

Planning Application DA – 0341/2018

The purpose of this letter is to provide a response and further information with respect to the representations made in objection to the proposed use of The Hall at 233A Charles Street, Launceston for the purposes of a fitness centre.

There have been a number of representations which generally centre around the suitability of the use in light of the location and zoning provisions and concerns with respect to noise and car parking.

Much of the representations appear to be based upon the assumption that the use will contravene council requirements or more particularly, will exceed noise limits. This is very much a 'half glass empty' approach. If this is the basis upon which council decisions are made then nothing would be approved. Clearly, an application can only be approved on the basis that the use will comply with council requirements. The evidence supporting such is expert advice provided by a sound engineer who has required building works to further mitigate the risk of noise. This advice should be relied upon rather than representations that focus on the 'negative' including a number of incorrect and exaggerated claims. Notwithstanding, we also suggest further practical measures to, hopefully, ease the concerns of the objectors. This could include mandatory use of the Charles Street entrance prior to a particular time, a requirement to not use the Canning Street entrance prior to a specified time (except for emergencies), that the doors are to be closed during classes and the defining of noise limits.

We also consider it is important to highlight that the hall provides the proposed tenant with a good opportunity to move to more suitable premises. The tenant has gone to significant expense to obtain expert advice on noise and intends to adapt the business to the location in order to ensure its sustainability. The tenant does not intend to operate the business as per the current operations within George Street. Failure to do so, may put the business at risk, which has severe financial consequences. This is a material incentive to comply with council requirements and we contend that failure to comply should be appropriately dealt with.

The following sections address the key areas of concern detailed within the representations provided.

Noise

With respect to noise, we understand the concerns of some nearby residents and we consider more information and potentially some conditions would be appropriate.

We consider that the expert's opinion, as provided, is what should be relied upon as he is best qualified to determine the impact of the proposed use in light of the nature of the location, the improvements and use. Opinions have been given which are not considered relevant given that they do not reflect the intended use and relate to a small space in the city with different characteristics and methods of operation. There is no intention to leave the doors open and potentially disturb the neighbourhood in the early hours of the morning.

The representation with respect to the door fronting Canning Street being the primary entrance being a risk is acknowledged. The previous door was in a poor state of repair and needed to be replaced. Notwithstanding, in the early hours of the morning, the opening and closing of that door between training sessions, logically poses a risk of unnecessary noise. We would suggest that it would be prudent to require that non-emergency access is not permitted via the Canning Street door prior to a given time and that this would be a reasonable condition.

The representations do give make various assumptions with respect to noise. We are also able to confirm that the previous tenant operated with a band including electric guitars and drums and a reasonable internal volume on Sundays. This activity was barely audible from the opposite side of the road.

With respect to the operator, this is a significant capital investment and there is great risk if they do not comply with council requirements. The operator must also consider the health and safety of their clients and maintain an ability to communicate. Failure to operate within reasonable levels, should be appropriately dealt with. This application should not be decided based upon the assumption that the tenant will cause excessive noise. It is not within their interests. For clarity, we would agree that it would be appropriate to define the noise limits.

Zoning Provisions and Locational Factors

It is contended that the proposed use is 'inappropriate' and 'fundamentally defective on a number of grounds and will erode the intent of the Urban Mixed Use zone'. The zone's purpose is clearly intended to support a wide range of activities including the proposed use. We highlight the following extract from the zoning provisions.

- To provide for the integration of residential, retail, community and commercial activities
- To provide for a diverse range of services

We acknowledge the reference to the provision of appropriate car parking. As noted within our planning application there is sufficient on site car parking to meet the council's requirements should it consider it necessary to make the approval conditional upon further car parking.

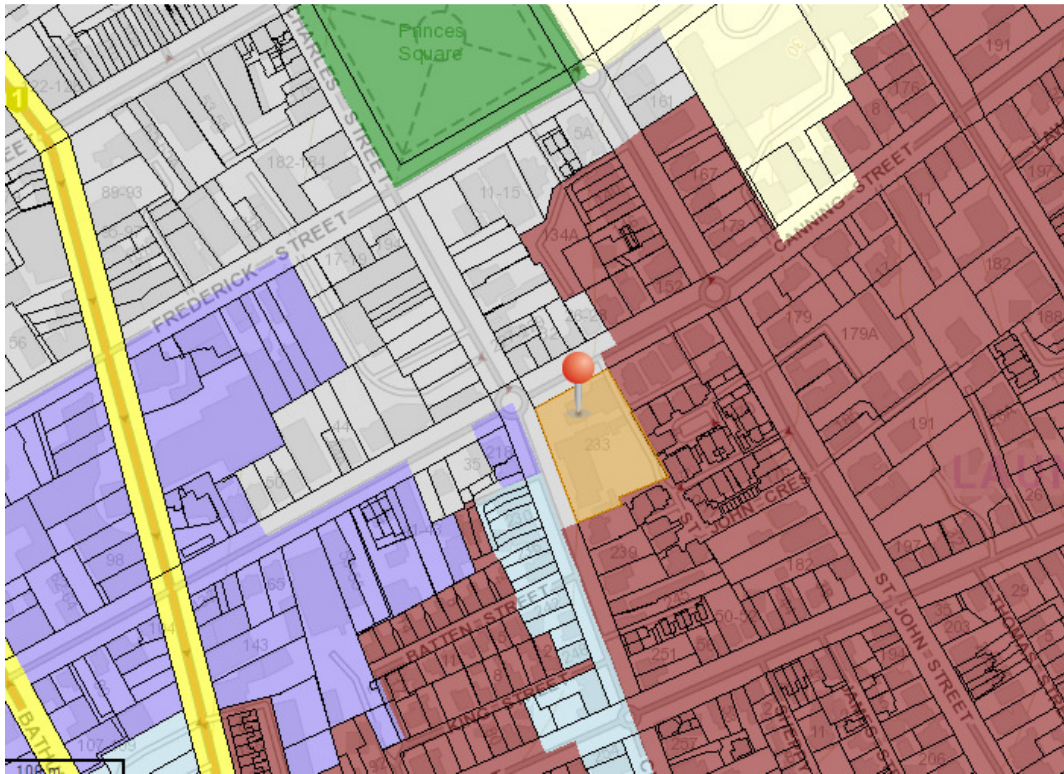
An overlay map has been provided with shaded areas that purportedly identify residential uses which we consider does not provide a balanced representation of land uses in the locale. We contend that the fact that there are residential uses nearby, does not, in itself, indicate that the position is 'fundamentally residential in character'. If the same position was argued for other nearby property in Charles Street then there would be no other businesses in Charles Street including the more recently approved hair salon (228 Charles Street) and restaurant (254 Charles Street) which neighbour many appealing residential style dwellings.

We contend that a visit to the site clearly indicates that the position is materially more commercial than residential. To the east are 3 adjoining buildings operating as a medical centre, opposite (north) is a small office building and two industrial style buildings, diagonally opposite is a reasonably large multi-tenanted shopping centre and directly opposite (west) is a former office building in a 'Commercial' zone and adjoining to the south is an office building. We acknowledge that there are two upper level flats opposite, although they are in the subject zone and are considered more similar to a caretaker residence rather than a residential dwelling. This is not too dissimilar to other flats above other commercial property, in central Launceston.

A key part of living in the city and enjoying all its benefits is a more vibrant and naturally busier environment. The property is within 750 metres of the Brisbane Street Mall and fronts a very busy local road linking the city with the Launceston General hospital, the southern suburbs and arterial roads linking with the southern outlet. It is a public bus route. Furthermore, Canning Street links directly with Wellington Street. It is also busy and includes numerous commercial activities. The location is clearly not 'fundamentally residential in character'.

There are many examples of commercial property existing in areas which are relatively more 'residential in character' and which have a materially higher impact with respect to noise, car parking and potentially residential amenity than the proposed use. We refer to the new motor vehicle workshop and service centre at 71 – 99 Galvin Street, South Launceston which is opposite and borders (on two boundaries) many residential properties and other centres discussed in 'Car Parking' following.

The following is the zoning overlay and aerial image of the location and we refer you to our planning application for more street images of the locale.



Car Parking

We consider that the representations with respect to car parking are unreasonable and refer to apparent lease agreements without any knowledge of the actual arrangements. The property has significant on site car parking which is able to cater for an increase in car parking requirements, should council see fit. However, we reiterate that the use is materially less onerous than many other approved uses in similar locations to the subject.

There are many precedents in past planning approvals which indicate that 2 spaces is more than sufficient, in light of the location and the use. In particular, we refer to the afore mentioned hair salon and restaurant in Charles Street (228 and 254) neither of which have customer car parking which are far more demanding in terms of on street car parking and are closer to the other businesses.

We also refer to

- the 3 level multi-tenanted building at 112 Cimitiere Street which is currently under construction. This is also an urban mixed use zoned site and upon completion, together with existing structures, will have a total of 15 office and retail tenancies with a total building area exceeding 2,500 sqm and was approved with 13 car spaces.
- The developments at 41 Arthur Street and 17-19 Abbott Street where again there is a low ratio of car parking per tenancy.

We also would like to highlight the short term visitor style accommodation which operates within the subject location and the city and which relies upon on street car parking. This right is not denied as it should not be for the subject use.

Clearly, there is strong evidence to suggest , that the proposed 2 spaces for the subject fitness centre is sufficient.

It is also suggested that the proposed use will place limitations on car park availability for other businesses in the area. We consider that this is unreasonable and that, in fact, the use, will provide those businesses, the opportunity for more customers from the proposed use. Ultimately, isn't the purpose of the zone to integrate and provide opportunity for a wide range of uses. Furthermore, there are tenants with businesses in the neighbourhood who have a greater need for those car parks within the subject property.

Tenant

We consider that the application should be decided upon the proposed use supported by the expert's advice based upon the assumption that the tenant will comply with council requirements.

Notwithstanding, the representations have highlighted the proposed tenant, and made a number of assumptions regarding their operations. We provide the following additional information for your consideration, which we consider supports the application:

- The business currently employs 6 staff and will be employing 5 more staff associated with the relocation;
- The business contributes to a healthy lifestyle consistent with the Council's vision and which extends beyond fitness to nutrition;
- The business sponsors two local sporting clubs;
- The business has a strong customer base which is community based and recognises this represents a good opportunity for the business and intends to operate the business in light of the location and be a 'good neighbour'; and
- The business has operated in George Street for 3 years and has not had a complaint in spite of residential apartments situated directly above the shop.

Conclusion

We consider the proposed use should also be considered in light of the permitted uses within the subject zone which pose a materially higher risk of disturbance and higher demand on car parking than the proposed. The permitted uses (bulky goods sales, hotel industry, food services (restaurant), service industry, tourist operation, general retail and hire and transport depot and distribution) align with the purpose of the zone and that is contrary to the exaggerated claims that the proposed use will erode the intent of the zone.

Finally, the proposed use of the property is very much a positive activity consistent with the goals of our community in promoting a healthy lifestyle. It provides a good opportunity for a small business owner, who is employing local people, to operate in premises well suited to the proposed use. We also contend that it is not reasonable to assume that the tenant will generate excessive noise. The proposed tenant is very mindful of being a good neighbour. Notwithstanding, an expert has provided an opinion, at significant cost at council's insistence, which should be given due weight. We contend that the application should be decided upon the assumption that the tenant will comply with council's requirements, that the tenant must operate within council requirements and should they infringe then appropriate action should be taken.

Therefore, on balance, we consider that should you approve the application that it would be appropriate to do so with conditions requiring the Charles Street entry to be the main access; that the Canning Street entry to be used only after a certain time, say 7am or for emergencies; and that the approval should define the noise limits deemed appropriate.

Should you require any further information then please contact the undersigned.



Richard Edwards

10 October 2018