensuring that 'recognisable historic character of Sullivans Cove is not compromised by new development'.

Notwithstanding the above however, 22.5.4 stipulates that buildings or works within 10 metres of, and adjacent to, a place of cultural significance and which does not exceed the height of that place, or exceed the area of its façade by a factor of 2, is deemed to be 'permitted' in respect to Schedule 1. As such, it is considered that in this instance the proposal cannot be considered against the specific heritage provisions of Schedule 1 of the Planning Scheme.

Beyond Schedule 1 however, it is acknowledged that Part C – 'Application of the Scheme' states at Part 10 "Decisions" that before determining any application to use or develop land, the Planning Authority must consider the objectives and impacts upon the heritage, urban and spatial character of each of the identified Activity Areas within the Cove.

The site in question falls within Activity Area 2.0 Sullivans Cove 'Mixed Use'.

Whilst the Activity Area's deal primarily with the issue of Uses, 16.2 'Objectives and Performance Criteria for Activities' states that 'objectives and performance criteria apply to all **uses** and **development** in the activity area. Objective (a) stipulates that;

'To ensure that activities within the Cove respect the cultural heritage and character of the Activity Area.'

The associated Performance Criteria states that;

*'All use and development within the Activity Area must **demonstrably contribute to, and enhance** the cultural heritage, built form (bulk, height, volume, urban detail) and spatial characteristics of the activity area.'*

Objective (b) stipulates that;

*'To ensure that the amenity, character and cultural heritage values of the Cove's roads and other public spaces are **conserved and enhanced**'*

The associated Performance Criteria states that;

'Use and development on road reserves, public parks and other public spaces within the activity area shall only be 'permitted' where they do not detract from the space's amenity or heritage value.'

Objective (c) stipulates that;

'To encourage use and development which generate pedestrian movement through the activity area.'

The associated Performance Criteria states that;

'Outdoor dining and other outdoor pedestrian activities are encouraged in appropriate locations'

In view of the above, it is considered pertinent to examine the relevant cultural heritage significance of the adjoining property at 19-21 Castray Esplanade.

No.19 to 21 Castray Esplanade, or The Ordinance Store as it is better known as, dates from the 1830's and represents development associated with the first major European expansion of the Capitol as a growing economic and trading port beyond its relatively simple origins. This increase in trade was at the same time reflected in the need for the Government to find a suitable location for its Ordinance Store which up to that point had been leased through a series of private warehouses and largely inappropriate storehouses. Therefore, with the construction of the 'New Wharf' on the southern side of the Cove as a series of reclamation landfills and Timber Wharf beginning in the mid 1820's, and works starting on the first sandstone warehouse in what is now known as Salamanca Place, it was determined by the Government that a new purpose built Ordinance Store be constructed adjacent to the Wharf. As such, in March 1833 the then State appointed Civil Engineer, John Lee Archer, was instructed to draw up plans for a new Ordinance Store which:

"It is to be understood that the plan cannot be too plain nor too substantial..."
(Pg3 '15 Castray Esplanade Historical Report' Lindy Scripps April 1994)

The plans drawn up by Archer were for a larger and grander structure than actually constructed, including central and terminal pavilions set slightly forward of the main building line and provided with doric pilasters along with a grand central archway. Indeed it would appear that the overall design was intended to act as a feature of the waterfront and a balancing building in both importance and style to the Archer Designed Custom House (now Parliament House) at the other end of the Esplanade. Whilst it soon became apparent that due to the additional costs associated with the required reclamation and excavation needed to accommodate the much larger set of buildings we see today, the two recessed elements that were constructed (nos.13-17 and 19-21 Castray Esplanade) still bare the same arcades to the ground floor elevations with deeply set stone jambs and regular window arrangement. Indeed, it was intended to always complete the full plan when additional funds were found and that the two stores constructed were only started to meet the pressing need.

Construction of the two Ordinance Store buildings started in July 1834 after delays due to land ownership issues, with the sandstone being principally taken from the main Domain quarry, with what is now No.13-17 Castray Esplanade being predominantly constructed first. Work on the second store went into full production in June 1836 with The Ordinance Department formally moving into the new stores in March 1840. The local newspaper, The Hobart Town Courier described the Stores as forming...

"...a conspicuous ornament to the harbour and presents a commanding object to vessels coming up the river."
(Pg.6 '15 Castray Esplanade Historical Report' Lindy Scripps April 1994)

An additional storey was added to No.19-21 Castray Esplanade in 1913-14 in a matching style and some elements of original fabric have been replaced (most notably the roofing material, which replaced the original Wood Shingles from Port Arthur soon after completion). Although several small alterations occurred during the lifetime of the building, including the provision of new side gates, fire escapes and roof lights, it is considered that the building, due to its robust deep set stone construction, strong lines and clear Colonial Georgian symmetry has remained notably unaltered and is immediately recognisable as the one designed by Archer and completed during a period of immense expansion and new found confidence in the history of Hobart and the wider State.

As set out above in the examination of the history of the Building, it is considered that the Building, along with the matching former Ordinance Store at No.13-17 Castray Esplanade, represents one of the State's most important early major civil developments. It was designed by the then State's Civil Engineer John Lee Archer who also designed some of the State's most notable and important early buildings and structures including Parliament House which it architecturally references. It is a major example of civic Colonial Georgian Sandstone architecture, constructed from local materials by local workforce and, importantly, remains largely unaltered and free from unfortunate extension or alteration. The Building represents and signifies a key part in the early expansion in the history of the European settlement of the State Capitol and Tasmania more generally, and its unaltered form springs directly from its original intended use and is clearly recognisable as such.

Based on the above, it is therefore considered that the Building is of significant cultural and architectural importance to the heritage of Hobart and the State, both due to its individual and collective components. Further, it is considered that due also to its imposing proportions and prominent position within the townscape, it can be described as a 'landmark building that has strong cultural townscape associations within the wider community and plays a significant role in defining and re-enforcing the sense of place and the on-going history of Sullivans Cove as

an operating port. A fact in part reflected in its appearance on the Tasmanian Heritage Register.

Given the relative importance of the building in question therefore, it is questioned as to whether the proposed provision of Outdoor Dining Furniture, even when temporary and not fixed to the footpath, is a use and development that meets the Performance Criteria of 'demonstrably contribute to, and enhance the cultural heritage, built form...and spatial characteristics of the activity area' and 'only be 'permitted' where they do not detract from the space's amenity or heritage value' as required under 16.2 for Activity Area 2.0.

Representations

It is noted that 8 representations have been received relating to the proposal, all of which raise objections to the proposed Outdoor Dining Furniture.

These comments can be summarised as follows –

- Street dining furniture directly outside this heritage-listed building disrespects and detracts from its heritage status.
- The proposed street furniture will not compliment the cultural significance of the building, will reduce the apparent authenticity of the place, and the works are individually prominent.
- The footpath to the building frontages along Salamanca Place has been taken over and Privatised by a mounting accumulation of tables and chairs, umbrellas, shade structures, privacy screens and planters etc. This does diminish the visual experience of the historic heritage context.
- The Ordnance Store is one of the most significant buildings remaining from the Van Dieman's Land colony.
- The proposal would detract from the heritage of the Ordnance Store. The umbrellas would be sited very close to the front façade, denying the public the ability to appreciate the effect of the building in its totality. The tables and chairs and barriers would add to the visual clutter. The siting of a cluster of umbrellas at one end of the building would obscure the arcade effect and disrupt the symmetry of the structure.
- The Ordnance Store, 19-21 Castray Esplanade, is classified under the Planning Scheme as a special building of historical interest and natural beauty. First commissioned in 1832, the Ordnance Store is one of Battery Point's most prominent heritage listed buildings. The building was designed by the renowned colonial architect, John Lee Archer and features magnificent, fine sandstone quarried from the cliffs behind Salamanca by convicts, and includes the original sea-wall at the rear of the building and visible from the street. The building is included in many walking tours, in Open House Hobart and is featured in many blogs and books on Tasmanian heritage. The protection of the heritage and cultural values and integrity of this unique building is of paramount concern. Under the heritage area of the Planning Scheme, it is stated that the heritage values should be "maintained and enhanced". This heritage belongs to all Tasmanians and is widely appreciated by visitors to Battery Point. The placement of any outdoor furniture with tall umbrellas, affixed perspex and metal structures, tables and chairs would markedly detract from the heritage values of the building, by obscuring lines of sight of the building, creating unpleasant visual clutter and allowing for potential damage to the fine sandstone comprising the building by creating obstacles for the passage of people along the narrowing footpath.

- The placement of street furniture and barricades will unfortunately detract from the beautiful heritage building. The Ordnance Store is a prime example of early colonial architecture and is often viewed in the context of tours on Tasmanian architecture. The cafe's furniture will become a part of the public views of the building, and will detract within photographs.

From the comments made above, it is considered that the cultural significance of the building is both recognised and prized by the local community.

Consideration of Proposals

It is noted that the provision of outdoor dining uses and the associated development of outdoor dining furniture has become a well-established feature of the Cove, in particular within Salamanca Place and the new food and beverage uses that have occupied many of the former warehouses that face onto the floor of the Cove. However, this has up to now not occurred to the front of the former Ordnance Stores other than to the area directly in front of the modern Hotel infill between the two. Indeed, other than limited numbers of modest signage and minor alterations to the windows and doors that face onto the roadside, external expression of the new uses, either commercial or residential, that now occupy the former Stores are extremely limited and restrained.

It is considered that it is precisely this limited expression of the new uses that have had a major impact on retaining the distinctive architectural form and language of the buildings. The buildings are based on classical proportions and omit a grand, robust, dignified and stately character as befitting what was intended to be an expression of Georgian confidence in the new city and wider state. Unlike the later commercial Warehouses of Salamanca Place that were developed by individuals and independent commercial concerns, the Ordnance Stores were designed by Archer, the then State Architect, financed, built and initially occupied by the State and was absolutely built to an exceptional quality in both design and materials. The proposed use and development would allow the internal commercial re-use of the buildings to spill out beyond its grand façade. It is considered that it could be argued that this would essentially reduce the building to a backdrop to the new outdoor dining, effectively acting to downgrade the cultural weight of the Ordnance Stores as merely an ornament to the commercial use of the site.

16.2 (a) stipulates that *'All use and development within the Activity Area must demonstrably contribute to, and enhance the cultural heritage, built form....and spatial characteristics of the activity area'*. It is considered that this should be interpreted that proposed uses and development should offer some reciprocal and appropriate contribution to the cultural heritage of the area, or, taking the Macquarie Concise Dictionary definition of the word 'enhance', 'raise to a higher degree'. In locations dominated by important culturally significant places, such as the Ordnance Stores, it is suggested that this could best be achieved through uses of high cultural worth that celebrate or at least, sit alongside the existing cultural associations of the location, ideally linked to development that includes works of appropriate refurbishment, re-instatement of original lost features or new development of such high architectural merit that it adds a permanent layer of cultural significance without dominating the original significance of the site.

Based on the above, it is considered that the proposed commercialisation of the space though the proposed use without an appropriate contribution and enhancement of the activity area as defined in 16.2 (a) would appear to run contrary to the stated objectives and performance criteria. Similarly, the proposed seating, umbrellas and wind barriers, both in of itself and as an expression of the use, would also appear to fail to act as a contribution an enhancement of the cultural significance of the site.

Further, it is considered that given the described benefit of having the new uses within the

Ordinance Stores retained within its walls as opposed to spilling out, and the high quality of the Ordinance Stores themselves, the proposed use and the associated development of outdoor furniture standing in front of and partially obscuring the buildings would actively detract from the spaces heritage value, contrary to 16.2 (a) and 16.2 (b).

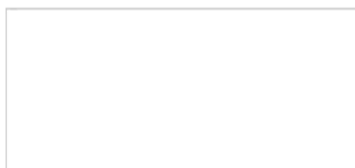
Conclusions

In view of the above, it is considered that 22.5.4 'Permitted' 'Building or Works' on sites adjacent to a place of cultural significance provides would, due to its exceptionally accommodating set of criteria, define the proposed Outdoor Dining Furniture as 'Permitted'. However, as set out above, under 16.2 (a) and (b) it is required that use and development within the Activity Area of Sullivans Cove 'Mixed Use' within the Cove's road reserves that new uses and development should both demonstrably contribute to and enhance the cultural heritage of the area and should only be 'permitted' where they do not detract from the space's amenity or heritage value.

Given the above, it is considered that due to the exceptionally high cultural heritage of the Ordinance Store at local, City and State level, and its relationship with the proposed site the proposed use and associated development would not adhere to the Objectives and Performance Criteria as set out under 16.2 of the Sullivans Cove Planning Scheme by virtue of both failing to demonstrably contribute to, and enhance the cultural heritage of the area, and would indeed detract from those spaces heritage values.

Recommendation

That the application be refused.



Nick Booth
Heritage Officer
4 March 2020



PLN-20-4

11 March, 2020

**MEMORANDUM: LORD MAYOR
DEPUTY LORD MAYOR
ELECTED MEMBERS**

**ADDITIONAL APPLICANT INFORMATION AND COUNCIL'S
HERITAGE RESPONSE
PLN-20-4 - OUTDOOR DINING FURNITURE
2/19-21 CASTRAY ESPLANADE**

Introduction:

At its Special meeting of 10 March 2020 the City Planning Committee considered the above planning application and resolved to defer the item to allow further information from the applicant to be circulated to the Elected Members. The further information is provided as Attachment A to this memorandum. A response to each of the questions raised in it is provided below.

Question 1:

'Mr Booth's response does not engage with or even mention our Heritage Report provided with the Proposal, which specifically sets out the contributions to and enhancement of the cultural heritage of the Property and the Activity Area as represented by the Proposal. For instance, the statement of architectural historian Michael Grant in the relevant Conservation Management Plan extracted in the Proposal that: "Traditionally, the circulation of the building was out from the ground floor...If a food service function was installed in the ground floor with temporary seating on a widened footpath with the activity moving between the seating and the inside of the building the original nature of the building could be better interpreted by the general public."

Response:

Under the request for further information, a copy of the above mentioned 'Conservation Management Plan' was sought given its referral in the supporting documentation. A full copy was not provided in favour of only a photograph of the front cover and an extract titled '6.2.2 Opportunities'.

It was noted that the said Conservation Management Plan related to 15-17 Castray Esplanade and not to 19-21 Castray Esplanade. It was also noted that the Report is MISSION ~ Working together to make Hobart a better place for the community.

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dated October 1996, and therefore pre-dates the formal adoption of the Sullivans Cove Planning Scheme, the statutory planning document. Given also that there is no information as to who commissioned the said report, the project brief or the formal qualifications of the author, it was considered that it made no pertinent contribution to the consideration of the proposals.

Question 2:

Mr Booth's response contains an incomplete history of the Property and the Ordnance Stores as relevant to the Proposal. His response does not consider the publicly recognised heritage restoration and enhancement from August 2017 to the present by Salamanca Cream as the owner of the Property and the 18% owner of the Ordnance Stores building, including to the historic flagstone floor and the stone front facade of the Property facing Castray Esplanade. The contribution that this restoration and Salamanca Cream's use has made to the aims and objectives for the Activity Area has been acknowledged by many as directly enhancing the recognition of the Property's cultural heritage by visitors to the Property and the Activity Area.

Response:

The report contains a relevant review of the historical background of the site. Whilst I am aware that the unit under the ownership of the applicant is currently the subject of enforcement action for works undertaken without formal approval or not in accordance with approvals, a full review or report of past planning approvals within the individual unit or the wider building was not deemed necessary in this instance as the proposal relates to an area outside of the property's boundary. No information regarding past 'restoration' works was submitted, nor would it be pertinent given both the site being beyond the property's boundaries and that the consideration must be based solely on the merits of the proposal as submitted.

Question 2 (continued):

The current proposal for temporary and minimalist outdoor seating is a natural element of this rejuvenating use of the Property, providing an amenity rightly expected by local and visiting patrons in the Activity Area and the most natural opportunity for the public to appreciate the Property's heritage as envisioned by both the Sullivans Cove Scheme and Michael Grant's Conservation Management Plan. Mr Booth's response conspicuously omits these vital elements.

Response:

As set out in my report, clauses 16.2(a) and (b) of the scheme requires that use and development within Activity Area 2.0 Sullivans Cove 'Mixed Use' and within the Cove's road reserves should both demonstrably contribute to, and enhance the cultural heritage of, the area and should only be 'permitted' where they do not detract from the space's amenity or heritage value.

I am therefore of the opinion that due to the exceptionally high cultural heritage of the Ordnance Store at local, City and State level, and its relationship with the proposed

site, the proposed use and associated development would not adhere to the Objectives and Performance Criteria.

Question 3:

Mr Booth's response does not detail any specific element or aspect of the proposal relating to what is temporary, portable and lightweight furniture that he would suggest may be incompatible with the aims and objectives of the Scheme, nor does he provide any guidance or suggest any alternatives that would illustrate a basis for his opinion. The Scheme provisions in 16.2 (a) and (b) that his response refers to are obviously intended to cover all general areas of development and use in the Activity Area, going far beyond merely temporary placement of minimalist outdoor seating amenity. His opinion without specific review of any element of the proposal, simply contradicts the recognised cultural and heritage contributions of temporary portable outdoor seating associated with what are promoted uses in the Activity Area.

As set out in my report, clause 16.2(a) stipulates that 'All use and development within the Activity Area must demonstrably contribute to, and enhance the cultural heritage, built form....and spatial characteristics of the activity area'. It is considered that this should be interpreted that proposed uses and development should offer some reciprocal and appropriate contribution to the cultural heritage of the area, or, taking the Macquarie Concise Dictionary definition of the word 'enhance', 'raise to a higher degree'. In locations dominated by important culturally significant places, such as the Ordinance Stores, it is suggested that this could best be achieved through uses of high cultural worth that celebrate or at least, sit alongside the existing cultural associations of the location, ideally linked to development that includes works of appropriate refurbishment, re-instatement of original lost features or new development of such high architectural merit that it adds a permanent layer of cultural significance without dominating the original significance of the site.

Based on the above, I am of the opinion that the proposed commercialisation of the space though the proposed use without an appropriate contribution and enhancement of the Activity Area as defined in 16.2(a), would appear to run contrary to the stated Objectives and Performance Criteria. Similarly, the proposed seating, umbrellas and wind barriers, both in of itself and as an expression of the use, would also appear to fail to act as a contribution or an enhancement of the cultural significance of the area.

Question 4:

Mr Booth does not disclose any affiliations or dealings he may have with any third party objectors to the current proposal through his private involvement with the public advocacy group known as "Better Hobart", of which he is a publicly advertised member.

'Better Hobart' is a public group that discuss the future urban form of the city. I am both a member and have in the past contributed to in both written and visual articles. It should be noted however that 'Better Hobart' never discusses or comments upon

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live applications. On every occasion that I have been involved in articles in which there has been a public interest, I have first sought permission from my Director to ensure there would be no perception or actual conflict with my public duties and responsibilities. This has never arisen.

Upon learning that one of the representations was from a fellow member of 'Better Hobart', I sought advice from the Council's Senior Cultural Heritage Officer, Brendan Lennard, as to whether this could be seen putting me in conflict. He was of the opinion that it did not and did not feel that the case ought be dealt with in any way by an alternative heritage officer.

Conclusion:

The questions posed by the applicant do not change my original position that the application PLN-20-4 should be refused.

Recommendation:

That:

Pursuant to the *Sullivans Cove Planning Scheme 1997*, the Council refuse the application for outdoor dining furniture at 2/19-21 Castray Esplanade and the adjacent road reserve Battery Point for the following reasons:

1. The proposal does not meet the objective or the performance criterion with respect to clause 16.2(a) of the *Sullivans Cove Planning Scheme 1997* because it does not respect the cultural heritage and character of the Activity Area by not demonstrably contributing to, and enhancing the cultural heritage, built form and spatial characteristics of the activity area.
2. The proposal does not meet the objective or the performance criterion with respect to clause 16.2(b) of the *Sullivans Cove Planning Scheme 1997* because it does not conserve and enhance the amenity, character and cultural heritage values of the Cove's roads, because it will detract from the Cove's heritage value.



(Nick Booth)

CULTURAL HERITAGE OFFICER

Attachment A – PLN-20-4 - Planning Referral Office Cultural Heritage Report

Application Referral Cultural Heritage - Response

From:	Nick Booth
Recommendation:	Proposal is unacceptable.
Date Completed:	
Address:	2 / 19 - 21 CASTRAY ESPLANADE, BATTERY POINT ADJACENT ROAD RESERVE
Proposal:	Outdoor Dining Furniture
Application No:	PLN-20-4
Assessment Officer:	Richard Bacon,

Referral Officer comments:

The development application for the above site relates to the provision of outdoor dining furniture consisting of two separate tables, individual chairs, wind barriers and three umbrellas located on the public footpath 2.2ms forward of the front elevation of 19-21 Castray Esplanade, Battery Point. All of the furniture would not be attached to the footpath.

Under the definitions as set out within the Sullivans Cove Planning Scheme 1997, there is a clear distinction between Public Street Furniture and Outdoor Dining Furniture, the latter being defined as 'the placement or use of tables, chairs benches umbrellas and the like used for the purpose of extending the services of premises whose main function is the provision of food and beverages to the public'. The principal distinction therefore is that one is a public facility, whilst the other is private or be it at times within the public realm.

Under clause 24.4.2 and the associated table, Outdoor Dining Furniture is not specifically identified and as such falls under the definition of 'Other Building Construction or Works' within the Cove Floor, and as such are not deemed 'Exempt' and as such are discretionary. Figure 10. 'Commercial & Community Use of Public Space' identifies where the use of Public Urban Space for outdoor dining furniture should be considered as exempt. This does not include any part of Castray Esplanade. Whilst 24.5 Part B – 'Commercial and Community Furniture' stipulates that the provision of ephemeral furniture can 'add vitality and interest to the Cove', this should be subject to appropriate controls to avoid visual clutter and to ensure that the Cove remains attractive and clause 24.5.2B confirms that it remains within the remit of the Council to determine if a permit can be approved or refused. It is therefore considered that the application is discretionary and that the appropriateness of the proposed location and form of the Outdoor Dining Furniture can be considered against the provisions of the Planning scheme.

With regard to Schedule 1 – 'Conservation of Cultural Heritage Values', 22.1 'Introduction' states that 'Conservation of the cultural heritage values of Sullivans Cove is the primary objective of the Scheme' whilst 22.2 'Objectives' include ensuring that 'recognisable historic character of Sullivans Cove is not compromised by new development'.

Notwithstanding the above however, 22.5.4 stipulates that buildings or works within 10 metres of, and adjacent to, a place of cultural significance and which does not exceed the height of that place, or exceed the area of its façade by a factor of 2, is deemed to be 'permitted' in respect to Schedule 1. As such, it is considered that in this instance the proposal cannot be considered against the specific heritage provisions of Schedule 1 of the Planning Scheme.

Beyond Schedule 1 however, it is acknowledged that Part C – 'Application of the Scheme' states at Part 10 "Decisions" that before determining any application to use or develop land, the Planning Authority must consider the objectives and impacts upon the heritage, urban and spatial character of each of the identified Activity Areas within the Cove.

The site in question falls within Activity Area 2.0 Sullivans Cove 'Mixed Use'.

Whilst the Activity Area's deal primarily with the issue of Uses, 16.2 'Objectives and Performance Criteria for Activities' states that 'objectives and performance criteria apply to all **uses** and **development** in the activity area. Objective (a) stipulates that;

'To ensure that activities within the Cove respect the cultural heritage and character of the Activity Area.'

The associated Performance Criteria states that;

*'All use and development within the Activity Area must **demonstrably contribute to, and enhance** the cultural heritage, built form (bulk, height, volume, urban detail) and spatial characteristics of the activity area.'*

Objective (b) stipulates that;

*'To ensure that the amenity, character and cultural heritage values of the Cove's roads and other public spaces are **conserved and enhanced**'*

The associated Performance Criteria states that;

'Use and development on road reserves, public parks and other public spaces within the activity area shall only be 'permitted' where they do not detract from the space's amenity or heritage value.'

Objective (c) stipulates that;

'To encourage use and development which generate pedestrian movement through the activity area.'

The associated Performance Criteria states that;

'Outdoor dining and other outdoor pedestrian activities are encouraged in appropriate locations'

In view of the above, it is considered pertinent to examine the relevant cultural heritage significance of the adjoining property at 19-21 Castray Esplanade.

No.19 to 21 Castray Esplanade, or The Ordinance Store as it is better known as, dates from the 1830's and represents development associated with the first major European expansion of the Capitol as a growing economic and trading port beyond its relatively simple origins. This increase in trade was at the same time reflected in the need for the Government to find a suitable location for its Ordinance Store which up to that point had been leased through a series of private warehouses and largely inappropriate storehouses. Therefore, with the construction of the 'New Wharf' on the southern side of the Cove as a series of reclamation landfills and Timber Wharf beginning in the mid 1820's, and works starting on the first sandstone warehouse in what is now known as Salamanca Place, it was determined by the Government that a new purpose built Ordinance Store be constructed adjacent to the Wharf. As such, in March 1833 the then State appointed Civil Engineer, John Lee Archer, was instructed to draw up plans for a new Ordinance Store which:

"It is to be understood that the plan cannot be too plain nor too substantial..."
(Pg3 '15 Castray Esplanade Historical Report' Lindy Scripps April 1994)

The plans drawn up by Archer were for a larger and grander structure than actually constructed, including central and terminal pavilions set slightly forward of the main building line and provided with doric pilasters along with a grand central archway. Indeed it would appear that the overall design was intended to act as a feature of the waterfront and a balancing building in both importance and style to the Archer Designed Custom House (now Parliament House) at the other end of the Esplanade. Whilst it soon became apparent that due to the additional costs associated with the required reclamation and excavation needed to accommodate the much larger set of buildings we see today, the two recessed elements that were constructed (nos.13-17 and 19-21 Castray Esplanade) still bare the same arcades to the ground floor elevations with deeply set stone jambs and regular window arrangement. Indeed, it was intended to always complete the full plan when additional funds were found and that the two stores constructed were only started to meet the pressing need.

Construction of the two Ordinance Store buildings started in July 1834 after delays due to land ownership issues, with the sandstone being principally taken from the main Domain quarry, with what is now No.13-17 Castray Esplanade being predominantly constructed first. Work on the second store went into full production in June 1836 with The Ordinance Department formally moving into the new stores in March 1840. The local newspaper, The Hobart Town Courier described the Stores as forming...

"...a conspicuous ornament to the harbour and presents a commanding object to vessels coming up the river."
(Pg.6 '15 Castray Esplanade Historical Report' Lindy Scripps April 1994)

An additional storey was added to No.19-21 Castray Esplanade in 1913-14 in a matching style and some elements of original fabric have been replaced (most notably the roofing material, which replaced the original Wood Shingles from Port Arthur soon after completion). Although several small alterations occurred during the lifetime of the building, including the provision of new side gates, fire escapes and roof lights, it is considered that the building, due to its robust deep set stone construction, strong lines and clear Colonial Georgian symmetry has remained notably unaltered and is immediately recognisable as the one designed by Archer and completed during a period of immense expansion and new found confidence in the history of Hobart and the wider State.

As set out above in the examination of the history of the Building, it is considered that the Building, along with the matching former Ordinance Store at No.13-17 Castray Esplanade, represents one of the State's most important early major civil developments. It was designed by the then State's Civil Engineer John Lee Archer who also designed some of the State's most notable and important early buildings and structures including Parliament House which it architecturally references. It is a major example of civic Colonial Georgian Sandstone architecture, constructed from local materials by local workforce and, importantly, remains largely unaltered and free from unfortunate extension or alteration. The Building represents and signifies a key part in the early expansion in the history of the European settlement of the State Capitol and Tasmania more generally, and its unaltered form springs directly from its original intended use and is clearly recognisable as such.

Based on the above, it is therefore considered that the Building is of significant cultural and architectural importance to the heritage of Hobart and the State, both due to its individual and collective components. Further, it is considered that due also to its imposing proportions and prominent position within the townscape, it can be described as a 'landmark building that has strong cultural townscape associations within the wider community and plays a significant role in defining and re-enforcing the sense of place and the on-going history of Sullivans Cove as

an operating port. A fact in part reflected in its appearance on the Tasmanian Heritage Register.

Given the relative importance of the building in question therefore, it is questioned as to whether the proposed provision of Outdoor Dining Furniture, even when temporary and not fixed to the footpath, is a use and development that meets the Performance Criteria of 'demonstrably contribute to, and enhance the cultural heritage, built form...and spatial characteristics of the activity area' and 'only be 'permitted' where they do not detract from the space's amenity or heritage value' as required under 16.2 for Activity Area 2.0.

Representations

It is noted that 8 representations have been received relating to the proposal, all of which raise objections to the proposed Outdoor Dining Furniture.

These comments can be summarised as follows –

- Street dining furniture directly outside this heritage-listed building disrespects and detracts from its heritage status.
- The proposed street furniture will not compliment the cultural significance of the building, will reduce the apparent authenticity of the place, and the works are individually prominent.
- The footpath to the building frontages along Salamanca Place has been taken over and Privatised by a mounting accumulation of tables and chairs, umbrellas, shade structures, privacy screens and planters etc. This does diminish the visual experience of the historic heritage context.
- The Ordnance Store is one of the most significant buildings remaining from the Van Dieman's Land colony.
- The proposal would detract from the heritage of the Ordnance Store. The umbrellas would be sited very close to the front façade, denying the public the ability to appreciate the effect of the building in its totality. The tables and chairs and barriers would add to the visual clutter. The siting of a cluster of umbrellas at one end of the building would obscure the arcade effect and disrupt the symmetry of the structure.
- The Ordnance Store, 19-21 Castray Esplanade, is classified under the Planning Scheme as a special building of historical interest and natural beauty. First commissioned in 1832, the Ordnance Store is one of Battery Point's most prominent heritage listed buildings. The building was designed by the renowned colonial architect, John Lee Archer and features magnificent, fine sandstone quarried from the cliffs behind Salamanca by convicts, and includes the original sea-wall at the rear of the building and visible from the street. The building is included in many walking tours, in Open House Hobart and is featured in many blogs and books on Tasmanian heritage. The protection of the heritage and cultural values and integrity of this unique building is of paramount concern. Under the heritage area of the Planning Scheme, it is stated that the heritage values should be "maintained and enhanced". This heritage belongs to all Tasmanians and is widely appreciated by visitors to Battery Point. The placement of any outdoor furniture with tall umbrellas, affixed perspex and metal structures, tables and chairs would markedly detract from the heritage values of the building, by obscuring lines of sight of the building, creating unpleasant visual clutter and allowing for potential damage to the fine sandstone comprising the building by creating obstacles for the passage of people along the narrowing footpath.

- The placement of street furniture and barricades will unfortunately detract from the beautiful heritage building. The Ordnance Store is a prime example of early colonial architecture and is often viewed in the context of tours on Tasmanian architecture. The cafe's furniture will become a part of the public views of the building, and will detract within photographs.

From the comments made above, it is considered that the cultural significance of the building is both recognised and prized by the local community.

Consideration of Proposals

It is noted that the provision of outdoor dining uses and the associated development of outdoor dining furniture has become a well-established feature of the Cove, in particular within Salamanca Place and the new food and beverage uses that have occupied many of the former warehouses that face onto the floor of the Cove. However, this has up to now not occurred to the front of the former Ordnance Stores other than to the area directly in front of the modern Hotel infill between the two. Indeed, other than limited numbers of modest signage and minor alterations to the windows and doors that face onto the roadside, external expression of the new uses, either commercial or residential, that now occupy the former Stores are extremely limited and restrained.

It is considered that it is precisely this limited expression of the new uses that have had a major impact on retaining the distinctive architectural form and language of the buildings. The buildings are based on classical proportions and omit a grand, robust, dignified and stately character as befitting what was intended to be an expression of Georgian confidence in the new city and wider state. Unlike the later commercial Warehouses of Salamanca Place that were developed by individuals and independent commercial concerns, the Ordnance Stores were designed by Archer, the then State Architect, financed, built and initially occupied by the State and was absolutely built to an exceptional quality in both design and materials. The proposed use and development would allow the internal commercial re-use of the buildings to spill out beyond its grand façade. It is considered that it could be argued that this would essentially reduce the building to a backdrop to the new outdoor dining, effectively acting to downgrade the cultural weight of the Ordnance Stores as merely an ornament to the commercial use of the site.

16.2 (a) stipulates that *'All use and development within the Activity Area must demonstrably contribute to, and enhance the cultural heritage, built form....and spatial characteristics of the activity area'*. It is considered that this should be interpreted that proposed uses and development should offer some reciprocal and appropriate contribution to the cultural heritage of the area, or, taking the Macquarie Concise Dictionary definition of the word 'enhance', 'raise to a higher degree'. In locations dominated by important culturally significant places, such as the Ordnance Stores, it is suggested that this could best be achieved through uses of high cultural worth that celebrate or at least, sit alongside the existing cultural associations of the location, ideally linked to development that includes works of appropriate refurbishment, re-instatement of original lost features or new development of such high architectural merit that it adds a permanent layer of cultural significance without dominating the original significance of the site.

Based on the above, it is considered that the proposed commercialisation of the space though the proposed use without an appropriate contribution and enhancement of the activity area as defined in 16.2 (a) would appear to run contrary to the stated objectives and performance criteria. Similarly, the proposed seating, umbrellas and wind barriers, both in of itself and as an expression of the use, would also appear to fail to act as a contribution an enhancement of the cultural significance of the site.

Further, it is considered that given the described benefit of having the new uses within the

Ordinance Stores retained within its walls as opposed to spilling out, and the high quality of the Ordinance Stores themselves, the proposed use and the associated development of outdoor furniture standing in front of and partially obscuring the buildings would actively detract from the spaces heritage value, contrary to 16.2 (a) and 16.2 (b).

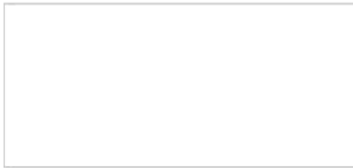
Conclusions

In view of the above, it is considered that 22.5.4 'Permitted' 'Building or Works' on sites adjacent to a place of cultural significance provides would, due to its exceptionally accommodating set of criteria, define the proposed Outdoor Dining Furniture as 'Permitted'. However, as set out above, under 16.2 (a) and (b) it is required that use and development within the Activity Area of Sullivans Cove 'Mixed Use' within the Cove's road reserves that new uses and development should both demonstrably contribute to and enhance the cultural heritage of the area and should only be 'permitted' where they do not detract from the space's amenity or heritage value.

Given the above, it is considered that due to the exceptionally high cultural heritage of the Ordinance Store at local, City and State level, and its relationship with the proposed site the proposed use and associated development would not adhere to the Objectives and Performance Criteria as set out under 16.2 of the Sullivans Cove Planning Scheme by virtue of both failing to demonstrably contribute to, and enhance the cultural heritage of the area, and would indeed detract from those spaces heritage values.

Recommendation

That the application be refused.



Nick Booth
Heritage Officer
4 March 2020

Ben Ikin

From: Alex Lazarou [REDACTED]
Sent: Friday, 6 March 2020 3:24 PM
To: Ben Ikin; Richard Bacon
Cc: Records Unit
Subject: PLN-20-4 Request for Mediation

Dear Mr Ikin,

I refer to our recent correspondence including telephone conversations on 3 and 4 March in which the Planning department's recommendation of our proposal was expressed, pending Council's heritage referral officer's response, which was received yesterday and dated 4 March.

I note that Council's Planning report confirms our previous discussion that our proposal for temporary outdoor furniture has support and approval from all levels of Council's administration.

The only person opposing the application is Mr. Booth, based solely on his personal opinion as expressed in his 4 March response. His response is without regard to a number of vital elements. These are:

- Mr Booth's response does not engage with or even mention our Heritage Report provided with the Proposal, which specifically sets out the contributions to and enhancement of the cultural heritage of the Property and the Activity Area as represented by the Proposal. For instance, the statement of architectural historian Michael Grant in the relevant Conservation Management Plan extracted in the Proposal that: "Traditionally, the circulation of the building was out from the ground floor...If a food service function was installed in the ground floor with temporary seating on a widened footpath with the activity moving between the seating and the inside of the building the original nature of the building could be better interpreted by the general public."

- Mr Booth's response contains an incomplete history of the Property and the Ordnance Stores as relevant to the Proposal. His response does not consider the publicly recognised heritage restoration and enhancement from August 2017 to the present by Salamanca Cream as the owner of the Property and the 18% owner of the Ordnance Stores building, including to the historic flagstone floor and the stone front facade of the Property facing Castray Esplanade. The contribution that this restoration and Salamanca Cream's use has made to the aims and objectives for the Activity Area has been acknowledged by many as directly enhancing the recognition of the Property's cultural heritage by visitors to the Property and the Activity Area. The current proposal for temporary and minimalist outdoor seating is a natural element of this rejuvenating use of the Property, providing an amenity rightly expected by local and visiting patrons in the Activity Area and the most natural opportunity for the public to appreciate the Property's heritage as envisioned by both the Sullivans Cove Scheme and Michael Grant's Conservation Management Plan. Mr Booth's response conspicuously omits these vital elements.

- Mr Booth's response does not detail any specific element or aspect of the proposal relating to what is temporary, portable and lightweight furniture that he would suggest may be incompatible with the aims and objectives of the Scheme, nor does he provide any guidance or suggest any alternatives that would illustrate a basis for his opinion. The Scheme provisions in 16.2 (a) and (b) that his response refers to are obviously intended to cover all general areas of development and use in the Activity Area, going far beyond merely temporary placement of minimalist outdoor seating amenity. His opinion without specific review of any element of the proposal, simply contradicts the recognised cultural and heritage contributions of temporary portable outdoor seating associated with what are promoted uses in the Activity Area.

- Mr Booth does not disclose any affiliations or dealings he may have with any third party objectors to the current proposal through his private involvement with the public advocacy group known as "Better Hobart", of which he is a publicly advertised member.

On the above grounds, I request that Council participate in a mediation regarding the Proposal as provided for by Section 57A of the Land Use and Planning Act 1993.

If you require any other information please call me on [REDACTED]

Thankyou

Alexander Lazarou