



# 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,  
11<sup>TH</sup> SEPTEMBER, 2012

**PRESENT:** Cr Gray (Chairperson); Cr Foster; Cr Garlick (proxy for Item 4.1); Cr Geard; Cr Owen and Cr Taylor.

**IN ATTENDANCE:** Cr Curran; Cr Garlick Mrs J Banks (Manager Governance & Human Services) and Miss J Tyson (Planning Officer)

## 1. APOLOGIES:

All members were present.

## 2. QUESTION TIME & DEPUTATIONS:

- Cr Owen addressed Committee in relation to Item 4.1

## 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*.

*Cr Owen declared at interest in Item 4.1*

#### 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.

Cr Owen declared and interest and left the meeting.

Cr Garlick (proxy) joined the meeting for this item only.

#### 4.1 APPLICATION FOR PLANNING APPROVAL – RESIDENTIAL (DWELLING) REQUIRING VARIATION TO REAR SETBACK AND BUILDING ENVELOPE REQUIRMENT IN THE RESIDENTIAL ZONE - -57 JETTY ROAD, OLD BEACH:

**FILE REFERENCE:** Jetty/57

**AUTHOR:** Jacqui Tyson  
(Planning Officer)

**APPROVED:** James Dryburgh  
(Manager Strategic Planning)

**Applicant:** Mario Arevalo

**Owner:** Mario Arevalo

**Application no.:** DA 2012/55

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

**Date accepted:** 24 April 2012

**Date advertised:** 21 July 2012 through to the 3 August 2012

**Decision required** Extension of time requested until 18 September 2012

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#### Discretions:

Planning Directive Number 4 (PD4) applies to the site and has been effective from the 29 August 2011. PD4 applies to all use and development associated with a single residential use (including appurtenant structures) and occurring on Residential zoned land.

The standards operate by taking precedence in the event of any inconsistencies with the other standards in the Planning Scheme applying to single dwellings and ancillary development.

The application generated two discretions under PD4 and includes:

- Standard 2, A2- rear setback standard
- Standard 3, A2- Building envelope

### **Proposal:**

The purpose of this application is to consider an application made to develop a recently subdivided lot by way of the construction of a two story dwelling. The dwelling would be sited centrally upon the internal allotment and would have a gross floor area of 190.44 square metres. The ground floor of the dwelling would comprise a double car garage, office, laundry, toilet, and open plan kitchen/living and dining room. An internal stairway would provide access to the upper level which contains three bedrooms (one with walk-in-robe) and a bathroom. The upper level would be sited centrally over the lower level and would occupy a smaller footprint which gives the appearance of a staggered upper level. The dwelling would be constructed from masonry walls in a rendered finish and 'colorbond' roofing in a gabled/hipped form with a 25 degree roof pitch. Colour details have not been provided at this stage. A covered concrete patio would also extend from the western elevation of the dwelling and a concrete driveway and pavement area would extend from the garage to the cross over with Jetty Road. Plans of the proposed dwelling were provided.

The proposed dwelling would be oriented towards the west to capitalize on river vistas and access would be obtained from Jetty Road via a recently installed crossover.

The site is serviced with reticulated sewer, stormwater and water infrastructure.

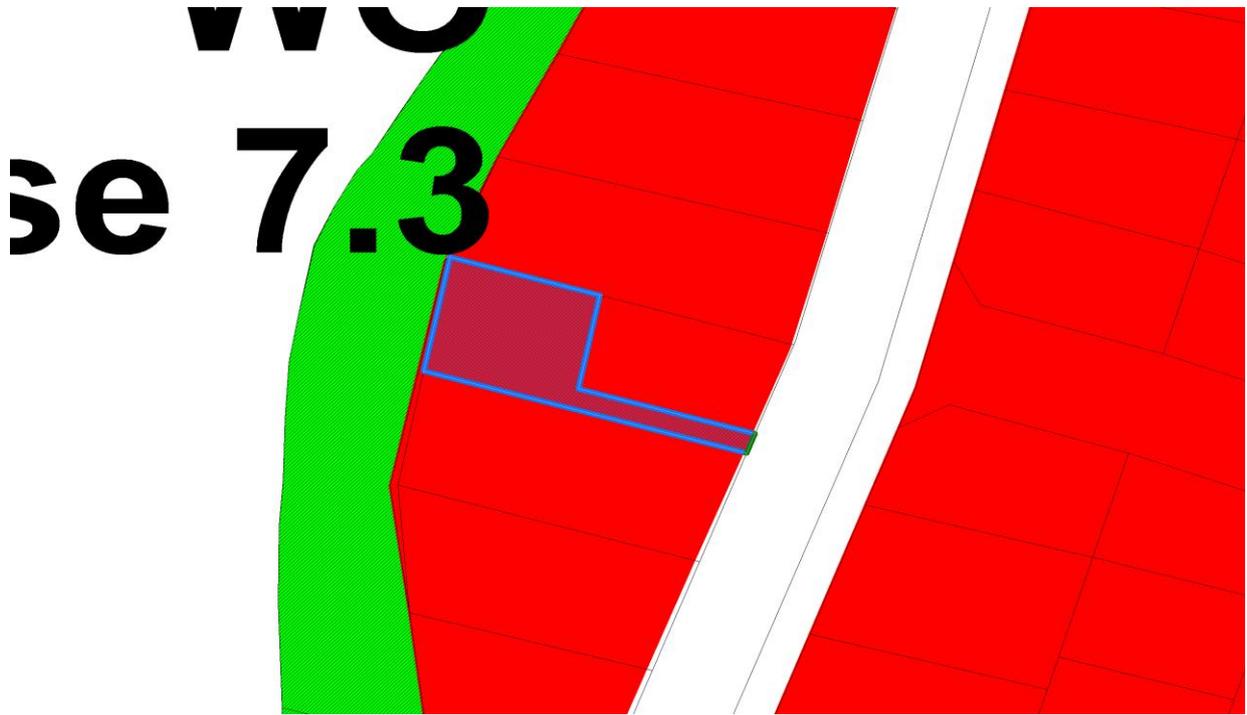
### **Background:**

A Planning Permit was issued for the subdivision of one lot and balance in 2011 (SA2010/40). The subdivision resulted in the creation of the subject lot.

### **Site and Locality**

The allotment is located on the western side of Jetty Road and is relatively level. It is a 599 square metre battle axe allotment and the rear elevation of the site adjoins a foreshore strip of land. In terms of the context of the surrounding area, the site is bound by the foreshore area of Old Beach to the west which forms the embankment of the Derwent River. The established urban area of Old Beach surrounds the site on the remaining three elevations. More broadly, Ferry Point is located further to the south and Lennox Park is located to the east.

The site is currently devoid of any structures and is cleared to grass in anticipation of residential development. There is an existing mature hedge along the southern boundary that adjoins a developed residential allotment.



*Plate 1: The subject site highlighted is located within the Residential Zone.*



*Plate 2: An aerial image of the subject site and surrounding built and natural environment.*



*Figure 1: Subject site when viewed from Jetty Road (note the rear of this image encompasses the subject lot).*

**Consultation:**

The application was subject to the 14 day statutory notification period as the proposal was a discretionary application in accordance with Clause 6.2.7 of the Planning Scheme. One representation was received during this statutory procedure .

The statutory representation raises the following issues:

<i>Issues raised</i>	<i>Planning response</i>
<p>I wish to lodge a formal objection against the above application on both counts of excess height and variation to the rear setback standard. My property is next door to the subject property on the southern side, and therefore is dramatically and unacceptably overshadowed by the prospective new residence in both the kitchen and the dining room. I have perused the designers proffered shade schematic and observed that this graphic shows extensive overshadowing of my property for prolonged periods which I believe is completely contrary to the parameters and ideals set by the Brighton Planning Scheme. I've also noticed that the designer has highlighted my existing hedge along the 57/59 boundary line a shaded area. I confirm that it is my option to prune or remove</p>	<p>Overshadowing is discussed in the assessment below.</p>

<p>my hedge if I desire to do so at any time and that this item should be disregarded when viewing the overshadowing element of this appeal.</p>	
<p>I am advised by Council staff that the height limit is 5.5 metres for this internal block. With a proposed height of this double storey dwelling in excess of 7.3 metres, this is a whopping 33 percent higher than the permitted height- which to me is completely unacceptable as the ensuing overshadowing and loss of privacy is extensive to habitable rooms of my property.</p>	<p>The permitted height for an internal block under PD4 is 5.5m and there is provision to vary that standard if the Performance Criteria are satisfied. Compliance with the Performance Criteria is assessed in the discussion below.</p>
<p>The proposed second storey has a large window on the southern side that directly overlooks the kitchen and dining room areas of my property. Both of these existing rooms have large windows and the loss of privacy would need to be addressed by a redesign of this upper storey window.</p>	<p>Overlooking and privacy is discussed in the assessment below.</p>
<p>I also contest the desired extra 0.8 metre variation to the rear setback as it forms an integral part of the overshadowing and privacy issues and should be refused.</p>	<p>If the development is approved it is recommended to include a condition to move the proposed dwelling 0.6m to the east, increasing the rear setback to 3.76m, reducing the discretion to 0.24m. This will reduce the overshadowing to meet the Performance Criteria and should also further reduce privacy issues.</p>
<p>Whilst I acknowledge that this point does not form part of the grounds of appeal, I wish to have noted that considerable water views from my property will also be diminished if the proposed residence is constructed as per the plans.</p>	<p>Views are not protected by the Brighton Planning Scheme 2000 or Planning Directive 4 and are therefore not valid considerations for the assessment of this proposal.</p>

**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:**

Approval of the application will increase the number and value of rateable properties.

## **Other Issues:**

The Local Government (Buildings and Miscellaneous Provisions) Act 1993 provides that land may only be subdivided in accordance with a previously approved plan, or a plan of subdivision approved by the granting of a permit under the Land Use Planning Approvals Act 1993 (the Act). Section 81(2) requires that unless the planning scheme provides otherwise, an application for subdivision be treated as a discretionary permit under Section 57 of the Act.

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.

## **Assessment:**

### **Strategic Plan**

The objectives of the planning process established by the *Land Use Planning and Approvals Act 1993* (the Act) in support of the Objectives of the Resource Management and Planning System of Tasmania include a requirement for sound strategic planning and co-ordinated action by State and local government. In addition, section 20(d) of the Act provides that a planning scheme must have regard to the strategic plan referred to in Division 2 of Part 7 of the *Local Government Act 1993* adopted by Council at the time the Scheme was prepared.

The Council's Strategic Plan provides for a future with practical and effective land use strategies that will be achieved by focusing on the following key area<sup>1</sup>: -

1. *A land use and development strategy to provide a long-term approach that produces sustainable and measurable economic, environmental (built and "green") and social benefits for the municipal area and the region.*

It is considered that the proposed subdivision will further the land use and development strategy in the long-term by providing for further economic development of the municipal area in a sustainable environmental and social manner.

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<sup>1</sup> Brighton Council: *Strategic Plan 2006 – 2016*, Brighton Council, Gagebrook, 2006.

## **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 represents the promotion of sustainable development of natural and physical resources as the proposal would result in infill development within an area that is fully serviced and contains no environmental values of significance. The proposal also provides for the fair, orderly and sustainable use and development of air, land and water insofar that the proposal would allow for the land to be utilised to its maximum potential without causing an unreasonable loading on existing service infrastructure, transport networks and biodiversity of the area. The public have had the opportunity to be involved in the decision making process through the appropriate notification requirements and all the differing spheres of government have been involved through the strategic land use decisions that have been made for the area. On this basis, the proposal is considered consistent with the Objectives of Schedule 1.

### **State Policies**

State Policies are made under the State Policies and Projects Act 1993. Section 13C provides that a Council is bound by a State Policy and Section 13(1) provides that if a planning scheme is inconsistent with a State Policy the planning scheme is void to the extent of that inconsistency.

Clause 3.3 (a) of the planning scheme requires Council to take into consideration any State planning policies before granting or refusing planning approval.

The State Coastal Policy 1996 (Coastal Policy) came into operation on 10 October 1996. This Policy applies to the coastal zone, which includes all State waters and land within 1 km from the High Water Mark (HWM).<sup>2</sup> The subject land is located within 1 km from the HWM of the Derwent Estuary and the Coastal Policy applies to the land.

Three main principles guide Tasmania's State Coastal Policy:

- Natural and cultural values of the coast shall be protected.
- The coast shall be used and developed in a sustainable manner.
- Integrated management and protection of the coastal zone is a shared responsibility.

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

#### Clause 1.1.10

*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.*

The proposed use is permitted under the Planning Scheme. The proposed subdivision design, engineering works and other infrastructure will comply with the standards and requirements prescribed within the Planning Scheme and by extension the Coastal Policy.

Approval of the subdivision would potentially facilitate future development of the land which would allow the land to be developed to its full potential which is appropriate given the Residential Zoning of the land. Such development would require consideration under the requirements of the Planning Scheme at that time.

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.*

In this instance, the development is on land zoned Residential under the Planning Scheme and is situated adjacent to a foreshore area and an established residential area characterised by suburban allotments supporting medium quality dwellings taking advantage of the coastal setting. The proposal is for the subdivision of land therefore there would be no physical changes to the allotment in the form of buildings or structures therefore would not have any visual ramifications on the coastal environment at this stage. Any future development proposed on the site will require assessment and the visual impacts will be assessed. It is considered that the proposal would not cause any impacts on the natural or cultural values of the coast.

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<sup>2</sup> State Coastal Policy Validation Act 2003

Clause 2.4.2 also states:

*Urban and residential development in the coastal zone will be based on existing towns and townships. Compact and contained planned urban and residential development will be encouraged in order to avoid ribbon development and unrelated cluster developments along the coast.*

The proposal is infill development in an existing residential area and is considered to accord with the provisions of the Coastal Policy.

State Water Quality Policy 1997

The State Policy on Water Quality Management 1997 (Water Quality Policy) came into operation on 27 September 1997. Clause 31.5 of the 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 subdivision includes access and services and the total site disturbance is expected to be more than 250 square metres. As such, a Soil and Water Management Plan will be required in the event of approval. Water sensitive urban design (WSUD) promotes a more de-centralised approach whereby greater emphasis is placed upon on-site collection, treatment and use of stormwater. WSUD has the potential to reduce future infrastructure needs by both making better use of rainfall within residential development (eg. garden irrigation) and reconfiguring the stormwater system to better cope with peak flows resulting from storm events. The adoption of WSUD principles can also form part of conditional approval in the event the proposal is approved.

The risk of sediments being transported into surface waters such that environmental harm might be caused during development is considered acceptable, in accordance with regional guidelines for best practice.

The State Policy on the Protection of Agricultural Land 2009

The PAL Policy does not apply to the land.

NEPM'S

None of the NEPM's are considered relevant to the assessment of this development application.

**Planning Scheme**

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

Planning Directive Number 4

Planning Directive No.4 came into effect on the 29th 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.

This application meets the Acceptable Solutions for setback from a frontage and privacy. The standards relating to setback and width garages/carports and frontage fences are not applicable to this development. Discretion is required in relation to the standards for site coverage and rear setback and building envelope.

*Site coverage and rear setback for single dwellings*

The proposed dwelling easily complies with the maximum site coverage of 50% specified in Acceptable Solution A1. Discretion is required in relation to the rear setback stated in A2 so the application requires consideration under the corresponding Performance Criteria which is replicated as follows:

<i>Objective: To ensure that the location and extent of building site coverage:</i>	
<ul style="list-style-type: none"> <li><i>(i) facilitates the provision of open space, gardens and other outside areas on the site that contribute to residential amenity; and</i></li> <li><i>(ii) assists with the management of stormwater; and</i></li> <li><i>(iii) provides for setback from the rear boundary; and</i></li> <li><i>(iv) has regard to streetscape qualities or is consistent with the statements of desired future character.</i></li> </ul>	
<i>Acceptable Solutions</i>	<i>Performance Criteria</i>
A2. <i>A minimum rear setback of 4m.</i>	P2. <i>The location of buildings in relation to the rear boundary must:</i> <ul style="list-style-type: none"> <li><i>(a) allow for adequate visual separation between neighbouring dwellings; and</i></li> <li><i>(b) maximize solar access to habitable rooms; and</i></li> <li><i>(c) facilitate provision of private open space.</i></li> </ul>

Under the proposal the new dwelling is to be sited 3.16 metres from the rear boundary, requiring discretion of 0.84 metres. In regard to P2 (a), the rear boundary of the subject land adjoins the foreshore reserve of the Derwent River. Therefore there will never be a neighbouring dwelling to the rear and the Performance Criteria is satisfied. P2 (b) required that solar access to habitable rooms is maximised. The reduced setback will not impact the solar access of the proposed dwelling as the boundary is shared with the foreshore and solar access is principally gained from the northern aspects.

As discussed further below, the applicant has agreed to move the dwelling a further 0.6 metres to the east, reducing the setback discretion to just 0.24 metres in order to maintain an acceptable level of solar access for the neighbouring property to the south. In regard to P2 (c), the proposed dwelling will be afforded with adequate areas of private open space including a covered patio and space in the north western portion of the lot.

*Building envelope for single dwellings*

The proposed dwelling is sited on an internal lot and as such Standard 3, A2 applies. This prescribes a building envelope which is determined by a minimum setback of 3.0 metres from all property boundaries (excluding the access strip) and a maximum building height of 5.5 metres.

The proposed dwelling falls outside the building envelope as it is sited 1.58 metres from the southern side boundary and has a maximum height of 7.33 metres. Consequently, the application requires consideration under the corresponding Performance Criteria which is replicated as follows:

<p><i>Objective: To ensure that the siting and scale of single dwellings:</i></p> <ul style="list-style-type: none"> <li><i>(i) allows for flexibility in design to meet contemporary dwelling requirements; and</i></li> <li><i>(ii) protects the residential amenity of neighbours through minimizing visual bulk and overshadowing; and</i></li> <li><i>(iii) has regard to streetscape qualities or is consistent with the statements of desired future character.</i></li> </ul>	
<p><i>Acceptable Solutions</i></p> <p><i>A2.</i>  <i>For internal lots, all single dwellings must be contained within a building envelope (excluding minor protrusions extending less than 1.5m) determined by a minimum 3m setback from all boundaries, excluding the access strip, and a maximum building height of 5.5m.</i></p>	<p><i>Performance Criteria</i></p> <p><i>P2.</i>  <i>The siting and scale of single dwellings on internal lots must be designed to:</i></p> <ul style="list-style-type: none"> <li><i>(a) ensure there is no unreasonable loss of amenity on adjoining lots by:</i> <ul style="list-style-type: none"> <li><i>(i) overshadowing and reduction of sunlight to habitable rooms and private open space to less than 3 hours between 9.00 am and 5.00 pm on June 21 or by increasing existing overshadowing where greater than above; and</i></li> <li><i>(ii) overlooking and loss of privacy; and</i></li> <li><i>(iii) visual impacts when viewed from adjoining lots; and</i></li> </ul> </li> <li><i>(b) take into account steep slopes and other topographical constraints.</i></li> </ul>

The applicant has provided a series of shadow diagrams for assessment against Performance Criteria P2 (a) (i). There are two windows of habitable rooms on the adjoining dwelling that will be overshadowed at times by the proposed dwelling, being the kitchen and living room.

The kitchen window is currently overshadowed by the existing hedge throughout the day on the 21<sup>st</sup> June and the proposed dwelling will also overshadow the window from sometime between 10:30am and 12pm through to 5pm. If the hedge was to be removed this window would receive less than 3 hours of sunlight between 9am and 5pm after the proposed dwelling is constructed. Legal advice has been sought regarding the consideration of existing overshadowing from a removable item such as the hedge for the second part of clause P2 (a) (i):

*'or by increasing existing overshadowing where greater than above'*

The legal advice indicates that as PD4 does not make any distinction about the source of existing overshadowing and whether or not it is permanent then existing overshadowing from any structure is relevant to the assessment. Using this approach the kitchen window will not be overshadowed by the proposed dwelling any longer than it already is by the hedge and as such no material change to this window will occur and the Performance Criteria is satisfied.

The living room window is currently overshadowed by the hedge through much of the day and will also be overshadowed by the proposed dwelling until 2:30pm if it is sited as originally proposed. This would mean less than 3 hours of sunlight before 5pm. Through discussions with the applicant it was determined that moving the proposed dwelling 0.6m to the east would ensure that the living room window does receive at least 3 hours of sunlight before 5pm and would therefore meet the Performance Criteria. It was agreed that a condition to this effect be placed on the permit and is included in the recommendation below.

P2 (a) (ii) requires that there is no unreasonable loss of amenity through overlooking and loss of privacy. The upper storey of the proposed dwelling is sited more than 7 metres from the closest corner of the adjoining dwelling. The existing house is sited so that the windows are at an angle to the shared boundary, rather than parallel with it. This, combined with the differential in height of the windows, considerably reduces the privacy impact as the windows of the proposed dwelling would not directly face the windows of the existing house. The upper storey rooms are bedrooms rather than living areas and this further reduces the potential for privacy impacts as the rooms are used less frequently during the day. It is considered that there will not be an unreasonable loss of amenity through overlooking and loss of privacy.

P2 (a) (iii) requires that there is no unreasonable loss of amenity from visual impacts when viewed from adjoining lots. It is acknowledged that there will be a degree of visual impact to the neighbouring property particularly in comparison to the current situation of having a vacant lot next door. There would be some impact expected from any dwelling even if it met all of the Acceptable Solutions.

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It is considered that there is a reasonable separation maintained between the dwellings and the smaller second storey of the proposed dwelling assists in reducing the bulk and visual impact from the adjoining lots. There is also some screening afforded by the existing vegetation on the boundary. Overall it is considered that there will not be an unreasonable loss of amenity from visual impacts when viewed from adjoining lots.

In relation to P2 (b), there are no topographical constraints on the land that are relevant to the assessment.

**Overlays**

The subject land is not subject to any overlays identified under the Brighton Planning Scheme 2000.

Clause 3.3(g) of the Scheme requires Council to take into consideration whether any part of the land is likely to become subject to inundation before granting or refusing planning approval.

The land is located close to the Derwent River. The land is outside the Waterway Overlay.

**Schedules**

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.

Schedule 5: Coastal and River Foreshore Development

The purpose of the Coastal and River Foreshore Development Schedule pursuant to S5.1 of the Planning Scheme is prescribed as follows:

*The purpose of the Coastal and River Foreshore Development Schedule is to control development that may cause environmental harm to foreshore areas and the waters of the Jordan or Derwent Rivers. [Amend. RZ03/04A effective 6/12/04]*

Any stormwater discharged into the Derwent River will be in accordance with best practise guidelines and a Soil and Water Management Plan will be required to ensure disposal into the Derwent is in accordance with best practice guidelines. The proposal is therefore considered consistent with Schedule 5 of the Planning Scheme.

**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.

Amenity impacts are addressed in the provisions of PD4 and are discussed at length above.

Overall it is considered that the proposed development will not have an unreasonable impact on the amenity of the adjoining properties or the neighbourhood generally.

*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.

*Traffic and Access:*

Clause 3.3(o) of the Scheme requires Council to take into consideration the accessibility of the site, its relationship to major roads, the capacity of the existing streets and roads in the locality and the effect of the development on such capacity when considering the application.

Clause 3.4(g) of the Scheme requires Council to take into consideration the layout of roads, having regard to their function and relationship to existing roads.

The proposed dwelling will not create a significant addition to the volume of traffic in the area and in any case the roads in the area could sustain a significant increase in traffic movements. The access location is appropriate and achieves the necessary site distances.

The proposal is considered reasonable from a traffic and access point of view.

**Conclusion**

Application has been made for a two storey dwelling on an internal lot in Jetty Road. The proposed dwelling does not comply with the Acceptable Solution for building envelope and rear setback contained in Planning Directive 4. The applicant has agreed to a condition requiring the dwelling to be moved 0.6 metres to the east so that it complies with all the relevant Performance Criteria that are necessary for the application to be approved. This is considered to be a reasonable outcome particularly as the proposed dwelling would have been a permitted development prior to the introduction of Planning Directive 4. Overall it is considered that while there will be some loss of amenity to the neighbouring property the impact will not be to an unreasonable level and the application can be approved, subject to conditions.

**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 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 and Part 4 of the Land Use Planning and Approvals Act 1993 for land at 57 Jetty Road, Old Beach, described in Folio of the Register Volume 24016 Folio 4, to be developed by a single dwelling and associated works be approved subject to the following conditions and advice:

### *General*

- (1) The use or development must be carried out substantially in accordance with the application for planning approval, the endorsed drawings and with the conditions of this permit and must not be altered or extended without the further written approval of Council.
- (2) The dwelling must be relocated no less than 3.76 metres from the rear (western) boundary in order to achieve adequate solar access to the adjoining dwelling. Plans showing compliance with this condition must be submitted to and approved by Council's Manager Strategic Planning prior to the issue of a Building Permit.
- (3) 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, whichever is later, in accordance with section 53 of the *land Use Planning and Approvals Act 1993*.

### *Amenity*

- (4) All external metal building surfaces must be clad in non-reflective pre-coated metal sheeting or painted to the satisfaction of the Manager Strategic Planning.

### *Parking & access*

- (5) At least two (2) parking spaces must be provided on the land at all times for the use of the occupiers in accordance with Standards Australia (2004): *Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking*; Standards Australia, Sydney.
- (6) Car parking spaces, other than those designed and marked out for use by the disabled, must be a minimum of 2.60 metres wide and 5.50 metres long, unless otherwise approved by the Council's Manager Strategic Planning.

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- (7) The areas set-aside for parking and associated access and turning must have: -
- (a) A driveway access with a minimum 3 metres internal width and an average maximum longitudinal grade of 1 in 5 (20%) or, if the topography makes this impractical, an absolute maximum longitudinal grade of 1 in 4 (25%).
  - (b) An all weather pavement constructed and surfaced to the satisfaction of the Council's Municipal Engineer.
  - (c) Drainage discharging to the stormwater system in accordance with the requirements of a plumbing permit issued by the plumbing Permit Authority.

**Services**

- (8) 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.

**Stormwater**

- (9) Drainage from the proposed development must drain to a legal discharge point to the satisfaction of Council's Municipal Engineer and in accordance with a Plumbing permit issued by the Permit Authority in accordance with the *Building Act 2000*.

**Protection of water quality**

- (10) Before any work commences a soil and water management plan (SWMP) prepared in accordance with the guidelines *Soil and Water Management on Building and Construction Sites*, by the Derwent Estuary Programme and NRM South, must be approved by Council's Manager Strategic Planning before development of the land commences (refer to advice below). The SWMP shall form part of this permit when approved.
- (11) Before any work commences install temporary run-off, erosion and sediment controls in accordance with the recommendations of the approved SWMP and maintain these controls at full operational capacity until the land is effectively rehabilitated and stabilised after completion of the development in accordance with the guidelines *Soil and Water Management on Building and Construction Sites*, by the Derwent Estuary Programme and NRM South and to the satisfaction of Council's Manager Strategic Planning.

**Construction amenity**

- (12) The development must only be carried out between the following hours unless otherwise approved by the Council's Manager Strategic Planning:
- 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.

- (13) 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.
- (14) 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 Manager Strategic Planning.
- (15) 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.
- (16) 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.
- B. The SWMP shall be prepared in accordance with the guidelines *Soil and Water Management on Building and Construction Sites*, by the Derwent Estuary Programme and NRM South, the State Policy for Water Quality Management 1997 and the requirements of the Council's Municipal Engineer and show the following -
  - Allotment boundaries, north-point, contours, layout of roads, driveways, building envelopes and reticulated services (including power and telephone and any on-site drainage or water supply), impervious surfaces and types of all existing natural vegetation;
  - Critical natural areas such as drainage lines, recharge area, wetlands, and unstable land;
  - Estimated dates of the start and completion of the works;
  - Timing of the site rehabilitation or landscape program;
  - Details of land clearing and earthworks or trenching and location of soil stockpiles associated with roads, driveways, building sites, reticulated services and fire hazard protection;
  - Arrangements to be made for surface and subsurface drainage and vegetation management in order to prevent sheet and tunnel erosion;

- Temporary erosion and sedimentation controls to be used on the site; and
  - Recommendations for the treatment and disposal of wastewater in accordance with Standards Australia: *AS/NZS 1547: On-site wastewater management*, Standards Australia, Sydney, 2000.
- C. 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 Foster moved, Cr Garlick seconded that the recommendation be adopted.*

**CARRIED**

**VOTING RECORD**

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

Cr Owen rejoined the meeting.

**4.2 APPLICATION FOR PLANNING APPROVAL – TOURIST ACCOMMODATION (THREE HOLIDAY FLATS & CARPORT) REQUIRING VARIATION TO THE BUILDING ENVELOPE IN RESIDENTIAL ZONE, 22 CHURINGA WATERS DRIVE, OLD BEACH:**

**FILE REFERENCE:** CHURIN/22

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

**APPROVED:** Mr J Dryburgh  
(Manager Strategic Planning)

**Applicant:** L Giakis

**Owner:** L Giakis

**Location:** 22 Churinga Waters Drive Old Beach

**Application no.:** DA2012/94

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

**Date accepted:** 9 July 2012

**Date advertised:** 25 July 2012

**Decision required** 18 September 2012

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**Discretion(s):**

Use (Tourist Accommodation)

Variation to building envelope

**Proposal:**

Application has been made to develop an existing single dwelling built to framing stage at 22 Churinga Waters Drive, Old Beach into three conjoined holiday flats and a carport.

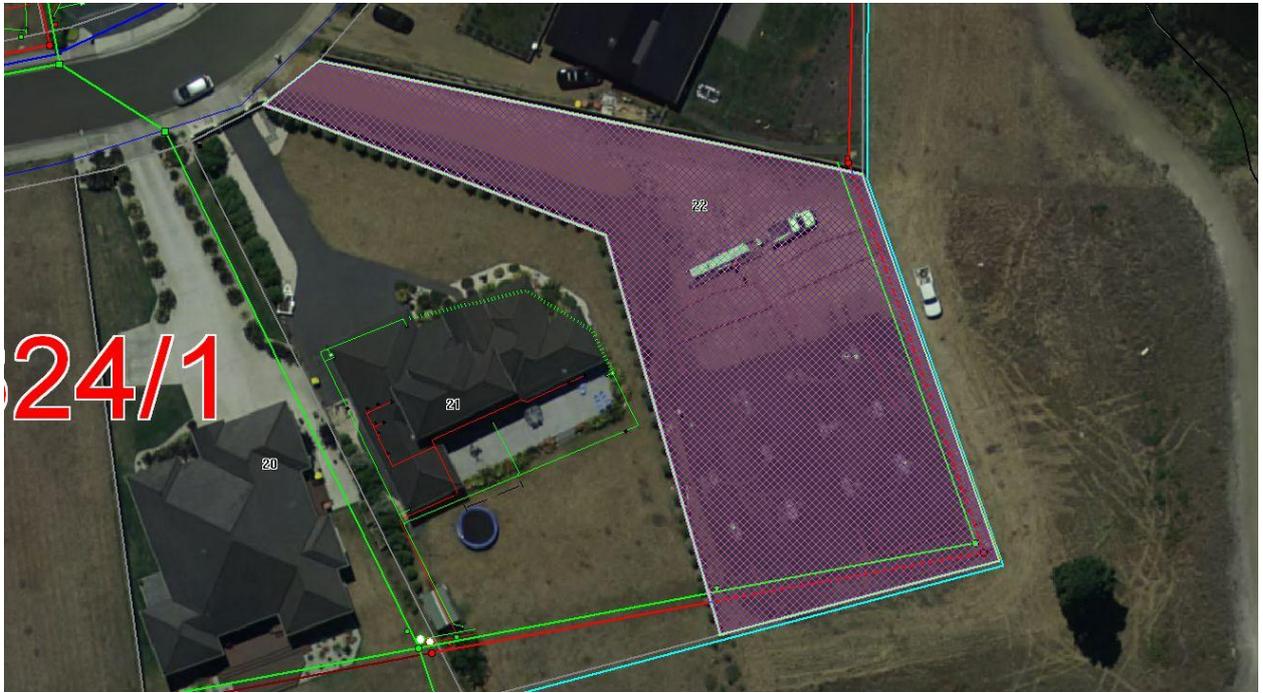
The application proposes to construct three conjoined apartments consisting of three bedrooms, two bathrooms, a laundry, a deck and landing area on the upper level, and two decks, an outdoor spa, and an open plan living, dining kitchen area on the lower level.

The outside of the building is proposed to be constructed of rendered cement sheeting, a colorbond roof and aluminium framed windows and sliding doors.

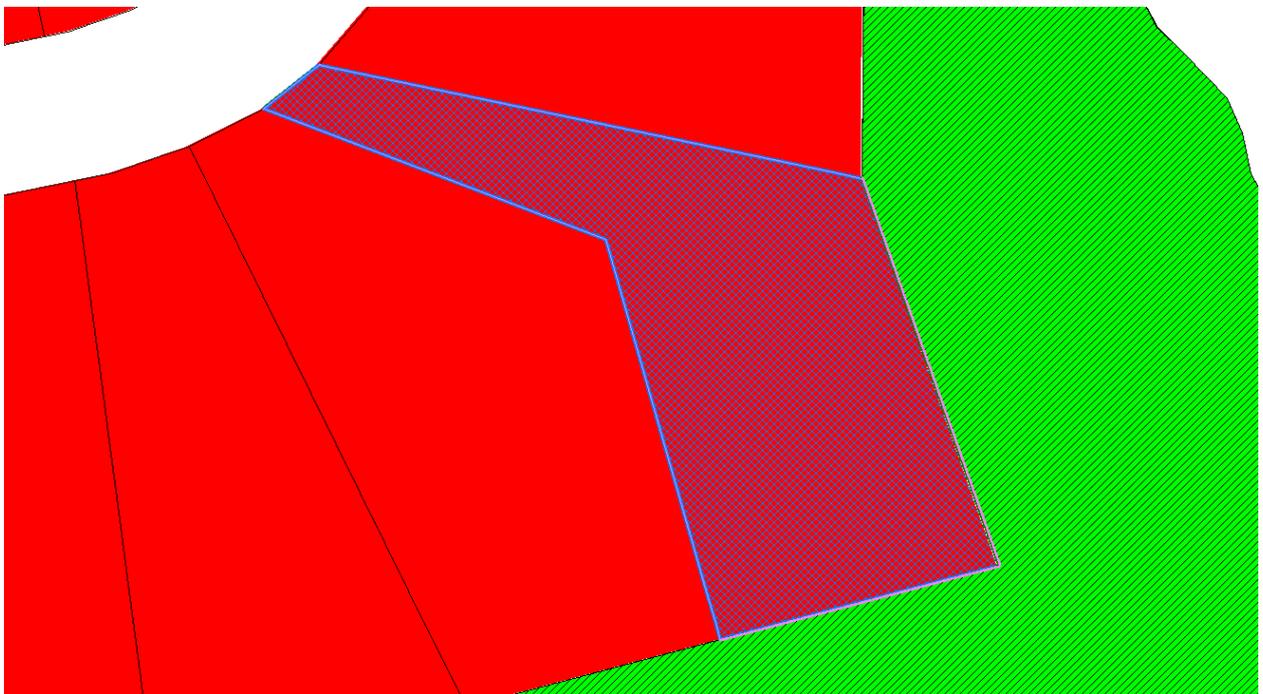
**Background:**

This site currently has planning approval for a dwelling which has been constructed to a framing stage.

**Site and Locality:**



**Figure 1:** A recent aerial image of the subject site.



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

**Consultation:**

The application was subject to the 14 day statutory notification period. The proposal is discretionary because it requires a variation to the building envelope standard and 'tourist accommodation' is a discretionary use within the Residential Zone.

Five (5) representations were received during the statutory notification period. The concerns raised in the representations are outlined and addressed as follows:

Concerns Raised	Planning Response
<i>Representor 1:</i>	
The building driveway is not designed to handle the volume of traffic expected.	If approved, the driveway would have to be upgraded in order to let vehicles pass each other within the driveway, and not cause an obstruction to Churinga Waters Drive in any way.
Tourists have a reputation for staying up all night and having little respect for neighbouring properties.	
The proposal is not in keeping with the residential nature of the neighbourhood.	This concern is considered to have planning merit as it is a commercial, rather than Residential use in a Residential area. Arguably it may also set a precedence in the area for the conversion of other residential properties as this is the first kind of its application in Old Beach.
Frequent usage of the balcony overlooking neighbouring living areas will diminish privacy and usability of private space.	Three balconies are proposed as part of the application on the upper level of the building, all of which may create overlooking and privacy issues for the occupants of 21 Churinga Waters Drive.
The position and scale of the building is not in keeping with the neighbouring properties and buildings.	Whilst the scale and position of the building is larger than others in the area, it is a requirement that it meets the Brighton Planning Scheme 2000, not to match that of surrounding existing properties.

<p>Land covenants prevent the construction of multiple dwellings on waterfront properties.</p>	<p>This is correct. There is a covenant on the property that prohibits the construction of multiple dwellings on this site. This is considered a planning issue because the impacts upon the area due to the proposed use would likely be similar to those caused by three multiple dwellings.</p>
<p>The representors believe there was never an intent to construct the building as a residence and was always intended for a commercial use in a Residential area.</p>	<p>This concern is not considered to have planning merit as it does not reflect any section of the Scheme's requirements.</p>
<p>Having had discussions with the owner, he has no consideration of the character and harmony of the area and sees the construction of this dwelling as a money making exercise.</p>	<p>This concern is not considered to have planning merit.</p>
<p>The representors believe Council have erred in its interpretation of the intent of the Planning Scheme clauses, specifically 6.2.2.</p>	<p>An application for Tourist Accommodation in the Residential Zone is discretionary. Therefore Council must accept the application and access it against the Scheme's requirements once it has been through the legal process.</p>
<p>The building is not sited within the building envelope in accordance with 6.2.9 (b)(i) of the BPS 2000.</p>	<p>This was one of the two discretions associated with the application and is assessed within the report.</p>
<p><b>Representor 2</b></p>	
<p>The representor was surprised and disappointed by the height and length of the framed building at 22 Churinga Waters Drive and that he had not been notified of the application for a single dwelling.</p>	<p>The application for the single dwelling was a permitted development in accordance with Section 58 of LUPAA. As such adjoining owners are not required to be notified of an application.</p>
<p>The owner would not be able to construct three dwellings on the site because of the covenant and so is getting around this by calling them tourist accommodation.</p>	<p>This concern has been addressed previously.</p>

<p>The representor has been told that Council will not be policing the use of the tourist accommodation business if approved and the onus would be on neighbours to report any constant long term visitors to the Council.</p>	<p>If it were to be approved, Council would have a responsibility to ensure that the property is used only for Tourist Accommodation. If the approved use were to be breached Council would be required to act.</p>
<p>Old Beach is a small community with limited services and tourists would not want to stay in the area as there are so many other options closer to the City.</p>	<p>The amount of public services available in Old Beach is considered outside the scope of the Brighton Planning Scheme 2000.</p>
<p>The representor does not believe the owner intends using the property for tourists but is rather using it as a loop hole to gain approval for flats.</p>	<p>This concern has been addressed previously.</p>
<p>Churinga Waters Drive is a quiet street and often young children are riding bikes and skateboarding out in the street due to low traffic volumes. The driveway is only wide enough for one car to enter or leave at any given time and is located right on a corner making it dangerous.</p>	<p>Any extra traffic associated with the development would be within the capacity of the existing road network. This concern is discussed further below in the report in the Engineering section.</p>
<p>Council have advised that the owner would be required to plant trees along the boundary to protect the representors privacy, however as the house is 7.5m tall this would completely block his view of the river.</p>	<p>This concern is not considered to have planning merit as "the right to a view" is not considered within the BPS 2000.</p>
<p>If this were to be approved it sets a precedence in the area. There are 3 vacant blocks along the waterfront still.</p>	<p>This concern considered to be valid as the area is zoned Residential, primarily to be used for this purpose. Allowing the conversion of certain blocks to be used for other purposes such as commercial activities may gradually change the intent of the Residential zone.</p>
<p>Existing ratepayers have invested a lot of money in making this street the jewel of the area and want to keep it this way.</p>	<p>This concern is not considered to have planning merit.</p>

<p><b>Representor 3</b></p>	
<p>Upon inspection of the plans to consider the siting and building of a two storey structure for a commercial operation in a residential area, the representor considers the application to be detrimental to the values of the areas residential properties.</p>	<p>This concern is not considered to have planning merit as it is not based on a requirement of the Brighton Planning Scheme 2000.</p>
<p>It would appear that given the building is being constructed for three flats there is no provision for the owner to live onsite thus allowing the potential for uncontrolled activity on the property next to existing residential houses.</p>	<p>The application does not include facilities for the owner of the property to live onsite. As such this concern is considered to have planning merit and is discussed further below in the report under Section 6.2 of the Residential Zone, in both the purpose and decision guidelines.</p>
<p>The date of the letter advising of the application was the 24<sup>th</sup> of July, yet the notice in the paper was the 25<sup>th</sup> and were placed well after construction had already begun on the site which seems to indicate an anomaly in the approval process.</p>	<p>Adjoining owner letters are sent out the day before the advertisement is placed in the paper in order to ensure that neighbours are notified of the application. Construction had already begun on the subject land as planning approval has already been granted for a single dwelling which has been built to framing stage.</p>
<p><b>Representor 4</b></p>	
<p>The current application does not meet Section 2.2 (f) To discourage the loss of existing housing stock by conversion to or redevelopment for non-residential uses. The development will change a residential lot into tourist accommodation.</p>	<p>This concern is considered to have planning merit and is discussed further below in the report under Section 6.2 of the Residential Zone, in both the purpose and decision guidelines.</p>
<p>The application does not meet Section 3.3 (e) the character of the locality, the existing and future amenities of the neighbourhood and the effect of the development on the amenity of the area. This development will affect the amenities of the neighbourhood. The tourist accommodation would be located</p>	<p>This concern is considered to have planning merit and is discussed further below in the report under Section 6.2 of the Residential Zone, in both the purpose and decision guidelines.</p>

<p>in a quiet residential street and there is no way that the potential guests can be policed. Guests could be arriving any time of the day or night with no control over the noise that will affect neighbouring properties. Being tourist accommodation with numerous guests staying throughout the year the noise can have significant effects on the amenity. If there were to be three dwellings, it would result in additional traffic which would affect the amenity of the area.</p>	
<p>The application does not meet Section 6.2.2 (b) the siting and design of the development protect the amenity of neighbours, minimise overshadowing and overlooking, enable passive surveillance without unreasonably diminishing privacy, and contribute to residential character and useability of private open space. The development does not meet this clause as it does not protect the amenity of the neighbours from noise and overlooking without unreasonably diminishing privacy, and contribute to residential character and useability of private open space.</p>	<p>This concern is considered to have planning merit and is discussed further below in the report under Section 6.2 of the Residential Zone, in both the purpose and decision guidelines.</p>
<p>There is a covenant on the title which prohibits the construction of more than one dwelling. This application goes against the intent of the covenant.</p>	<p>This concern has been addressed previously.</p>
<p><b><i>Representor 5</i></b></p>	
<p>The proposed application is out of keeping with the area. This is an established residential area and there is no precedence for this kind of development.</p>	<p>This concern has been raised previously and will be discussed in more detail further in the report.</p>
<p>The site is located in a residential area where occupiers could reasonable expect a level of amenity concurrent with the property.</p>	<p>This concern is considered to have planning merit and is discussed further below in the report under Section 6.2 of the Residential Zone, in both the purpose and decision guidelines.</p>

<p>Noise pollution and traffic generation will be increased if the tourist accommodation were to be approved.</p> <p>The waterfront lots within the Churinga Waters Drive subdivision are subject to a covenant which states that there is to be no more than one dwelling per lot.</p>	
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The issues raised within the objections are considered further within this report.

Consultation has also been held with Council’s Senior Technical Officer.

**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:**

Approval of the application will increase the number and value of rateable properties/ provide for further development in the area.

**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.

**Assessment:**

**Strategic Plan**

The Council’s Strategic Plan provides for a future with practical and effective land use strategies that will be achieved by focusing on the following key area<sup>3</sup>: -

*A land use and development strategy to provide a long-term approach that produces sustainable and measurable economic, environmental (built and “green”) and social benefits for the municipal area and the region.*

<sup>3</sup> Brighton Council: *Strategic Plan 2006 – 2016*, Brighton Council, Gagebrook, 2006.

The proposal is considered to be in conflict with some aspects of Council's Strategic Plan as it is not considered to provide a consistent long term approach to the immediate area. Churinga Waters Drive is exclusively a Residential area and it is considered that the introduction of commercial uses would create conflict with the well-established Residential nature of the immediate area.

### **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 considered to be in conflict with objective (b) as it does not provide for the orderly and sustainable use of the land due to the potential of land use conflict that may arise if approved. The neighbourhood which is characterised as being a family friendly area may also be compromised as the result of allowing commercial development in the area.

### **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>4</sup> The subject land is located within 1 km from the HWM of the Derwent Estuary (Jordan River 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:

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<sup>4</sup>*State Coastal Policy Validation Act 2003*

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. It is considered that the design and siting of the building is within an established residential area which is characterised by a variety of different housing types. The tourist accommodation has been architecturally designed and is considered to be consistent with other modern, contemporary new homes in the neighbourhood.

In addition, Clause 2.4.2 also states:

*Urban and residential development in the coastal zone will be based on existing towns and townships. Compact and contained planned urban and residential development will be encouraged in order to avoid ribbon development and unrelated cluster developments along the coast.*

The development would result in a slight infill development within an established residential area and thus is considered to accord to the Coastal Policy in this regard.

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 greater than 250 square metres. Therefore, if approved, a Soil and Water Management Plan would be 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.

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.

Scheme Objectives

Clause 2.2 of the Scheme provides that the residential objective of the Scheme is –

- (a) *To encourage and facilitate opportunities for diversity in residential type, choice and affordability commensurate with Brighton's quality of lifestyle and environment.*
- (b) *To promote Brighton as an independent suburb within the regional metropolitan context.*
- (c) *To establish residential growth within existing settlement areas serviced with infrastructure.*
- (d) *To ensure that the future patterns of residential development protect and enhance the natural and man-made assets of the Municipality.*
- (e) *To encourage infill within the existing townships and suburbs as a consolidation of services and to provide definable communities with strong interconnectivity.*
- (f) *To discourage the loss of existing housing stock by conversion to or redevelopment for non-residential uses.*
- (g) *Concentration of new residential development remains within the green field sites of Tivoli Green and Compton and for continued growth of Old Beach and Brighton – Pontville. Other areas will concentrate on the infill of existing developed areas within the service capabilities of the local area.*

The application is inconsistent with objective (c) in that it does not provide for Residential growth, but rather would create a commercial use in a Residential zone that does not provide either economic or social benefits to the neighbourhood. The application is also in conflict with objective (f) in that it seeks to redevelop Residential land for non-residential purposes which results in the loss of existing housing stock.

**General Provisions (Clause 3.3)**

Before granting or refusing planning approval, Council must also take into consideration the following criteria, which are reproduced only where relevant to the application in question:

- (e) *the character of the locality, the existing and future amenities of the neighbourhood and the effect of the development on the amenity of the area;*

Churinga Waters Drive is characterised as an exclusively Residential area and is mainly single dwellings used for Residential purposes. The representors have expressed to Council that existing amenity of the area is primarily made up of a mix of both young families and retirees and it is known to be a safe, family friendly street. The effect of tourist accommodation in an area such as this is thought to be detrimental to the amenity of the area due to the potential impacts of noise, traffic safety issues and loss of privacy and useability of private open space for adjoining neighbours.

- (m) *the orderly planning of the area;*

The application is inconsistent with this provision as Old Beach itself is almost exclusively a Residential suburb. The Old Beach store is the only commercial use in the entire suburb. Tourist Accommodation at the scale proposed does not provide for the orderly planning of the area.

### Zone

The proposed holiday flats and carport meet the definition of a 'Tourist Accommodation use', which is 'discretionary' under the Table of Uses pursuant to Clause 6.2.3.

Clause 6.2.1 of the Scheme provides that the purpose of the Residential zone is: -

- (a) *To ensure sufficient land is available to meet anticipated demand for residential use in the next 5 years.*
- (b) *To protect residential amenity by reducing the potential for land use conflicts between residential uses and other uses.*
- (c) *To allow for a range of housing types within the zone, subject to meeting performance guidelines, so as to satisfy different housing needs within the community.*
- (d) *To restrict non-residential uses to those that are compatible with maintaining residential amenity and servicing local needs.*
- (e) *A broad range of residential options should be accommodated subject to the maintenance of satisfactory levels of amenity for new and existing development.*

Clause 6.2.1 (b) states that the purpose of the Residential Zone is to protect Residential amenity by reducing the potential for land use conflicts between residential uses and other uses. As Churinga Waters Drive is exclusively used for Residential purposes at this time, it is considered that land use conflicts could arise between Commercial and Residential uses if approved.

Clause 6.2.1 9d) states non-residential uses must be restricted to those that are compatible with maintaining residential amenity and servicing local needs. Tourist Accommodation of a more limited nature, such as a bed and breakfast establishment or single holiday flat could be appropriate in the zone. In this case the proposal is for three holiday flats with three double bedrooms, giving an expected occupancy rate of 18 people at full capacity. It is considered that due to the scale of the proposal it is not compatible with maintaining existing Residential amenity nor is it believed that the development would service local needs as the area has such a strong Residential use focus.

### Decision Guidelines

Council must consider the following decision guidelines before deciding on an application within the Residential zone under Clause 6.2.2: -

6.2.2 (b) states that the siting and design of the development must protect the amenity of neighbours, minimise overlooking, enable passive surveillance without unreasonably diminishing privacy, and contribute to the residential character and useability of private open space. The application includes three upper level decks all of which would overlook the neighbours backyard, compromising both their privacy and useability of private open space.

The scale of the proposed development with three flats that could each be occupied by six people exacerbates the amenity impacts to an unacceptable level.

**Overlays**

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

**Schedules**

***Schedule 1: Off Street Parking: - Car Parking, Access and Loading***

The purpose of Schedule 1 of the Planning Scheme is to ensure the provision of an appropriate number of car spaces having regard to the activities of the land and the nature of the locality as well as ensuring an appropriate design and location of car parking and manoeuvring areas.

Three car parking spaces are required in order to meet the prescriptive parking space provision. A total of three on-site car parking spaces are provided in the application. Accordingly, the application complies with the required number of parking spaces.

Clause S1.18 requires adequate maneuvering space to ensure vehicles enter and leave the site in a forward direction with a single turning movement.

Clause S1.19 requires driveway widths to be 5.5 metres wide for a distance of 7.5 metres from the carriageway of the road to allow for vehicle passing.

The proposal complies with all other relevant provisions relating to car space dimensions and driveway access.

Council's Senior Technical Officer has indicated that the proposed car parking arrangement can comply with the Australian Standards relating to Off-Street Car Parking.

**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.

This has been addressed previously in the report.

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 with the ability to service this lot.

Southern Water

The proposal was referred to Southern Water who provided a response indicating that if approved they wish to impose conditions on the planning permit relating to service connections and asset protection.

Traffic and Access:

The proposal is considered acceptable from a traffic and access point of view.

Refer to engineering report below for additional comments.

Engineering report

With respect to engineering assets, Council's Senior Technical Officer advises as follows -

Access

Access to the property is via Churinga Waters Drive. The extra traffic generated by the proposal would be well within the capacity of the existing road network. The existing crossover would need to be widened to a minimum width of 5.5 metres.

Stormwater

Stormwater from the development would connect to Council's existing reticulation.

**Conclusion:**

The proposal has been a difficult one to consider as there are legitimate issues raised by representors regarding the loss of existing residential amenity and character in the area, impacts on amenity due to noise, traffic and loss of privacy. There will be impacts, however many of these impacts are subjective in terms of the degree to which they are considered adverse or unacceptable.

The proposed use would be considered appropriate in some Residential areas, however due to the scale of this proposal, the general lack of services in the area, existing character and concerns on neighbouring properties in this instance it is not considered to be the case.

This application has had many issues repeatedly raised in both the representations and assessment against the Planning Scheme provisions.

The application does comply with certain aspects of the Planning Scheme, however it is considered on balance that this development is not suitable in this area and as such is recommended for refusal.

**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 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 and Part 4 of the Land Use Planning and Approvals Act 1993 for land at 22 Churinga Waters Drive Old Beach, described in Folio of the Register 139306 Folio 22, to be developed by Tourist Accommodation (3) holiday flats, a carport, and associated works be refused for the following reasons:

- (a) The proposed use is contrary to the purpose of the Residential Zone in that:
  - (i) the application does not protect the residential amenity of the neighbourhood by reducing the potential for land use conflicts between residential uses and other uses.
  - (ii) non-residential uses are to be restricted to those that are compatible with maintaining residential amenity and servicing local needs and the proposed use is not.
- (b) The proposed use is contrary to the decision guidelines for the Residential Zone in that:
  - (i) the siting and design of the development will not protect the amenity of neighbours, minimise overlooking, enable passive surveillance without unreasonably diminishing privacy, and contribute to residential character and useability of private open space.

**DECISION:**

*Cr Owen moved, Cr Geard 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	

The meeting closed 5.55 p.m.

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

Date: \_\_\_\_\_  
18<sup>th</sup> September 2012