



# Brighton Council

MINUTES OF THE **PLANNING COMMITTEE MEETING**  
OF THE BRIGHTON COUNCIL HELD  
IN THE COUNCIL CHAMBER, COUNCIL OFFICES  
GAGEBROOK AT 5.30P.M. ON TUESDAY,  
14<sup>TH</sup> FEBRUARY, 2012

**PRESENT:** Cr Gray (Chairperson); Cr Foster; Cr Geard; Cr Owen and Cr Taylor.

**IN ATTENDANCE:** Cr Curran; Cr Garlick; Cr Jeffries; Mrs J Banks (Manager Governance & Human Services); Mr H Macpherson (Municipal Engineer); Mr J Dryburgh (Senior Planner) and Ms J Tyson (Planning Officer).

## 1. **APOLOGIES:**

*Cr Geard moved, Cr Owen seconded that an apology be received from Cr Williams*

**CARRIED**

### VOTING RECORD

<b>In favour</b>	<b>Against</b>
Cr Foster	
Cr Geard	
Cr Gray	
Cr Owen	
Cr Taylor	

## 2. **QUESTION TIME & DEPUTATIONS:**

*As there were no members of the public in the gallery there was no requirement for question time.*

### **3. DECLARATION OF INTEREST:**

In accordance with Part 5, Section 48 of the *Local Government Act 1993*, the Chairman of a meeting is to request Councillors to indicate whether they have, or are likely to have an interest in any item on the agenda; and

Part 2 Regulation 8 (7) of the Local Government (Meeting Procedures) Regulations 2005, the Chairman of a meeting is to request Councillors to indicate whether they have, or are likely to have, a pecuniary interest in any item on the agenda.

Accordingly, Councillors are requested to advise of any interest they may have in respect to any matter appearing on the agenda, or any supplementary item to the agenda, which the Council has resolved to deal with, in accordance with Part 2 Regulation 8 (6) of the Local Government (Meeting Procedures) Regulations 2005.

*There were no declarations of interest.*

### **4. COUNCIL ACTING AS PLANNING AUTHORITY:**

In accordance with the provisions of Part 2 Regulation 25 of the Local Government (Meeting Procedures) Regulations 2005, the intention of the Council 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 Council will act as a planning authority in respect to those matters appearing under Item 4. on this agenda, inclusive of any supplementary items.

#### **4.1 BIODIVERSITY OFFSETS GUIDELINES – ENDORSEMENT OF DRAFT FOR PUBLIC CONSULTATION:**

##### **FILE REFERENCE:**

**AUTHOR:** Planning Officer  
(Ms J Tyson)

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The Southern Tasmanian Councils Authority (STCA) and its 12 member Councils have prepared a set of guidelines for the use of biodiversity offsets as part of the local planning approval process by planners, NRM officers, applicants and developers.

The guidelines are intended to provide a consistent approach to the use of biodiversity offsets across Councils within Southern Tasmania in order to provide for improved management of biodiversity values within the region and assist in achieving commonality in planning approval processes.

Agreement for the draft guidelines to be advertised for public comment is sought from all the STCA member Councils.

The draft guidelines will be advertised for a period of six (6) weeks from the 26<sup>th</sup> February. A copy of the draft Guidelines and Executive Summary will be available from the STCA website ([www.stca.tas.gov.au/biodiversity](http://www.stca.tas.gov.au/biodiversity)) and they will also be displayed in the offices of the twelve (12) Southern Councils.

Revisions of the draft document will be completed after the public consultation period. The final document will then be presented to Councils for endorsement and adoption.

**RECOMMENDATION:**

That Brighton Council agree to endorse the Draft Biodiversity Offset Guidelines for public consultation.

**DECISION:**

*Cr Foster moved, Cr Owen seconded that the recommendation be adopted.*

**CARRIED**

**VOTING RECORD**

<b>In favour</b>	<b>Against</b>
Cr Foster	
Cr Geard	
Cr Gray	
Cr Owen	
Cr Taylor	

**4.2 APPLICATION FOR PLANNING APPROVAL – RESIDENTIAL (FENCE) REQUIRING VARIATION TO HEIGHT STANDARD IN RESIDENTIAL ZONE, 59 FOCHE AVENUE OLD BEACH:**

**FILE REFERENCE:** FOCHE/59 & DA2012/03

**AUTHOR:** Planning Officer  
(Miss J Farmer)

**Applicant:** Borderline Fencing

**Owner:** I & C Sealy

**Location:** 59 Fouche Avenue, Old Beach

**Application no.:** DA2012/03

**Zoning:** Residential - Brighton Planning Scheme 2000 (the planning scheme)

**Date accepted:** 10 January 2012

**Date advertised:** 11 January 2012

**Decision required** 21 February 2012 (Agreement by extension of time)

**Discretion(s):**

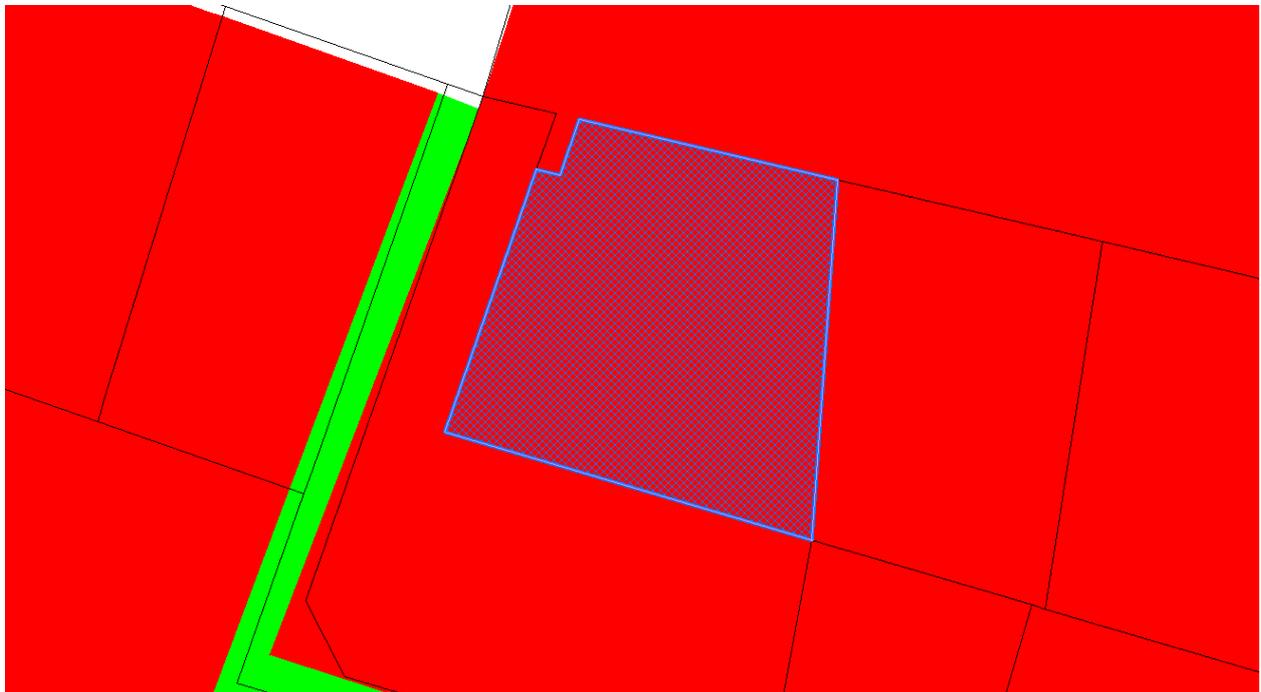
Variation to height standard in accordance with Planning Directive 4.

**Proposal:**

Application has been made for a 2.4 metre high front fence at a Residential property in Fouche Avenue, Old Beach. The fence is proposed to be 22 metres long and located approximately 400mm within the front boundary. The fence is proposed to be constructed from colorbond and horizontal timber screening. The middle section, measuring approximately 1.4 metres, is of colorbond in the colour 'paperbark' with treated pine slat screening measuring approximately 500mm located above and below the colorbond centre feature. An electronic front gate is also proposed to access the property and will match the front fence.

**Site and Locality:**

The subject land is located at 59 Fouche Avenue Old Beach and is zoned Residential.



**Figure 2:** The zoning of the subject locality.

The subject site is currently developed with a newly constructed single storey dwelling, an attached garage and pine deck.

**Consultation:**

The application was subject to the 14 day statutory notification period. The proposal is discretionary because it requires variation to the height standard in accordance with Planning Directive 4.

Two (2) representations were received during the statutory notification period. The concerns raised in the representations are outlined and addressed as follows:

Concerns Raised	Planning Response
<b>Representor 1:</b>	
The fence is not in keeping with the streetscape at all.	Currently Fouche avenue does not have many front fences. Planning Directive 4 ('PD4') allows for a front fence of 1.2m high if solid or 1.8m provided that the part of the fence above 1.2m has openings which provide 50% transparency.  As such Council must approve all fences that comply with the abovementioned criteria regardless of existing streetscape.
The few fences that are in front of houses in the area are very low.	This concern has been addressed above.
<b>Representor 2:</b>	
A front fence at the proposed height will create serious safety issues as a vehicle could reverse from the driveway and injure a young child or animal.	This concern is considered to be relevant and is discussed further in the report.
A front fence will not suit the area and would lessen the street appeal, possibly devaluing properties in the near vicinity. The majority of houses do not have a front fence in the area, particularly at that height.	This concern has been addressed previously.
The height of the fence will prevent strategies and objections of the community based on crime prevention program "Neighbourhood Watch"	The performance criteria of PD4 states that fences within 4.5m of a frontage must be designed to provide for security and privacy of residents while allowing for mutual passive surveillance of the road. The proposed fence does not comply with this objective and as such this concern is considered to be relevant and is discussed further in the report.

### **Risk Implications:**

Section 63A of the Act provides that a planning authority that fails to take all reasonable steps to ensure that its planning scheme is complied with may be liable to a fine of up to \$50,000.

### **Financial Implications:**

Nil

### **Other Issues:**

This report details the basis and reasons for the recommendation. An alternative decision by Council will require a statement of the reasons for the decision in order to maintain the integrity of the planning approval process and to comply with the intent of the Judicial Review Act 2000. In addition, section 25 of the Local Government (Meeting Procedures) Regulations 2005 provides that the General Manager is to ensure that the reasons for a decision by a Council acting as a planning authority are recorded in the minutes of the meeting.

### **Objectives of the Resource Management and Planning System of Tasmania**

Section 5 of the Act provides that Council is obliged to further the Objectives of the Resource Management and Planning System of Tasmania (RMPS) set out in Schedule 1 of the Act when determining an application for planning approval. The Objectives of the RMPS are –

- a) *to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and*
- b) *to provide for the fair, orderly and sustainable use and development of air, land and water; and*
- c) *to encourage public involvement in resource management and planning; and*
- d) *to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and*
- e) *to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.*

The proposal is not considered to be consistent with the objectives of Schedule 1 of the Act, in particular (b) as the proposed fence is inconsistent with the surrounding streetscape and does not provide for the orderly development of the land.

## **State Policies**

Clause 3.3 (a) of the Planning Scheme requires Council to take into consideration any State planning policies before granting or refusing planning approval and Section 13(1) provides that where inconsistency occurs between State Policy and Planning Scheme the Policy takes precedence.

### **State Coastal Policy 1996**

The State Coastal Policy 1996 (Coastal Policy) applies to the coastal zone, which includes all State waters and land within 1 km from the High Water Mark (HWM).<sup>1</sup> The subject land is located within 1 km from the HWM of the Derwent Estuary and the Coastal Policy applies to the land.

The following provisions of the Coastal Policy are of relevance to the assessment of this development application:

Clause 1.1.10 provides the following:

*The design and siting of buildings, engineering works and other infrastructure, including access routes to the coastal zone, will be subject to planning controls to ensure compatibility with natural landscapes.*

Clause 2.1.3 goes further to state:

*Siting, design, construction and maintenance of buildings, engineering works and other infrastructure, including access routes within the coastal zone will be sensitive to the natural and aesthetic qualities of the coastal environment.*

The development is on land zoned Residential under the Planning Scheme and it is considered acceptable for a fence associated with an existing house to be developed on the site.

On the above basis, the proposal is considered consistent with the outcomes of the State Coastal Policy.

### **State Water Quality Policy 1997**

The State Policy on Water Quality Management 1997 (Water Quality Policy) requires that a use or development be consistent with the physical capacity of the land so that the potential for erosion and subsequent water quality degradation is minimised.

The total site disturbance is expected to be less than 250 square metres. As such, a Soil and Water Management Plan is not required.

### **The State Policy on the Protection of Agricultural Land 2009**

The subject land is located in a residential zone and established suburb and it is therefore considered that the Agricultural Policy does not apply to the land.

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<sup>1</sup>State Coastal Policy Validation Act 2003

**National Environmental Protection Measures (NEPM's)**

No NEPM's are applicable to this proposal.

**Planning Scheme**

The land is located within the Residential zone of the Planning Scheme. Planning Directive 4 ('PD4') applies to all single dwellings Residential uses on Residential zoned land and therefore these standards form the basis of assessment and override the existing scheme requirements.

**PLANNING DIRECTIVE NO.4 (PD4)**

Planning Directive No.4 came into effect on the 29<sup>th</sup> August 2011 and introduces a primary set of planning standards for single dwellings in the Residential zone in most planning schemes in the State.

There are six primary standards. The six standards are:

- setback from a frontage;
- site coverage and rear setback;
- building envelope;
- frontage setback and width of garages and carports;
- privacy; and
- frontage fences.

The only standard applicable to this application is the front fence standard.

***Frontage Fences***

Objective: To ensure that the height and design of frontage fences:	
(i) provides adequate privacy and security for residents while allowing for mutual passive surveillance of the road and dwelling; and (ii) enhances streetscapes or is consistent with the statements of desired future character.	
<b>Acceptable Solutions</b>	<b>Performance Criteria</b>
A1. The maximum building height of fences on and within 4.5m of a frontage must be: (a) 1.2m if solid; or (b) 1.8m provided that the part of the fence above 1.2m has openings which provide a minimum 50%	P1. Fences on and within 4.5m of a frontage must be designed to: (a) provide for security and privacy off residents while allowing for mutual passive surveillance of the road; and (b) take account of the prevailing height, design and character of

transparency.	neighbouring fences; and (c) attenuate noise from high volume traffic; and (d) take account of steep slope or other topographical constraints; and (e) have regard to streetscape qualities or be consistent with the statements of desired future character.
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The proposed fence does not comply with either of the abovementioned Acceptable Solutions. Therefore the Performance Criteria must be assessed against the development application.

*P1(a) provide for security and privacy of residents while allowing for mutual passive surveillance of the road.*

The proposed fence does not comply with the above due to its proposed overall height and solid construction.

*(b) take account of the prevailing height design and character of neighbouring fences.*

The neighbourhood is characterised by a lack of front fences as most residents have used landscaping to provide privacy rather than fencing. The proposed fence is not in keeping with this character.

*(c) attenuate noise from high volume traffic.*

The applicant has stated that they would like a fence to help buffer any traffic noise from Fouche Avenue as they understand it will become a bus route in the future. Fouche Avenue is a local road and the traffic volume is not considered to be higher than an average residential street. This is not considered to be a valid planning reason for a higher fence.

*(d) take account of steep slope or other topographical constraints.*

The subject site has a gentle downward slope and a front fence would provide private open space for the occupants in their yard. There is no topographical reason to have a front fence higher than that allowed in the Acceptable Solution.

## **Overlays**

The subject site is not located within any of the overlays listed in Section 7 of the Brighton Planning Scheme 2000.

## **Schedule 4: Environmental Management Standards**

Clause 3.3(n) of the planning scheme requires Council to take into consideration the effect on the environment of the development on nearby land before granting or refusing planning approval.

On balance, the proposal is consistent with the provisions outlined under the Environmental Management Schedule subject to a number of conditions that should form part of any planning permit in the event the proposal is approved

## **Amenity**

Clause 3.3(e) of the Planning Scheme requires Council to take into consideration the character of the locality, the existing and future amenities of the neighbourhood and the effects of the development on the amenity of the area.

The proposed fence if approved will be the only one in the immediate area, as other surrounding properties have established landscaping to provide screening and landscaping from the street.

The proposed construction materials do not provide for passive surveillance of the neighbourhood and do not contribute to the streetscape and character of the areas. As such it is recommended that the overall height of the fence be reduced to 1.8 metres and that the part of the fence above 1.2 metres has openings which provide a minimum 50% transparency, in accordance with the Acceptable Solution of Planning Directive 4. No strong planning reason has been demonstrated to support the need for a fence exceeding the Acceptable Solution and no supporting evidence has been provided to demonstrate compliance with the Performance Criteria.

## **Services**

Clause 3.4(l) of the planning scheme requires Council to take into consideration the availability and provision of utility services, including water, sewerage, drainage and electricity when considering the application.

There are no issues associated with the services to this development site.

A standard condition is required to ensure that the developer meets the cost of any alterations or reinstatement of existing services, Council infrastructure or private property incurred as a result of the development.

## **Conclusion**

Application has been made for a 2.4 metre high fence in a Residential area which is proposed to be constructed from solid materials.

The fence does not comply with the Acceptable Solutions contained in Planning Directive 4 and has been found not to comply with the Performance Criteria either. It is therefore recommended that the fence be altered to comply with the Acceptable Solution and conditions of approval reflecting this have been included in the permit below.

### **Options:**

1. Issue a written approval specifying the conditions (if any) imposed upon the use or development in accordance with the recommendation; or
  2. Issue a written approval providing alternative or additional conditions (if any) imposed upon the use or development; or
  3. Issue a written refusal for the use or development stating the reasons for refusal.
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### **RECOMMENDATION:**

That the application submitted in accordance with Part 4 of the Land Use Planning and Approvals Act 1993 for land at 59 Fouche Avenue Old Beach, described in Folio of the Register Volume 159738 Folio 41, to be developed by a front fence, and associated works approved subject to the following conditions:-

#### *General*

- (1) The use or development must be carried out substantially in accordance with the application for planning approval, except where modified by the conditions of this permit and must not be altered or extended without the further written approval of Council.
- (2) This permit shall not take effect and must not be acted on until 15 days after the date of receipt of this letter or the date of the last letter to any representor, which ever is later, in accordance with section 53 of the *land Use Planning And Approvals Act 1993*.
- (3) The front fence must extend the length of the boundary with Fouche Avenue. The fence must be no more than 1.8 metres high and must be no less than 25% transparent in accordance with Planning Directive 4 - Frontage Fences for single dwellings A1(b).

#### *Amenity*

- (4) All external metal building surfaces must be clad in non-reflective pre-coated metal sheeting or painted to the satisfaction of the Council's Senior Planner.

*Landscaping*

- (5) Landscaping must be provided along the outside front boundary of the fence onto Fouche Avenue. Plants should provide screening and grow to a height of approximately 3 metres and be planted no more than 3 metres apart. Plans showing compliance with this condition must be submitted to and approved by the Manager of Governance & Human Services.
- (6) The landscaping works must be completed in accordance with the endorsed landscape plan and to the satisfaction of Council's Senior Planner within six (6) months of the first use of the development. All landscaping must continue to be maintained to the satisfaction of Council.

*Services*

- (7) The developer must pay the cost of any alterations and/or reinstatement to existing services, Council infrastructure or private property incurred as a result of the development. Any work required is to be specified or undertaken by the authority concerned.

*Construction amenity*

- (8) The development must only be carried out between the following hours unless otherwise approved by the Council's Senior Planner:
  - Monday to Friday 7:00 a.m. to 6:00 p.m.
  - Saturday 8:00 a.m. to 6:00 p.m.
  - Sunday and State-wide public holidays 10:00 a.m. to 6:00 p.m.
- (9) All works associated with the development of the land shall be carried out in such a manner so as not to unreasonably cause injury to, or prejudice or affect the amenity, function and safety of any adjoining or adjacent land, and of any person therein or in the vicinity thereof, by reason of:
  - (a) Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, ash, dust, waste water, waste products, grit or otherwise.
  - (b) The transportation of materials, goods and commodities to and from the land.
  - (c) Obstruction of any public footway or highway.
  - (d) Appearance of any building, works or materials.
- (10) Any accumulation of vegetation, building debris or other unwanted material must be disposed of by removal from the site in an approved manner. No burning of such materials on site will be permitted unless approved in writing by the Council's Senior Planner.
- (11) Public roadways or footpaths must not be used for the storage of any construction materials or wastes, for the loading/unloading of any vehicle or equipment; or for the carrying out of any work, process or tasks associated with the project during the construction period.

- (12) The developer must make good and/or clean any footpath, road surface or other element damaged or soiled by the development to the satisfaction of the Council’s Municipal Engineer.

THE FOLLOWING ADVICE APPLIES TO THIS PERMIT:

- A. This permit does not imply that any other approval required under any other legislation or by-law has been granted.

*This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.*

**DECISION:**

*Cr Taylor moved, Cr Geard seconded that the recommendation be adopted subject to Conditions 5 and 6 relating to Landscaping being deleted.*

**CARRIED**

**VOTING RECORD**

<b>In favour</b>	<b>Against</b>
Cr Foster	
Cr Geard	
Cr Gray	
Cr Owen	
Cr Taylor	

The meeting closed 5.40 p.m.

Confirmed: \_\_\_\_\_  
(Mayor)

Date: \_\_\_\_\_  
21<sup>st</sup> February 2012