

Hobart City Council and the Transition from By-Laws to Planning Schemes

Ben Ridder¹

received Tues 28.11.00

After 1945, the legal instruments used to regulate development in Australia underwent a fundamental shift from by-laws, which were controlled by local government, to planning schemes, which were drafted and administered by local government, yet were ultimately under the control of state government.

The following paper outlines the process by which this transition occurred in the City of Hobart, from the earliest adaptation of building regulations in the thirties, to the controversies surrounding residential amenity in the 1960s and early-1970s. Of particular interest are the planning schemes prepared for Sandy Bay (1967) and Battery Point (1969), which were the first schemes to be attempted by the Hobart City Council.²

Planning By-Laws in Hobart Prior to 1943

The earliest municipal development controls in Hobart, introduced in 1858, required the walls of all buildings erected within the central part of the city be non-flammable in nature. This zone was known as the Brick Area, and was designed to protect the city from the destructive potential of urban conflagrations.³

In 1935 the Council extended its power over building construction to include the regulation of land use. This was achieved via Section 208A of the *Hobart Corporation Act* 1935, which provided for the definition of protected residential areas.⁴ The new statutory power were first used in 1936 to create by-law 44, which prohibited non-residential uses, such as manufacturing and industry, from three residential areas of Hobart (the Sandy Bay foreshore,

Footnotes make use of the following abbreviations:

AOT - Archives of Tasmania
CA - City Architect
CE - City Engineer
HCC - Hobart City Council
LM - Lord Mayor
TC - Town Clerk
TGG - Tasmanian Government Gazette
TPC - Town Planning Committee

¹ The following paper was undertaken while preparing an honours thesis on high rise apartments for the University of Tasmania (School of Architecture). Some material contained within the thesis complements the information presented below. Thanks to Bert Dechaineux, Stefan Petrow, George Clarke and Barry McNeill for their comments on this paper.

² Council plans for the development of community precincts in South Hobart (Cascades), and Lenah Valley (Franklin Gardens) predate the planning schemes for Sandy Bay and Battery Point. These plans were never submitted to the state government approval process, and were not implemented to any great extent.

³ M Cannon, *Life in the Cities*, Ringwood, 1988, p. 26.

⁴ AOT MCC 16/36/1, *By-law 44*, Council resolution, 16 September 1935.

Fitzroy Place/Dynnyrne and New Town).⁵ Subsequent by-laws (45, 52, 54 and 55) approved in 1937, 1939 and 1941, defined six additional residential areas.⁶

Additional control over development was contained within the new *Building Act* 1937. The Building Regulations gazetted under this act required the Council to define central, inner and outer areas, in which were specified standards relating to minimum open space, and the nature of internal walls and floors.⁷ In 1941, the Council used the Building Regulations to prohibit the construction of small houses and shacks in certain areas through the definition of minimum floor areas. The rationale for these restrictions was to 'give reasonable protection to the residential areas of the City, and allow the erection of week-end houses at reasonable distances from main outlets and tourist roads'.⁸

During the late-1930s, Council also gained additional control over subdivisions, through changes in the wording of a by-law relating to sewerage provision. By-law 51, which was endorsed by the Council in October 1939, required developers to have new subdivision plans checked by Council officers prior to sale of the land.⁹

These developments in the use of by-laws indicate that, prior to 1940, the Council had achieved some measure of control over land use via three different paths; the *Hobart Corporation Act* 1935; the *Building Regulations* 1938; and the laws relating to sewerage provision. Another type of control related to the specification of set-back distances for new houses to allow room for future road widening.¹⁰

The Cook Plan and Introduction of Zoning By-Laws in 1945

In February 1943, the Hobart City Council established a Town Planning Committee to oversee the preparation of a municipal town plan. This was completed in 1945 by Frederick Cook; a City Engineer and Town Planner from Melbourne.¹¹ A parallel development at the state level was the gazettal of the *Town and Country Planning Act* 1944, which established a framework for approving and administering municipal planning schemes. Although the Council anticipated that the Cook Plan would form the basis of a planning scheme under the Act, it pre-empted the preparation of a scheme by adopting a new zoning by-law (64) in July 1945, prior to the Cook Plan being made available to the public. This repealed all of the previous by-laws relating to residential areas (44, 45, 48, 52, 54, 55 & 61), and defined a number of new

⁵ AOT MCC 16/36/1, *By-law 44*, Building Surveyor to TC, 27 August 1936; TGG, 17 November 1936, pp. 2852-3.

⁶ TGG, 20 April 1937, p. 709; TGG, 20 December 1939, pp. 3319-20; TGG, 9 April 1941, pp. 850-1; TGG, 7 May 1941, p. 1122.

⁷ AOT MCC 16/36/2, *Building Regulations 1938*, Council resolution, 18 July 1938.

⁸ AOT MCC 16/36/2, *By-law 19*, TC to Health & Building Committee, 28 February 1941.

⁹ AOT MCC 16/36/2, *By-law 43*, TC to Works Committee, 16 August 1939.

¹⁰ FC Cook, *City of Hobart Plan*, Hobart: Hobart City Council, 1945, p. 7.

¹¹ S Petrow, 'A city in search of a plan: Hobart, 1945-1962', *Tasmanian Historical Studies*, vol. 5 1995-96, pp. 133-4.

zones proposed by Cook - Industrial, Business, Miscellaneous Shopping, and Residential.¹²

The public response to the Cook Plan, and the subsequent failure to develop a regional planning scheme for Hobart, has been described elsewhere by Stefan Petrow.¹³ The rest of this paper focuses on the efforts of the Hobart City Council to control development in Sandy Bay and Battery Point, which eventually resulted in the gazettal of the Council's first planning scheme in 1972, twenty-eight years after the introduction of the Town and Country Planning Act.

By-Law 33 - The Battery Point Development Code

The potential for flat development was a principal driving force behind Council moves to introduce special planning controls for Battery Point in the 1950s. This is apparent in the Council minutes from 1955, during consideration of a proposal to extend the Marine Board wharves from Sullivans Cove around the foreshore of Battery Point. The report written by Council officers included the following comments:

From purely Town Planning viewpoints, the present and future land usage in the Battery Point area are of vital concern... The topography of Battery Point is such that it is not suitable nor even economical for industrial or business development but rather its proximity to the City, its aspect and its hilly terrain are ideal for future multi-storied flats and apartments.¹⁴

In March 1956, Council officers were formally directed by the Town Planning Committee to consider zoning for the future use of the Battery Point area.¹⁵ This was consistently deferred by the City Engineer, who was responsible for town planning, until February 1957, when the decision was made to pass the matter onto the Commissioner for Town and Country Planning.¹⁶ The Commissioner agreed to assist, and the task was handed to SWT Blythe and his architecture students at the Hobart Technical College.¹⁷

The completed student projects, which were displayed at the Nettlefold's showroom in August 1958, prompted the Battery Point Progress Association to invite Council officers and Aldermen to discuss the future of the area.¹⁸ The Association had been formed in 1948 in response to the proposed expansion of industrial uses in Battery Point, and its members were actively seeking to have development controlled by means of a planning scheme.¹⁹ Before meeting with

¹² TGG, 15 August 1945, pp. 1846-50.

¹³ Petrow, pp. 132-53.

¹⁴ AOT MCC 16/134/2, *Minutes of the TPC*, 5 December 1955.

¹⁵ AOT MCC 16/134/2, *Minutes of the TPC*, 19 March 1956.

¹⁶ AOT MCC 16/134/3, *Minutes of the TPC*, Most meetings up until 7 February 1957 restate the request for consideration of Battery Point; The post of Commissioner was established under the *Town and Country Planning Act* 1944.

¹⁷ AOT MCC 16/134/4, *Minutes of the TPC*, 4 October 1957.

¹⁸ AOT MCC 16/134/5, *Minutes of the TPC*, 25 July 1958.

¹⁹ BG Kennedy, *The Gentrification of Inner City Hobart*, Honours Thesis, University of Tasmania, 1986, p. 111; Email George Clarke to Ben Ridder, 20 October 2000.

the Association, the City Engineer indicated that over the next forty years, all of Battery Point, 'except for the two groups of good class homes in the vicinity of Castray Esplanade and Margaret Street, will be used for multistorey flats'. These comments were inspired by a recent proposal for McMahon's Point in Sydney, which envisaged the redevelopment of a suburb similar to Battery Point with Modern-style apartments.²⁰ To encourage these proposals for redevelopment, Council Aldermen approved the investigation of 'special rating provisions to encourage flat construction in the area'.²¹

In June 1959, *The Mercury* reported that the Progress Association was still seeking action from the Council, and had again invited Council representatives to attend one of their meetings. The article notes that the Association sought the prohibition of industry, road widening, construction of Cook's proposed foreshore boulevard, and the preservation of historic buildings. The Association frowned upon dense concentrations of flats, although tall apartment buildings were considered acceptable if the plans included sufficient open space.²²

Not long after the Association's request, the Council formally resolved to engage the renowned Sydney planner, Denis Winston, who would be in Tasmania for a conference, to 'report on the potential of Battery Point'.²³ Winston's report, which was posted to the Council in March 1960, identified the area as being of high potential for residential development. He recommended that a development code be drawn up specifying planning requirements relating to open space, parking provision, and the restriction of tall buildings from the foreshore area. Tower blocks were to be encouraged on the higher land, and 'certain selected old properties' acquired by the Council and preserved.²⁴

Winston also expressed the reservation that 'however much it may be regretted... Battery Point is changing'. He considered such change to be inevitable, and 'impossible to prevent short of total resumption of the area by the City Council'. In support of strict planning controls he issued Council with the following warning:

without a great deal of ingenuity and active participation on the part of the Council, development will take place in a patchy, un-co-ordinated kind of way, much hardship will be suffered by people in the neighbourhood of over-shadowing and sometimes noisy flats, streets will become over-burdened with traffic and parked cars, and the outlook across the Derwent will be blocked for all but a few in the highest and most expensive flats. In short, most of what is good in the present Battery Point will disappear, without anything very good taking its place except the good profits of a comparatively small number of

²⁰ AOT AA236/6, *Battery Point Planning Scheme*, CE to TC, 5 September 1958; M Herman (ed), 'Redevelopment of McMahon's Point, North Sydney', *Architecture in Australia*, 47(4), October/December 1958, pp. 70-72.

²¹ AOT MCC 16/134/5, *Minutes of the TPC*, Council resolution, 12 September 1958; It does not appear that 'special rating provisions' were ever introduced.

²² *The Mercury*, 24 June 1959, p. 3.

²³ AOT MCC 16/2/344, *Battery Point Development*, Council Resolution, 26 October 1959.

²⁴ D Winston, *Report on the Development of Battery Point*, pp. 3-4. This report is found in AOT MCC 16/2/344, *Battery Point Development*, Winston to TC, 29 March 1960.

speculators and developers, who are as likely to have their headquarters in Sydney or Melbourne as in Hobart.²⁵

Upon drafting the development code, which more-or-less followed Winston's recommendations, the City Architect commented that 'for a number of years the Council has recognised that it is essential to encourage high density development', the principal reasons being to maintain and increase the population of the City. He continued:

In a vigorous policy of encouragement to high density development, controlled to give the benefits of sun, light, air and natural surroundings of which we are so well endowed, this Council will be doing its utmost to support the growth and welfare of the City.

The proposed Battery Point Development Zone marks one of the foremost steps taken by Council since the adoption of Residential and Commercial Zoning in 1945.²⁶

The Battery Point Development Code (by-law 33) was subsequently approved by the Council in June 1960.²⁷ As with all by-laws, this decision was not advertised, and no input from local residents was sought. As indicated by Colman in 1968, this was standard local government procedure:

Public relations, particularly with regard to town planning activity, is clearly not regarded as a normal part of a council's duties... With certain exceptions, councils do not attempt to involve the public in the planning process except as may be required by statute.

A commonly held attitude amongst elected members and the majority of council officers is that it is unnecessary - perhaps even undesirable - to involve the general public in any kind of open dialogue on town or community planning, especially during the stage of scheme preparation.²⁸

Soon after the introduction of the by-law, a proposal was submitted to the Council for a nine-storey apartment building in Runnymede Street which would breach the open space requirements of the Code. In response, the Town Planning Committee recommended that the 'by-law be amended to allow Council discretionary powers so that this proposal can be approved'.²⁹ The amendment gave Council the power to 'vary or dispense' with most of the provisions of the by-law if they were considered to be unreasonable or unsuitable.³⁰

Unfortunately for the Council, the proposal which inspired the amendment was later withdrawn because of concerns about 'economic conditions'. The local developer, Barry Fisher, who later became a Council alderman, was

²⁵ Winston, pp. 2-3.

²⁶ AOT MCC 16/2/344, *Battery Point Development*, CA to TC, 9 May 1960.

²⁷ TGG, By-Law 33 (Battery Point Development), 10 August 1960, pp. 1211-2.

²⁸ J Colman, *Post-War Planning in the County of Cumberland*, Sydney: University of Sydney, 1968, p. 52.

²⁹ AOT MCC 16/2/183, *Runnymede Street*, TPC resolution, 16 August 1960.

³⁰ TGG, By-Law 38, 10 January 1962, p 16.

subsequently given Council approval to erect an apparently more profitable complex of four-storey walk-up flats on the same site.³¹

Despite agitation from the Progress Association for planning controls in Battery Point, it seems that the impetus for the Development Code came largely from the Council's determination to see the suburb redeveloped as a high density residential enclave. The advantages of by-laws, from the perspective of the Council, were demonstrated by the ease with which the Development Code was amended in order to approve a particular proposal.

By-Law 43 - The Sandy Bay Development Code

The Sandy Bay Development Code was drafted in response to concerns expressed in May 1963 by the Council Town Planning Committee that a recently proposed twenty-nine-unit development 'might affect the view of residents on the opposite side of Sandy Bay Road'. The City Architect was subsequently directed to investigate a policy for the size of buildings along the Sandy Bay foreshore.³²

In response to the Committee's request, by-law 43 (Sandy Bay Development Code - Apartment Houses) was drafted, and approved by the Council in August 1963. This restricted the height of flats erected on the waterfront side of Sandy Bay Road to thirty-three feet, and reiterated the clause contained within the old by-law empowering Council to assess any proposed apartment building in Sandy Bay 'on its merits'.³³

The level of discretion contained within the by-law was soon tested by proposals for flats on both corners of Waimea Avenue and Sandy Bay Road. In approving the first proposal, *The Mercury* indicates that Aldermen regretted making the decision, but felt they had no choice, because the plans conformed with the by-law.³⁴ Appeals by Sandy Bay residents against the Council approvals were subsequently upheld by the Commissioner for Town and Country Planning, Neal Abercrombie, on the basis that insufficient allowance had been made for open space. In delivering his verdict on the first appeal Abercrombie strongly recommended that Council review their planning controls for Sandy Bay. During the second appeal, he made a point of describing the benefits of a planning scheme over by-laws.³⁵

It appears that the general intent of the by-laws for Battery Point and Sandy Bay seems to have been to provide Council with the greatest possible discretion to permit high density development, except in the case where views

³¹ AOT MCC 16/2/183, *Runnymede Street*, LJ Hooker to TC, 23 May 1961; See also later material on this same file.

³² AOT MCC 16/134/9, *Minutes of the TPC*, 21 May 1963.

³³ TGG, August 1963, p. 1106; The generosity of the height restriction suggests that it was not for the benefit of the general public, such as would travel along Sandy Bay Road, but rather to preserve the river-views, and market value, of properties overlooking Sandy Bay Road.

³⁴ *The Mercury*, 10 March 1964, p. 3; *The Mercury*, 2 April 1964, p. 3.

³⁵ AOT AA 500/3, *Appeal 120*, Commissioner to TC, 9 September 1964; AOT AA 500/3, *Appeal 122*, Appeal Decision, 30 June 1965; Neal Abercrombie, who was Commissioner up until the mid-1970s, was the son of Sir Patrick Abercrombie; one of the most prominent figures in the rise of the British town planning movement. and author of the *Greater London*

might be impeded by waterfront flats. This considerable level of discretion was encouraged by the use of by-laws, which could be introduced by the Council with no public input, and changed at short notice.

The Sandy Bay Planning Scheme

The Commissioner's desire for the Council to prepare a planning scheme for Sandy Bay was supported by the introduction of two important legislative amendments. The first was the *Local Government Act* 1962, which redefined Tasmania's planning and building legislation. The second was the *Hobart Corporation Act* 1963, which stipulated that Council by-laws made under previous acts, which could not be made under this act, would lapse five years after the introduction of the act. The combined result of these new laws was that by 1969, certain aspects of development, such as the area of space around buildings, could only be controlled by Council under the auspices of a planning scheme; by-laws would no longer have legal effect.³⁶

In early 1965 Council officers began to collect data in preparation for a municipal planning scheme. In support of this course of action, the City Engineer indicated that he was 'firmly of the opinion that the zoning of residential areas in Hobart to promote stability of residential development and to protect the character and established pattern of desirable development in each area is a vital necessity'. He argued that the 'random intrusion of high rise apartments' could cause the 'shift of the higher income groups into neighbouring municipalities'. In addition, 'declining values in the suburbs affected by incompatible structures' could outweigh the extra rates which Council would gain from the apartment buildings.³⁷

Debate on the construction of flats in Sandy Bay escalated throughout 1965, with the number of letters appearing in *The Mercury* reaching a peak in August. In September, 100 concerned residents attended a Council meeting at which another Sandy Bay flat development was narrowly approved, by four votes to three.³⁸

In October, the Council formally resolved to prepare a planning scheme for Sandy Bay, and postpone work on the city-wide scheme. Sandy Bay was divided into two primary zones, with the development of flats restricted in one zone (R1), and encouraged in the other (R2).³⁹ In February 1966, the City Engineer commented that:

over the whole R2 zone, individual owners will face the possibility of an apartment building near to them. This, it is admitted may be adverse in its effect upon owners in the zone. Other owners especially those with larger

³⁶ This issue is discussed in relation to the Battery Point Development Code on HCC file 5622386, 48 *Marievillle Esp*, vol. 1, TC to Murdoch, 14 March 1967; The relevant sections of the *Local Government Act* 1962 became effective on 1 January 1964 - See *Tasmania Statutory Rules*, 1963, p. 500; The importance of these legislative changes is highlighted in the following thesis: E Thomson, *The Integration of Physical and Financial Planning at the Local Planning Level: Battery Point, A Case Study*, Masters Thesis, University of Sydney, 1969. Although Thomson's thesis was not accessed during the preparation of this paper, a microfilm copy is apparently available for inter-library loan from the University of Sydney.

³⁷ AOT MCC 16/2/327, *Sandy Bay Planning Scheme*, vol. 1, CE to TC, 16 November 1964.

³⁸ *The Mercury*, 14 September 1965, p 3.

allotments may regard the R2 zone as having good investment potential.

He also mentioned that the R2 zone would permit 'a reasonably wide freedom of choice both by outside developers on the one hand and by owners who wish to redevelop with apartments on the other'. He warned against reducing the size of the R2 zone, as it would result in larger development projects shifting into 'other suburbs of Hobart or... other municipalities'.⁴⁰

Battery Point - Ripe for Redevelopment

In March 1966, as Council officers worked on the Sandy Bay scheme, the Battery Point Progress Association wrote to the Town Clerk requesting a town plan for Battery Point. Residents were becoming concerned about the number of new flats, and had been surprised to learn that high rise flats were permitted by the Battery Point Development Code. The minutes of the November 1965 meeting of the Progress Association noted that 'we want the old to be blended with the new; so as not to entirely change the face of the point'.⁴¹ The Association's concern was vindicated in December, with the Council approving sketch plans for Tasmania's tallest apartment building, Empress Towers, which would be located in Battery Point adjacent to Princes Park.⁴²

In response to the Progress Association's request for a town plan, the City Architect commented that 'Council has previously recognised the necessity for having a planning scheme for Battery Point', although this had been delayed by lack of staff.⁴³ In July the City Engineer further emphasised the need for immediate action: 'Battery Point is a unique living area which is ripe for redevelopment. High density and medium density redevelopment is now gaining momentum and the urgency for a master plan is apparent'.⁴⁴

In September 1966 the Council invited George Clarke, a planning consultant from Sydney, and one-time student and good friend of Professor Denis Winston, down to Hobart to discuss the preparation of a scheme.⁴⁵ During the late-1960s, Clarke was commissioned to prepare planning controls for a number of Australian cities in response to public unrest over flats-related controversies, and it was his success in this area that resulted in him being approached by the Hobart City Council.⁴⁶

⁴⁰ AOT MCC 16/2/327, *Sandy Bay Planning Scheme*, vol. 1, CE to TC, 22 February 1966.

⁴¹ Minutes of the Battery Point Progress Association, 20 July 1965 & 15 November 1965.

⁴² HCC file P5565983, *Battery Sq 1/1*, vol. 1, Council resolution, 13 December 1965.

⁴³ AOT MCC 16/2/351, *Battery Point Town Planning*, vol. 1, Progress Association to TC, 30 March 1966; *Ibid.*, CA to CE, 1 April 1966; In an email to the author dated 20 October 2000, George Clarke stated that 'The "lack of staff" ploy was a standing joke of the period, used by Council Officers who either didn't have the foggiest how to do something, or simply didn't want to do it, or both'.

⁴⁴ AOT MCC 16/2/351, *Battery Point Town Planning*, vol. I, CE to TC, 27 July 1966.

⁴⁵ AOT MCC 16/2/351, *Battery Point Town Planning*, vol. 1, Council resolution, 26 September 1966; Reference to Clarke's relationship with Winston is contained within the following book: P Ashton, *The Accidental City: Planning Sydney Since 1788*, Sydney, 1993, p. 77.

⁴⁶ Email George Clarke to Ben Ridder, 20 October 2000

Briefing notes prepared by Council officers for Clarke's presentation in October included the following:

With declining population and without suitable industrial areas, the Council feels that it must concentrate on attracting residential development and Battery Point presents itself as a desirable area for high, or higher, density housing.⁴⁷

Handwritten notes of Clarke's address to the Council indicate that he was concerned with more than just the issue of density:

Monstrous buildings - Disfigurement - last 10 years - upheaval - Council must lead debate.

Areas like Battery Point will never be a slum - psychological.

Preserve old historic character - preserve views, etc, work deliberately to give Battery Point something special - tourist interest as well.

Necessary to generate public opinion and support - most vital - process more important than end result.

Practically essential for implementation.⁴⁸

This may have been the first time that the Aldermen, and perhaps some of the Council officers, had been exposed to the notion that public opinion and historic preservation had a significant role to play in urban planning. His subsequent proposal to Council included the following objectives:

(a) allow and encourage residential development to medium and high densities...

(b) reshape the old street and pedestrian pathway systems to meet the new needs of the redeveloped area;

(c) preserve, reinstate and revitalize the unique historical character of Battery Point without inhibiting modern development...⁴⁹

These were approved by the Aldermen in November 1966, and Clarke was appointed to prepare a planning scheme for Battery Point ⁵⁰

At this stage the disparity between the positions of the Council and the Battery Point Progress Association appear quite obvious. Residents still felt obliged to permit some degree of progress, yet sought to place limits on the amount of change which would eventually take place in Battery Point; a sentiment which gained support during 1966 as work started on the eleven-storey Empress Towers.⁵¹ In contrast, the Council sought to maximise redevelopment potential in order to create a high density residential area close to the CBD. The Clarke proposal represented a compromise between the two extremes.

Public Exhibition of the Sandy Bay Planning Scheme

⁴⁷ AOT MCC 16/2/351, *Battery Point Town Planning*, vol. 1, Undated briefing notes.

⁴⁸ AOT MCC 16/2/351, *Battery Point Town Planning*, vol. 1, Handwritten minutes, 21 October 1966.

⁴⁹ AOT AA236/71, *Battery Point Pl. Scheme*, Clarke to TC, 1 November 1966.

⁵⁰ AOT MCC 16/2/351, *Battery Point Town Planning*, vol. 1, Council resolution, 28 November 1966.

⁵¹ *The Saturday Evening Mercury*, 4 June 1966, p. 1.

Under the *Local Government Act* 1962, a draft planning scheme was first adopted by the council. It then had to receive the provisional approval of the Commissioner for Town and Country Planning before being subjected to a three month public exhibition period. After the scheme had been modified by the council to reflect comments made during this period, the Commissioner would conduct hearings to resolve any disputes. After the hearings, if everything went smoothly, the amended scheme would be gazetted by the State as subsidiary legislation. An important feature of the legislation was that a draft planning scheme became operative after being provisionally approved, prior to the public exhibition phase.

The Sandy Bay scheme was approved by the Council in November 1966, and provisionally approved by the Commissioner soon after. During the three-month comment period, which commenced in January 1967, many articles and letters appeared in the pages of *The Mercury*, both objecting to the scheme, and encouraging residents to make formal objections to the Council. The City Engineer later made the following comments in relation to the newspaper coverage:

It is recalled that a wave of misinformed publicity took place just prior to the closing of objections, and too late for taking effective corrective measures.

The publicity gave rise to a widespread misconception that the Council had selected Sandy Bay, as distinct from other parts of the City, as an area where blocks of flats up to 13 storeys should be encouraged. However, as previously reported, the scheme will place a considerable additional cost on flat development, and therefore will act, correctly it is believed, as a brake on the rate of flat building in Sandy Bay.⁵²

By the end of March, the Council had received comments from 1,100 people, together raising a total of 8,485 objections. The most common objections were as follows:

Objection (number)

Flat development lowers property values (931)

Flat development results in loss of views (893)

The planning scheme does not comply with town planning principles (826)

Flat development should be planned for other more suitable areas of the city (813)

Widespread development should be confined to one area (792)

The comments were analysed by Council staff between March and December 1967. The Town Planning Committee classified nearly all of the public comments, including the five principal objections listed above, as invalid. A revised version of the scheme was approved in mid-December, and included a reduction in the size of the R2 zone, in which flats were permitted. The *Southside News* made the point that, despite being rejected, the general intent

⁵² AOT AA236/70, *Hobart Sandy Bay Pl. Sch.*, CE to TC, 8 June 1967.

of the objections 'obviously influenced the Council in the changes that were recommended'.⁵³

In March 1968, the Commissioner received authorisation from the Minister for Lands and Works to reject the draft scheme.⁵⁴ In the first of two letters sent on 25 March, the Commissioner requested that Council prepare a new scheme, as 'the upholding of the majority of these objections would in my opinion result in the substantial modification of the scheme'. In the second letter he stated that 'Council has done the right thing at this stage in the policy that has been adopted toward the great majority of the objections'.⁵⁵

After this rejection by the Commissioner, the Sandy Bay scheme was never again put before the public. It did however, remain effective for over seven years. Under Section 734 of the *Local Government Act*, councils were empowered to make decisions based on planning schemes which were in preparation. Consequently the rejected Sandy Bay scheme became a 'scheme in preparation', prompting one community group to comment that it 'may be expedient from your Council's point of view, but such action would appear to lack validity'.⁵⁶ When the architect Jim Moon drew attention to the issue in *The Mercury*, Council responded by stating that they were operating within the law, and that a new scheme was 'in preparation'.⁵⁷

The Battery Point Planning Scheme

By March 1967, it appears that Council officers had become aware of the legal necessity for a shift from by-laws to planning schemes. After running into problems over an eight-storey building on Marieville Esplanade, the Council was advised that it no longer had the power to approve by-laws which controlled the space around buildings. The lawyer providing this advice suggested that a planning scheme would overcome such difficulties.⁵⁸

By this stage, George Clarke had already commenced his investigations in Battery Point, suggesting that the Council's decision to move towards a planning scheme had not been influenced by the legal revelation. In June 1967 Clarke proposed the following zones for Battery Point:

- R1 - Consisting of the historic village in which 'optimum suggested redevelopment... is for clusters of two-storied town houses which would be in keeping with its present character and which would enhance the intimate scale of street and mews frontages'.
- R2 - Consisting of the area around the historic core, in which 'four-storied to five-storied buildings' would be encouraged.

⁵³ AOT MCC 16/2/327, *Sandy Bay Planning Scheme*, vol. 2, Council Resolution, 18 December 1967; *Southside News*, 25 January 1968, p. 1.

⁵⁴ AOT MCC 16/2/327, *Sandy Bay Planning Scheme*, vol. 3, Commissioner to Minister for Lands and Works, 15 March 1968.

⁵⁵ AOT MCC 16/2/327, *Sandy Bay Planning Scheme*, vol. 3, Commissioner to TC (2 letters), 25 March 1968.

⁵⁶ AOT MCC 16/2/327, *Sandy Bay Planning Scheme*, vol. 3, Sandy Bay Environment Protection Committee to TC, 23 May 1968.

⁵⁷ *The Mercury*, 31 May 1968, p. 4; *The Mercury*, 1 June 1968, p. 6.

⁵⁸ HCC file 5622386, 48 Marieville Esp, vol. 1, Cosgrove to TC, 17 April 1967.

R3 - The area around the fringe of the planning area, including the flat land to the south of Battery Point, known as Marieville. There would be no height restrictions in this zone; 'if tower blocks are built... they would provide a pleasant back-drop or frame for the first two zones'.⁵⁹

In collecting information for the planning scheme, Clarke, and his assistant Elizabeth Thomson, consulted with various local organisations and individuals, including residents.⁶⁰ In subsequent years, Clarke was recognised by the Royal Australian Planning Institute as being 'among the first planning practitioners to bring public participation into the planning process'.⁶¹ The Battery Point Planning Scheme has been similarly acclaimed as a pioneer, not only with respect to community consultation, but also for provisions relating to heritage values, streetscape improvement and a proposed pedestrian mall. As a result of these innovations the scheme gained some prominence amongst Australian planners during the early seventies.⁶²

The draft Battery Point scheme was approved by the Council in August 1969, followed by the Commissioner's provisional approval in October. The premiere of a film on the planning scheme process, called *In Partnership with the People*, was scheduled for November 3rd, which marked the beginning of the public exhibition period. The film, which was organised by the Council in conjunction with the Tasmanian Department of Film Production, seeks to convince the viewer that the new planning scheme has full community support and will ensure the preservation of the historic tourist highlights of Battery Point.⁶³ When originally suggested by the Council, Clarke had anticipated that it would 'document the true story of positive local planning by local government acting for and with the people of a locality',⁶⁴ His recent comments on the film are as follows:

The Council and the State Department made their own arrangements, and when I was finally sent a script, I absolutely refused to have anything to do with it, because it was so hopelessly crude... I did encourage and assist the Lord Mayor, Sir Basil Osborne, with several ABC TV News reports of my work in Battery Point, but I refused to participate in the State Government film.⁶⁵

⁵⁹ AOT AA236/71, *Battery Point Pl. Scheme*, Preliminary Report on Development Control Zones, June 1967; In a letter to the author dated 4 October 2000, Clarke pointed out that in the R2 zone, the maximum building height was three storeys above street level. On steep land, an additional two storeys could added, but only if they were below the level of the street.

⁶⁰ AOT MCC 16/2/350, *Battery Point Town Planning*, vol. 2, Report and Recommendations to the Council, 26 October 1967.

⁶¹ This quote is taken from the citation for the 1974 Luker Award, which was bestowed on Clarke by the NSW Division of the Royal Australian Planning Institute. The text of the award citation was confirmed by John Roseth in an email to the author dated 20 October 2000.

⁶² D Gazzard, 'Conservation of the Urban Landscape', *Architecture in Australia*, 61(6), December 1972, p. 663; AS Fogg, *Australian Town Planning Law*, 2nd edition, St Lucia, 1982, p. 410.

⁶³ AOT AB 869/2264, *In Partnership with the People*, Hobart, Department of Film Production, 1969.

⁶⁴ AOT MCC 16/2/355, *Battery Point Town Planning - Film*, Clarke to CE, 13 November 1967.

⁶⁵ Letter George Clarke to Ben Ridder, 4 October 2000.

It could be argued that the Battery Point film accurately reflected the attitude among planners and architects at the time that community consultation was primarily about public relations. The statements below were made by Zelman Cowen at the Australian Architecture Convention in 1963:

Some people think that public relations very often smack of being ballyhoo, and very often smack of advertising... My own thought is that good public relations in educating people in architecture and the architectural function will at one and the same time be good for the community and good for you.⁶⁶

The consultative method adopted by Clarke sought to rectify the problems that had been spawned by this limited view of the community role in urban planning.⁶⁷ As demonstrated in the next section however, Clarke's involvement in the planning process for Battery Point, rather than diminish the conflicts brought about by planning, instead served to highlight the rift which existed between the goals envisaged by residents and the Council.

In Partnership with the People

In August 1969, ten days after the scheme was endorsed by the Council, approval was given for a flat development which was to occupy two properties in the heart of Battery Point; at 4 Colville Street and 7 Secheron Road. The Council and the Commissioner were almost immediately presented with a number of appeals against the development from local residents. The Commissioner viewed the appeals with concern, as there existed a legal precedent which held that once a scheme had been provisionally approved, all outstanding appeals were rendered invalid. This was complicated by the erection of Council's standard notice on the development site which informed residents that they did have a right to appeal.

Faced with this seemingly intractable situation the Commissioner tactfully suggested that 'Council was a bit over-hasty' in approving the development. He went on to advise:

I believe that Council should delay as much as possible new development in Battery Point until it has some idea how the Scheme is being accepted by the residents. I cannot forget what happened over the Sandy Bay Scheme, and it would be nothing short of tragic if the Battery Point Scheme were to be attacked on the grounds that the Council were jumping the gun, so to speak, as regards new development before all objections were received and considered.⁶⁸

The three month public comment period for the new scheme commenced on November 3. Within a week the Commissioner had received another appeal against the flats - this time signed by twenty seven people - prompting another letter to the Town Clerk:

...unless we are very careful, procedures under the Act could be reduced to chaos, some of the mud from which will

⁶⁶ Z Cowen, 'Opening Session: Australian Architecture Convention', *Architecture in Australia*, 52(3), September 1963, p. 97.

⁶⁷ G Clarke, 'The Urban Planning and Development Fields', *Journal of Public Administration*, 29(2), June 1970, pp. 132-3.

⁶⁸ AOT MCC 16/2/351, *Battery Point Town Planning*, vol. 5, Commissioner to TC, 30 October 1969.

rub off onto the Scheme. I cannot emphasise too strongly how delicate the situation is. I sympathise with the Council because apparently the proposed flats conform with the projected Scheme; I also sympathise with the residents who suddenly find that a whacking great block of flats (as they see it) is to be plumped down slap in the middle of their Historic Village area. I have not seen the plans for the block but I can imagine what they are like.

I hope you will accept my apologies for writing you these letters in regard to this matter but my concern is deep.⁶⁹

It seems that by this stage the Town Clerk was also nervous about the future of the scheme, seeking the following assurance from the City Architect:

that the buildings proposed for the... two sites are impeccable. That, in size, site development and use they conform and do not obtrude into the area; that in design they are harmonious and that they will fit as snugly into the Battery Point street scene as Entally House would.⁷⁰

These concerns were well justified with thirty-eight letters of objection to the planning scheme having been sent to the Council before the end of the comment period on 2 February 1970. Clarke was asked to prepare a report on the objections, which was completed in April. On the basis of the report, Council made various recommendations to the Commissioner regarding changes to the scheme, and it was subsequently announced that the Commissioner would commence public hearings on the scheme in late-June.⁷¹

Considerable delay in proceeding with all of the hearings, ostensibly because of resistance from the Marine Board, resulted in final approval of the scheme not being granted until November 1972.⁷² During this time, with the flats at Colville Street and Secheron Road having been put on hold, the land was sold to the local developers Ward and Dobosz. They quickly submitted a new development application to the Council in May 1972, which was subsequently refused on the grounds that it would detract from the appearance of the area.⁷³ This was despite the fact that the proposal had been designed entirely in accordance with the provisionally approved planning scheme.

The proposal for flats, which became known as Avon Court, was resubmitted to the Council by Ward and Dobosz twice more, and rejected both times. Eventually the matter was taken to the Supreme Court, which ruled in June 1973 that Council must comply with the provisions of the planning scheme and approve the development.⁷⁴

⁶⁹ AOT MCC 16/2/351, *Battery Point Town Planning*, vol. 5, Commissioner to TC, 12 November 1969.

⁷⁰ HCC file 5569693, 4 *Colville Street*, vol. 1, TC to CA, 17 December 1969; Entally House is a prominent historic building located in the north of Tasmania.

⁷¹ *Southside News*, 28 May 1970, p. 1; AOT MCC 16/2/351, *Battery Point Town Planning*, vol. 6, Open letter from Commissioner, 29 May 1970.

⁷² AOT MCC 16/2/351, *Battery Point Town Planning*, vol. 7, Commissioner to TC, 1 November 1972.

⁷³ HCC file 5569693, 4 *Colville Street*, vol. 2, TPC minutes, 5 June 1972; *Ibid.*, Council resolution, 5 June 1972.

⁷⁴ HCC file 5569693, 4 *Colville Street*, vol. 3, ARTHUR WARD & ORS v. HOBART CITY COUNCIL, 8 June 1973.

Reflections on the Battery Point Planning Scheme

In September 1973, at an Australian Institute for Urban Studies (AIUS) seminar, Peter Newton from the Tasmanian College of Advanced Education attempted to explain why 'the people of Battery Point have turned to bite the hand that fed them'. Newton praised the consultative efforts of George Clarke, although said that after his departure in 1967, 'liaison between the Council and residents ceased altogether'. Apparently residents had been in agreement with the general principles of the scheme, and assumed that the detailed planning controls would reflect these principles. Consequently they were 'appalled' when Avon Court was approved, having thought that 'the Plan would have made such a large development impossible'.⁷⁵

Yet the Avon Court proposal was consistent with the Battery Point scheme, as outlined in Clarke's preliminary reports from June 1967. The winter 1967 issue of *Tasmanian Architect* also indicates that the low-rise, high-density redevelopment strategy had the support of the National Trust, and the local architectural and planning community.⁷⁶

The general principles to which Newton refers were never mentioned in the original scheme approved by Council in 1969, and were only included after the local architect Patrick Bush objected that the scheme contained no 'statement of goals'. A list of 'Guiding Principles', prepared by Clarke, was consequently appended to the scheme in April 1970.⁷⁷ These principles emphasised the historic values of Battery Point, and made passing reference to 'the building of new housing in a traditional scale'.⁷⁸ Clarke had intended them to be 'Governing Principles', and hoped they would be used 'to settle disputes about the mathematical elements of the controls'.⁷⁹ The principles had no effective legal standing however, and clearly promised something that could not be achieved given the principal emphasis of the scheme on medium to high density redevelopment.

The second Battery Point Planning Scheme, which was gazetted by the state government in June 1979, came about after numerous committee meetings, protests, petitions, community surveys, government debates and controversial development proposals.⁸⁰ This latter scheme has remained essentially

⁷⁵ AOT MCC 16/2/354, *BPPS Review Committee*, vol. 1, Transcript of AIUS Seminar, September 1973.

⁷⁶ BH McNeill (ed), 'The National Trust Battery Point Report', *Tasmanian Architect*, Winter 1967, pp. 15-6; T. Hurburgh, 'Thesis: Battery Point Redevelopment', *Tasmanian Architect*, Winter 1967, pp. 22-4, 29-31. The position of the National Trust is explained more fully in D Young, 'The role of the National Trust in the conservation of Hobart buildings in the 1960s', in *Hobart's History: The First Two Hundred Years*, eds. I Terry & K Evans, (Hobart, TAS: Professional Historians Association of Tasmania, 1998), pp. 82-86.

⁷⁷ AOT MCC 16/2/351, *Battery Point Town Planning*, vol. 5, Consultant's Report on Objections and Proposals Urging Amendments to the Publicly Exhibited Planning Scheme, 21 April 1970

⁷⁸ AOT MCC 16/2/355, *Battery Point Town Planning Scheme 1972 - Objections - Decisions*, The Governing Principles of the Battery Pt P.S., April 1970, pp. 2-4.

⁷⁹ Email George Clarke to Ben Ridder, 20 November 2000.

⁸⁰ A Hudspeth and L Scripps, *Battery Point Historical Research*, Hobart, 1990, pp. 12-18.

unchanged since 1979, and has proved particularly successful in minimising the visible impact of change in Battery Point.⁸¹

Transition from By-Laws to Planning Schemes

The events outlined above demonstrate that the transition from by-laws to planning schemes was slow and controversial. Council favoured the use of by-laws because of the ease with which they could be introduced, modified and even ignored, thereby providing Council officers and Aldermen with the greatest level of personal influence over development.

From the perspective of residents, by-laws had a number of disadvantages. Not only could they be changed without public input, but because of the incremental way in which they were amended, it would have been difficult for residents to know what the by-laws were. Bert Dechaineux, who was City Architect between 1946 and 1976, admits that the 'many amendments made a completely up to date booklet very much sought after. My office prepared many copies for display and for solicitors - all for gratis in those days!'.⁸² Hence a planning scheme was attractive to residents because of its rigidity and the consultation which was required before a scheme was given final approval.

Councils were further discouraged from moving to planning schemes because of the administrative difficulties involved in having them gazetted. This was demonstrated by the Council's reluctance to subject the Sandy Bay Planning Scheme to a second public exhibition phase. The practice of delaying the final gazettal of planning schemes was quite common in Australia. In Sydney, for example, between 1948 and 1968, only four out of thirty-eight councils had fully approved planning schemes - most preferred to remain in the 'interim development' phase.⁸³

The experience of Avon Court provided an example of the problems inherent in approving a planning scheme which did not accurately account for the concerns of an active and influential group of residents. Although the residents eventually managed to convince Council Aldermen that flats were inappropriate, the rigidity of the scheme resulted in the Council's decision being overturned in the Supreme Court. Such an outcome would not have occurred if the by-law had still been in operation.

Another perspective on the transition from by-laws to planning schemes concerns the role played by individual Council officers. Clarke has recently suggested that the process of transition was complicated by the difference in the objectives of the City Architect and the City Engineer.⁸⁴ The City Architect, Bert Dechaineux, was responsible for development control, and held a strong conviction that high density flat development was necessary for the good of the city. In this regard he conformed with the prevailing ideology among planners and architects in the 1950s and 1960s. For Dechaineux's purposes, by-laws were a convenient and practical means of regulating development. In contrast, the City Engineer, Peter Crawford, was responsible

⁸¹ J Dawkins, *On the Right Track: Battery Point and Marieville after 25 Years of Planning*, Hobart: Hobart City Council, 1996, p. 9.

⁸² Letter Bert Dechaineux to Ben Ridder, 3 August 2000.

⁸³ Colman, pp. 67-74.

⁸⁴ Email George Clarke to Ben Ridder, 20 October 2000.

for planning scheme preparation. He was also less enthusiastic about flats, and had apparently moved house in the mid-1960s because of his concerns about flat development.⁸⁵

Legislative change was another important factor contributing to the shift from by-laws to planning schemes. Planning schemes were first encouraged by the state government under the Town and Country Planning Act of 1944. The Hobart City Council did not undertake to prepare a planning scheme until 1965, by which stage amendments to the Local Government Act had been gazetted which would repeal many of Council's planning by-laws.

⁸⁵ Letter Bert Dechaineux to Ben Ridder, 3 August 2000; Conversation with Bert Dechaineux, 16 August 2000.