



DEVELOPMENT ASSESSMENT SPECIAL COMMITTEE (DASC) AGENDA

4 OCTOBER 2022

COUNCIL CHAMBERS

COMMUNITY ADMINISTRATION CENTRE (CAC)

NOTICE OF MEETING

Notice is hereby given that the next meeting of the Development Assessment Special Committee (DASC) will be held at the Community Administration Centre (CAC), 47 Cole Street, Sorell on Tuesday, 4 October 2022 commencing at 4:30 pm.

C E R T I F I C A T I O N

I, Robert Higgins, General Manager of the Sorell Council, hereby certify that in accordance with Section 65 of the *Local Government Act 1993*, the reports in this Agenda have been prepared by persons who have the qualifications and experience necessary to give such advice. Information and recommendations or such advice was obtained and taken into account in providing general advice contained within the Agenda.

ROBERT HIGGINS
GENERAL MANAGER
28 September 2022



AGENDA

FOR THE DEVELOPMENT ASSESSMENT SPECIAL COMMITTEE (DASC) MEETING
TO BE HELD AT THE COMMUNITY ADMINISTRATION CENTRE (CAC), 47 COLE
STREET, SORELL ON TUESDAY 4 OCTOBER 2022

TABLE OF CONTENTS

1.0	ATTENDANCE	1
2.0	CONFIRMATION OF THE MINUTES OF 20 SEPTEMBER 2022	1
3.0	DECLARATIONS OF PECUNIARY INTEREST	1
4.0	LAND USE PLANNING	2
4.1	DEVELOPMENT APPLICATION NO. DA 2022 / 237 - 1	2
4.2	DEVELOPMENT APPLICATION NO. DA 2019 / 386 - 2	11

1.0 ATTENDANCE

^

Chairperson Mayor Vincent
Deputy Mayor N Reynolds
Councillor K Degrassi
Councillor V Gala
Councillor G Jackson
Councillor C Torenus
Councillor M Reed
Councillor B Nichols
Robert Higgins, General Manager

2.0 CONFIRMATION OF THE MINUTES OF 20 SEPTEMBER 2022

RECOMMENDATION

“That the Minutes of the Development Assessment Special Committee (DASC) Meeting held on 20th September 2022 be confirmed.”

3.0 DECLARATIONS OF PECUNIARY INTEREST



In considering the following land use planning matters the Development Assessment Special Committee intends to act as a planning authority under the *Land Use Planning and Approvals Act 1993*.

4.0 LAND USE PLANNING

4.1 DEVELOPMENT APPLICATION NO. DA 2022 / 237 - 1

APPLICANT: MISHO & ASSOCIATES

PROPOSAL: PARTIAL CHANGE OF USE FROM GENERAL RETAIL & HIRE TO CAFE/RESTAURANT

ADDRESS: 394 ARTHUR HIGHWAY, SORELL

RECOMMENDATION

That pursuant to Section 57 of the *Land Use Planning and Approvals Act 1993* Council resolve that Development Application No. DA 2022 / 237 - 1 for a partial change of use from general retail and hire to café/restaurant at 394 Arthur Highway, Sorell for Misho and Associates be approved, subject to the following conditions:

1. Development shall generally be in accordance with the endorsed plans submitted on 8 August 2022 and further details dated 21 August 2002 except as may be amended by the conditions of this permit.
2. The maximum number of seats in the restaurant and café shall not exceed 100 and 60 respectively. The lounge is only to be used by guests waiting to be seated in the restaurant.

NOTE: THE FOLLOWING ADVICE APPLIES TO THIS PERMIT

- This permit shall lapse at the expiration of two (2) years from the date on which it is granted if the development and use is not substantially commenced within that period.
- This permit does not imply that any other approval required under any other by-law or legislation has been granted.
- Separate Building Approval may be required prior to commencement of the development.

You may appeal against the above condition/s, any such appeal must be lodged within fourteen (14) days of service of this notice to the Resource Management and Planning Appeal Tribunal, Level 1, 144-148 Macquarie Street Hobart 7001. Ph ☎ 6165 6794 or email rmpat@justice.tas.gov.au.



Introduction

A retrospective application is made for a part change of use.

The original approval provided a general retail and hire use in the northern part of the upper level, leading into a café and then a restaurant. This area has, however, been fitted out as a café. The upper level now consists of a café in the northern section leading into a larger restaurant. No external changes are proposed.

The proposal is made on the basis of no net increase in the number of café and restaurant seating. The applicant submits that much of the original café floor area is now lounge seating for restaurant guests.

At the time of writing the café has commenced use whilst the restaurant has been fitted out but is not in use.

The application follows investigation by Council officers and subsequent correspondence sent to the owner and operator.

Strategic plan

The proposal will not affect implementation of Council's Strategic Plan 2019 – 2029.

Annual plan

The proposal will not affect implementation of Council's Annual Plan 2022/2023.

Environmental implications

There are no significant environmental implications associated with this proposal.

Asset management implications

There are no significant asset management implications.

Risk management implications

There are no significant risk management implications associated with this proposal.

Community implications

There are no significant implications for the community associated with this proposal.

Statutory implications

Zone:	Significant Agriculture
Overlay:	Bushfire-Prone Areas, Waterway and Coastal Protection, Scenic Landscape Area
Code:	Parking and Access
Use Classification:	Food Services

Representations

The application was advertised and representations closed on 12 September 2022. One representation was received.

Referrals

The application was referred to Council's Engineering, Plumbing and Environmental Health Departments. Environmental Health provided comments and conditions that require a limitation on the maximum number of seats in the café and restaurant to ensure that the approved capacity of the wastewater system is not exceeded. The condition is included in the recommendation.

Date of Receipt of Application

08 August 2022

Date by Which a Decision Must be Made

6 October 2022

Report

This is an application for Partial Change of Use from General Retail & Hire to Cafe/Restaurant at 394 Arthur Highway, Sorell.

The property is a single title, which has been recently developed for a large restaurant and several visitor accommodation units.

The application consists of a planning report from All Urban Planning, RFI response from All Urban Planning and floor plan dated 16 August 2022 (Council ref P2).



Zone

The change in use is subject to clause 27.3.3. No other use or development standards of the zone are applicable.

Clause 27.3.3 P1 provide:

A discretionary non-agricultural use must not conflict with or fetter agricultural use on the site or adjoining land having regard to all of the following:

- (a) the characteristics of the proposed non-agricultural use;*
- (b) the characteristics of the existing or likely agricultural use;*
- (c) setback to site boundaries and separation distance between the proposed non-agricultural use and existing or likely agricultural use;*
- (d) any characteristics of the site and adjoining land that would buffer the proposed non-agricultural use from the adverse impacts on amenity from existing or likely agricultural use.*

The original approval included a number of resource development elements, including the as completed expansion of the cherry orchard. Accordingly, the original form of retail, café and restaurant uses on the upper level has been deemed to be consistent with this performance criteria.

The change in use, in the terms presented (i.e., no seating capacity increase and the removal of the retail space) is unlikely to change any existing or potential external impacts to agricultural land or the agricultural potential of the site. There is no change in the footprint of buildings or infrastructure. There are no operational changes, such as hours. It is considered that the performance criteria is satisfied.

Code

The parking and access code applies. The All Urban Planning report correctly identifies the net quantitative increase in floor area of 12.3 spaces. This is due to the more intensive nature of food services relative to retail in terms of parking demand.

All Urban Planning refer to the original TIA. That TIA suggested that 50 spaces was sufficient for a 150 seat restaurant. The actual seating numbers are 160 with provision of 85 spaces close to the main café/restaurant building and 110 spaces in total across the entire development.

E6.6.1 P1 provides:

The number of on-site car parking spaces must be sufficient to meet the reasonable needs of users, having regard to all of the following:

- (a) car parking demand;*
- (b) the availability of on-street and public car parking in the locality;*
- (c) the availability and frequency of public transport within a 400m walking distance of the site;*
- (d) the availability and likely use of other modes of transport;*
- (e) the availability and suitability of alternative arrangements for car parking provision;*
- (f) any reduction in car parking demand due to the sharing of car parking spaces by multiple uses, either because of variation of car parking demand over time or because of efficiencies gained from the consolidation of shared car parking spaces;*
- (g) any car parking deficiency or surplus associated with the existing use of the land;*
- (h) any credit which should be allowed for a car parking demand deemed to have been provided in association with a use which existed before the change of parking requirement, except in the case of substantial redevelopment of a site;*
- (i) the appropriateness of a financial contribution in lieu of parking towards the cost of parking facilities or other transport facilities, where such facilities exist or are planned in the vicinity;*
- (j) any verified prior payment of a financial contribution in lieu of parking for the land;*
- (k) any relevant parking plan for the area adopted by Council;*
- (l) the impact on the historic cultural heritage significance of the site if subject to the Local Heritage Code;*
- (m) whether the provision of the parking would result in the loss, directly or indirectly, of one or more significant trees listed in the Significant Trees Schedule.*

The practical demand for parking, which is considered by sub-clause (a), is unchanged given seating numbers. The other clauses have little direct relevance to the use or development. A discretion below the quantitative rate of the planning scheme is reasonable.

At the time of preparing this report, one representation was received.

Issue	Response
Reiterating concerns raised for the original approval – privacy, agricultural use and traffic.	Noted
“We are greatly concerned by the reduced setbacks indicated in the diagram on page 53 (DA 07) which are reduced from the original DA2018/00154-1. Page 53 indicates setbacks of 15m, 20m and 30m to our neighbouring agricultural property, we do not support the current setbacks. We would appreciate Council giving thoughtful consideration into how Discretionary Use Standard 27.3.3 and 27.4.2 applies.”	DA 07 is from the original application and is dated May 2018. This drawing is an attachment to the original TIA which was re-submitted as part of this application. There is no change to the siting of any building on the site. The as built siting is documented in a site plan from Lark and Creese surveying which was included, and approved, in the minor amendment to the 2018 permit (ref 5.2018.154.2 – subject to appeal).
Lighting	The quoted Australian Standard is not relevant. It applies to lighting of public roads and public spaces. No change to external lighting is proposed.
Future increase in seating and associated impacts.	A condition regarding seating is considered reasonable.

Conclusion

The development application demonstrates compliance with each applicable Standard of the *Sorell Interim Planning Scheme 2015* and is accordingly recommended for approval subject to conditions.

Shane Wells
Senior Planner

Attachments:
Representation
Amended Floor Plan
All Urban Planning Report (Separate Attachment)



From:
To: [Sorell Council](#)
Cc: [Robert Higgins](#)
Subject: Representation on Partial Change of Use: DA 2018 / 154 – 1 (394 Arthur Highway)
Date: Monday, 12 September 2022 10:49:06 AM

Representation to proposal 5.2022.237.1
Partial Change of Use: DA 2018 / 154 – 1 (394 Arthur Highway)

Mr Robert Higgins
 General Manager, Sorell Council
Sorell.council@sorell.tas.gov.au

Dear Robert,

We initially submitted a representation to DA 2018/154-1 and hence submit this representation for partial change (5.2022.237.1) to maintain currency on the aspects we raised at that time. The main themes we raised were: maintain privacy, protect agricultural rights and land, better solution to our shared entrance/exit.

Setbacks

We are greatly concerned by the reduced setbacks indicated in the diagram on page 53 (DA 07) which are reduced from the original DA2018/00154-1. Page 53 indicates setbacks of 15m, 20m and 30m to our neighbouring agricultural property, we do not support the current setbacks. We would appreciate Council giving thoughtful consideration into how Discretionary Use Standard 27.3.3 and 27.4.2 applies.

Lighting

We note the application advises that lighting standard AS.1185 is not applied. We seek councils' assurance that Australia's artificial lighting guidelines, as endorsed at COP13 will be applied, given this development is in radius to Ramsar wetlands.

Operating Hours & Seating Density

We note the operational hours and density of seating do not change, even though floor area does increase. We would like to understand how any future expansion of these aspects would be addressed as this would affect carparking, waste water, traffic impact and other aspects of the original DA.

Conclusion

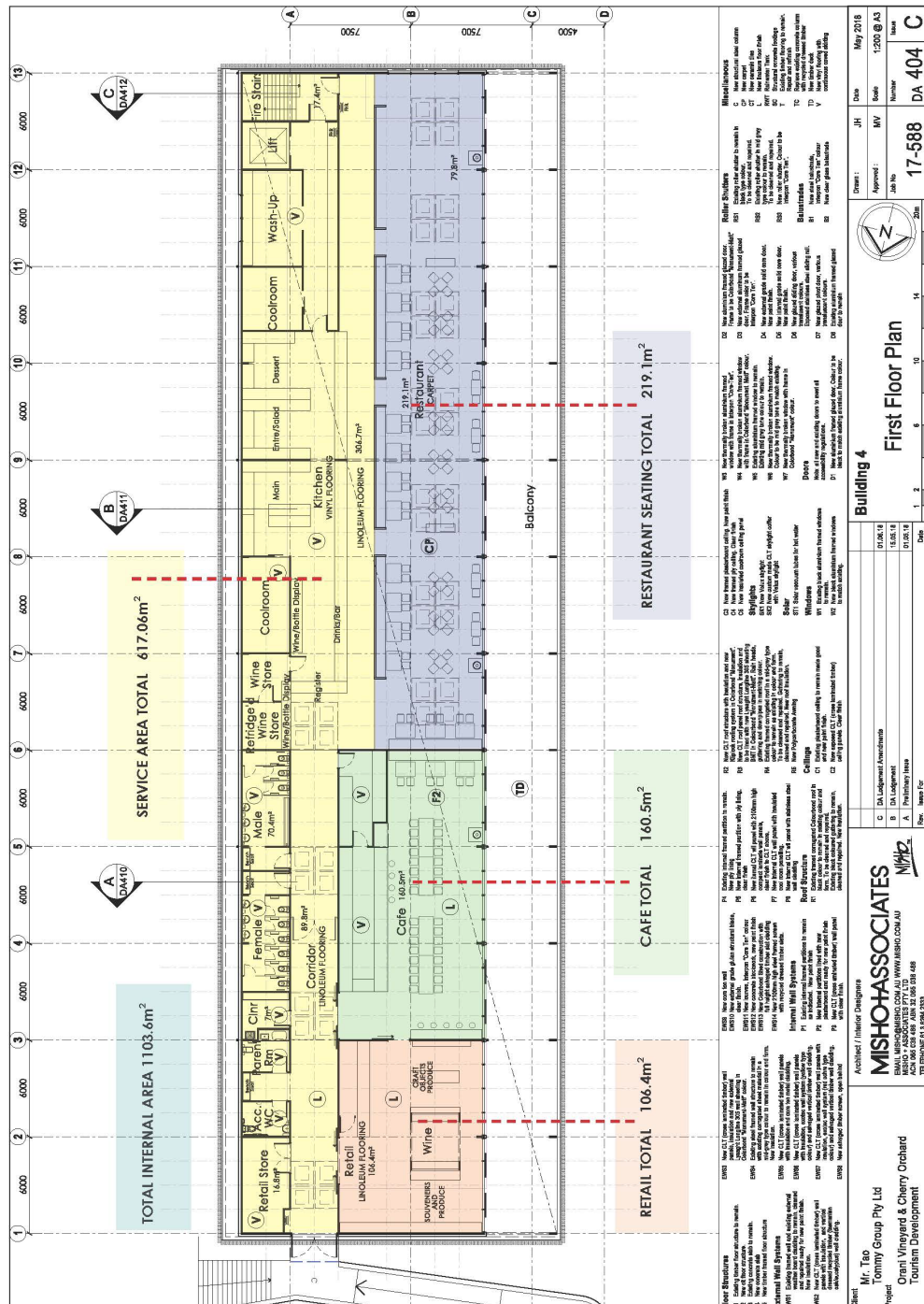
We were supportive of this development as was prescribed in original DA 2018/154-1 for: 15 farm stay accommodation, 72 picker accommodation, café (60 seats), restaurant (100 seats) and general retail. We share a large boundary and proximity with the development and want to balance our support with proper governance and process for amendments so that we do not suffer lasting ill effects from incremental increases to scope and size of this development.

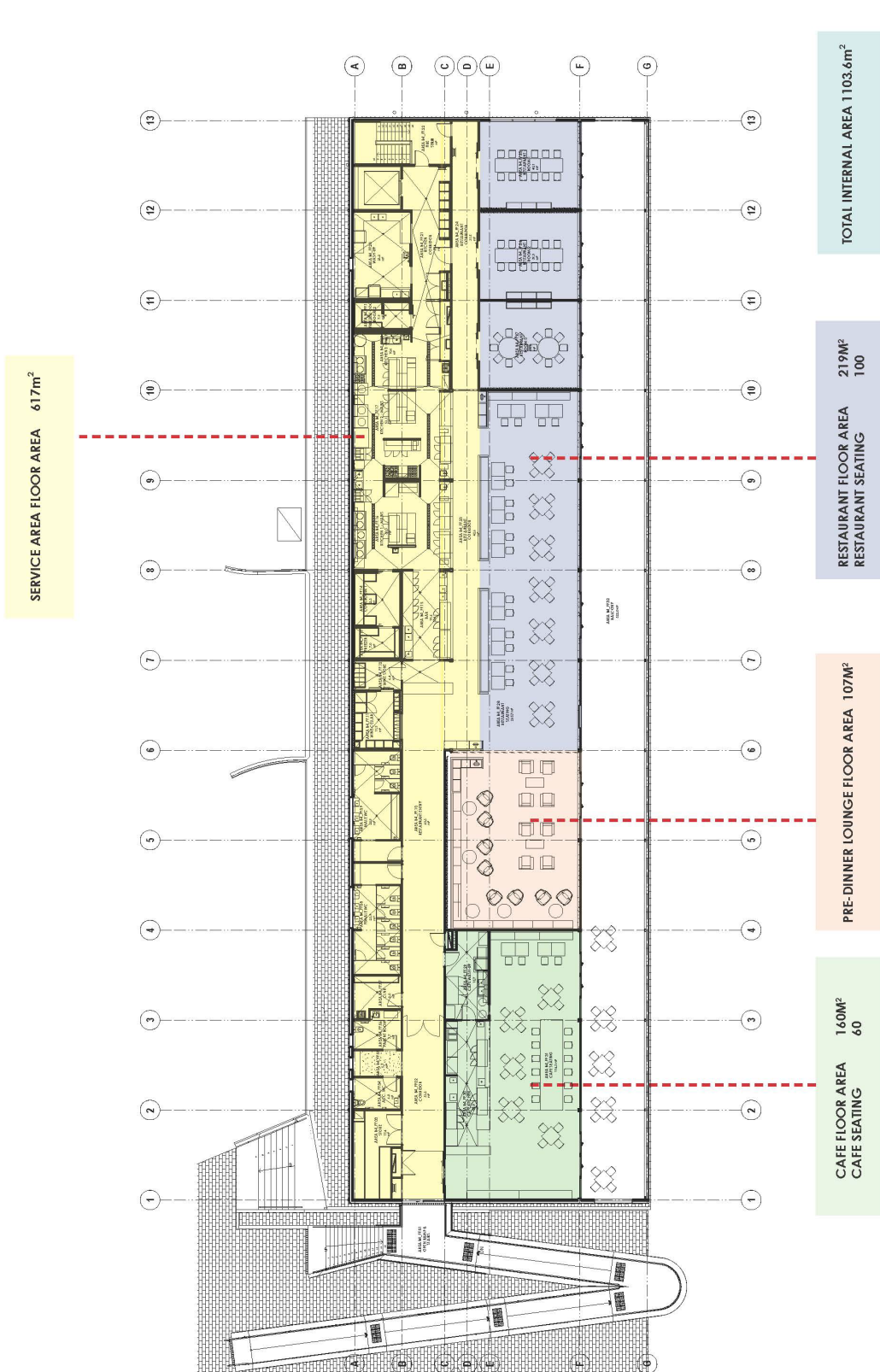
We consider it Councils' duty to consider any subsequent modifications through the lens of **"if this was included in the original DA would Council have granted a discretionary permit"** as it is Significant Agricultural Zone.

Regards,



AGENDA
DEVELOPMENT ASSESSMENT SPECIAL COMMITTEE (DASC) MEETING
4 OCTOBER 2022





IRON CREEK BAY_B4
FIRST FLOOR PLAN_SEATING
1:250@A3
ISSUE A_16.8.22

MISHO+ASSOCIATES

4.2 DEVELOPMENT APPLICATION NO. DA 2019 / 386 - 2

APPLICANT: ALL URBAN PLANNING

PROPOSAL: MINOR AMENDMENT – CHANGE OF FLOOR PLAN AND ELEVATIONS OF DWELLING

ADDRESS: 394 ARTHUR HIGHWAY, SORELL

RECOMMENDATION

“That pursuant to Section 56 of the *Land Use Planning and Approvals Act 1993* Council resolve that permit DA 2019 / 386 be amended and that condition 1 be replaced with:

1. Development shall generally be in accordance with the **amended drawings submitted on 20/09/2022 (ref TH-CC 02 A, TH-CC 100-106 B, TH-CC 120-121 b, TH-CC 130 b, TH-CC 132b and TH-CC 140b)** except as may be amended by the conditions of this permit.”

Introduction

Application is made for a minor amendment to a previously approved dwelling. Changes to the floor plan and elevations are sought.

Permit DA 2019/386 approved a change of use from a dwelling to a manager’s residence associated with the Orani/Iron Creek Farm Stay development and also approved the new dwelling that is subject to this request.

Strategic plan

The proposal will not affect implementation of Council’s Strategic Plan 2019 – 2029.

Annual plan

The proposal will not affect implementation of Council’s Annual Plan 2022/2023.

Environmental implications

There are no significant environmental implications associated with this proposal.

Asset management implications

There are no significant asset management implications.



Risk management implications

There are no significant risk management implications associated with this proposal.

Community implications

There are no significant implications for the community associated with this proposal.

Statutory implications

Zone: Significant Agriculture Zone

Overlays: Bushfire-Prone Areas; Scenic Landscape Area.

Codes: Nil

Use: Single dwelling

Representations

Two representations were received on the original application. Issues raised included need for the two parts of the proposal, setbacks, traffic and protection of agricultural land.

Referrals

The application was referred to Council's Engineering, Plumbing and Environmental Health Departments. No comments are made or conditions required.

Date of Receipt of Application

20 September 2022.

Date by Which a Decision Must be Made

17 October 2022

Report

The approved dwelling is located west of the recent development, and north of the orchard, and is located between two existing dams. A sealed driveway is proposed from the existing internal road network. The approved dwelling has five bedrooms across two storeys.



The minor amendment request has the following elements:

- Change in shape of the dwelling with a simpler form;
- A new ground level deck on the western elevation;
- A larger deck on the south elevation;
- A gross floor area of 316m² for the lower level versus 353m² as approved;
- A larger external dining area off the southern elevation (now referred to as a tea house) which is now 9.5m x 4.5m (versus 6.4m x 5.7m) with a higher roof;
- Rendered brick wall to the majority of the lower level and vertical timber to the upper level (replacing a predominate mix of stone and rendered brick wall with timber features); and
- Various changes to the size, number and location of windows with less overall glazing.

The building location does not change.

This permit is substantially commenced due to the completion of the change of use of the original dwelling to manager's residence notwithstanding the fact that works on the proposed dwelling have not commenced within the two year period provided by the *Land Use Planning and Approvals Act 1993*.

Compliance with the relevant legislative requirements is outlined in the following table.

Section		Compliance statement
1	<i>The owner of land, or a person with the consent of the owner, may request the planning authority in writing to amend a permit which applies to that land and which is a permit issued by the planning authority.</i>	Complies. Orani Pty Ltd is the applicant for this minor amendment. All Urban Planning is the contact. Orani Pty Ltd is the owner of the land.
1a	<i>A planning authority that receives a request under subsection (1) to amend a permit – (a) must, within the 28-day period after the request was received, amend, or refuse to amend, the permit; and (b) must, within 7 days – (i) after amending the permit, comply with subsection (3) ; or (ii) after refusing to amend the permit, give notice of the refusal to the person who made the request.</i>	Complies.
2	<i>The planning authority may amend the permit if it is satisfied that the amendment – (aa) is not an amendment of a condition or restriction, specified in the permit, that</i>	Not applicable.

	<i>is required, imposed or amended by the Appeal Tribunal; and</i>	
	<i>(a) does not change the effect of a condition or restriction, specified in the permit, that is required, imposed or amended by the Appeal Tribunal; and</i>	Not applicable.
	<i>(b) will not cause an increase in detriment to any person; and</i>	Complies. The location of the dwelling is well separated from adjoining land. The minor amendment will result in a different design and form. However, the difference is not significant nor would it cause an increase in detriment to any person given the separation distances involved.
	<i>(c) does not change the use or development for which the permit was issued other than a minor change to the description of the use or development.</i>	Complies. The proposal is considered to be a minor change to the description of the use and development as it remains a two storey, five-bedroom dwelling in the same location within similar floor area, design and scale.
2A	<i>An amendment of a condition or restriction specified in a permit is not to be taken to contravene subsection (2)(a) by reason only that other conditions or restrictions have been specified in the permit, or amended, by the Appeal Tribunal.</i>	Not applicable.
2B	<i>A condition or restriction (the fresh condition or restriction) specified by the planning authority in a permit is not to be taken, for the purposes of this section, to be required or imposed by the Appeal Tribunal if – (a) the fresh condition or restriction is to the same effect as a condition or restriction that was specified in the permit by the Appeal Tribunal before the planning authority specified the fresh condition or restriction in the permit; and</i>	Not applicable.

	(b) <i>the fresh condition or restriction is not referred to in the decision, in relation to the permit, of the Appeal Tribunal made under section 78 of the Tasmanian Civil and Administrative Tribunal Act 2020.</i>	
3	<p><i>If the planning authority amends a permit, it must, by notice in writing served on –</i></p> <ul style="list-style-type: none"> <i>(a) the person who requested the permit to be amended; and</i> <i>(b) if that person is not the owner of the land, the owner; and</i> <i>(c) in the case of a permit granted under section 57, the owner or occupier of any property which adjoins the land; and</i> <i>(d) any person who made a representation under section 57(5) in relation to the application for the permit –</i> <p><i>notify those persons of the amendments made to the permit.</i></p>	In this case, the representor and the two directly adjoining properties will be notified (one of which was an original representor).

Conclusion

The minor amendment is considered to comply with Section 56 of the *Land Use Planning and Approvals Act 1993* and is recommended for approval.

Shane Wells
Senior Planner

Attachments:
Amended Plans

