



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,
12TH FEBRUARY, 2013

PRESENT: Cr Taylor (Acting Chairperson); Cr Garlick; Cr Geard and Cr Owen.

IN ATTENDANCE: Cr Curran; Cr Jeffries; Mr J Dryburgh (Manager Strategic Planning) and Mr D Allingham (Planning Officer)

1. APOLOGIES:

Cr Owen moved, Cr Geard seconded that Cr Foster and Cr Gray be granted leave of absence.

CARRIED

VOTING RECORD

In favour	Against
Cr Garlick	
Cr Geard	
Cr Owen	
Cr Taylor	

2. QUESTION TIME & DEPUTATIONS:

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 APPLICATION FOR PLANNING APPROVAL - RESIDENTIAL (SINGLE DWELLING) REQUIRING VARIATION TO BUILDING ENVELOPE AND PRIVACY STANDARDS IN RESIDENTIAL ZONE, 22 CHURINGA WATERS DRIVE, OLD BEACH :

FILE REFERENCE: CHURIN/22

AUTHOR: Mr J Dryburgh
(Manager Strategic Planning)

Applicant: Leonidas Giakis

Owner: Leonidas Giakis

Location: 22 Churinga Waters Drive, Old Beach

Application no.: DA2012/186

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

Date accepted: 18 December 2012

Date advertised: 9 January 2013

Decision required: 19 February 2013

Discretion(s):

Planning Directive Number 4 (PD4) applies to the site and has been effective from the 29th of 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 application generates the following two discretions under PD4:

Standard 3, A1- Building envelope for single dwellings

Standard 5, A1- Privacy for single dwellings

Proposal:

Application has been made to develop an existing single dwelling built to framing stage at 22 Churinga Waters Drive, Old Beach.

The application proposes to construct a roofed three car carport and a double storey dwelling, which consists of five bedrooms, five ensuite bathrooms, a powder room, a laundry, a home theatre and a rumpus room on the lower floor. On the upper floor is an open plan living, dining and kitchen area with access to large northern and southern decks, a study and a master bedroom with ensuite and walk-in-robe with access to a modest southern deck.

The dwelling at its highest point is 7.6m and has a low pitched gable roof.

The exterior of the dwelling is proposed to be constructed of painted shadowclad external cladding and rendered styrene external cladding, a colorbond roof and timber framed windows and sliding doors.

The carport is proposed to be constructed of painted shadowclad external cladding and colorbond custom-orb sheet roofing and will be open to the east and north.

Background:

In February 2011, this site received a "Permitted" planning approval for a dwelling.

The partially constructed dwelling has been built similarly to the plans which formed part of the original approval, but not identically.

In September 2012, a planning application for tourist accommodation (3 holiday flats) and carport was refused. The applicant appealed the decision to the Resource Management and Planning Appeals Tribunal, however the appeal was withdrawn and did not proceed to a full hearing. During this process it was discovered that Council officers had erred when performing the original assessment of the application by not identifying a minor building envelope discretion. This discovery led to the making of this application.

Site and Locality:

The subject site is an irregular shaped block located on the foreshore of Old Beach. The site has direct frontage to Churinga Drive which expands in width to open into a more regular shaped block. Due to the shape of the block, the site is not prominent in the streetscape, but is prominent when viewed from the surrounding foreshore.

The site gently slopes downwards from the frontage to the rear of the property and is currently developed with a detached double storey dwelling built to frame stage. The remainder of the site is grassed and vacant.

There are residential properties adjoining the northern and western boundaries which consist of single storey detached dwellings. The southern and eastern boundaries adjoin recreational areas along the Derwent River foreshore which consists of a walking trail. The site has excellent views to the Derwent River to the south and east.

The subject site is zoned Residential as are the adjoining properties to the north and west. The adjoining foreshore area is zoned Recreation.

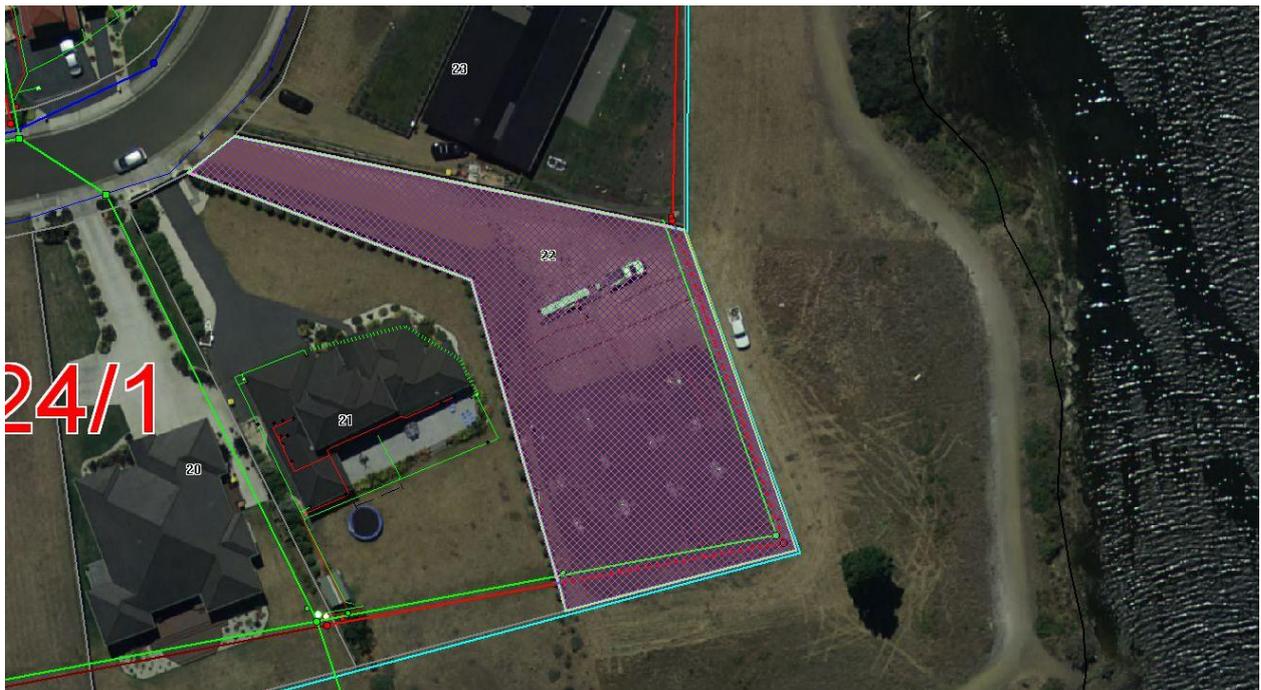


Figure 1: A recent aerial image of the subject site.

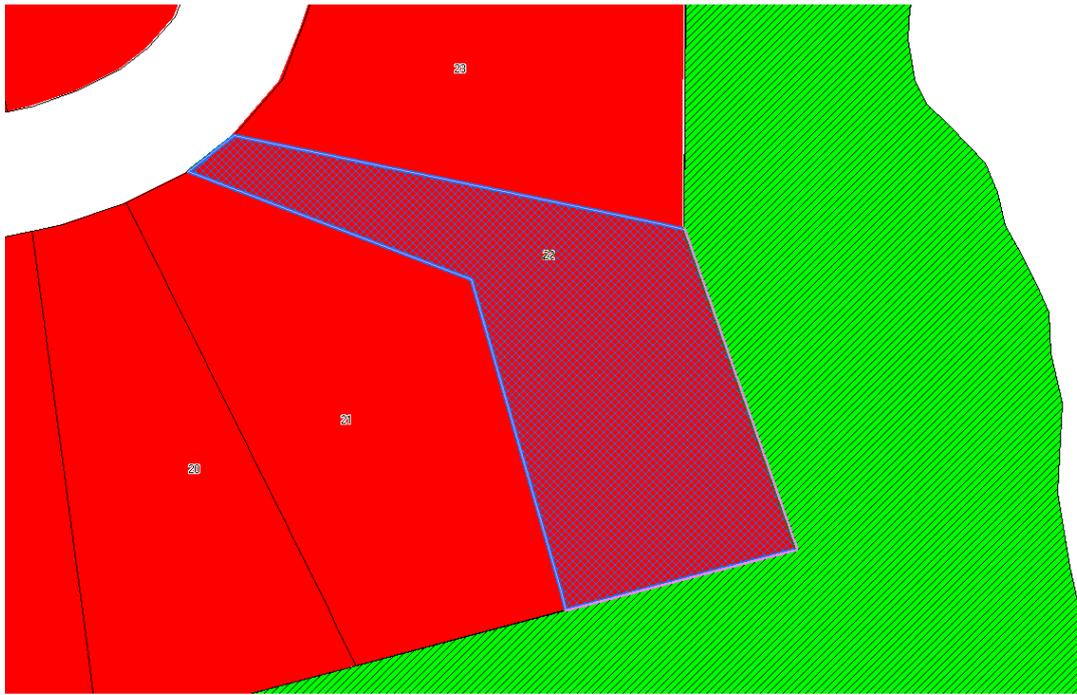


Figure 2: The zoning of the subject locality.

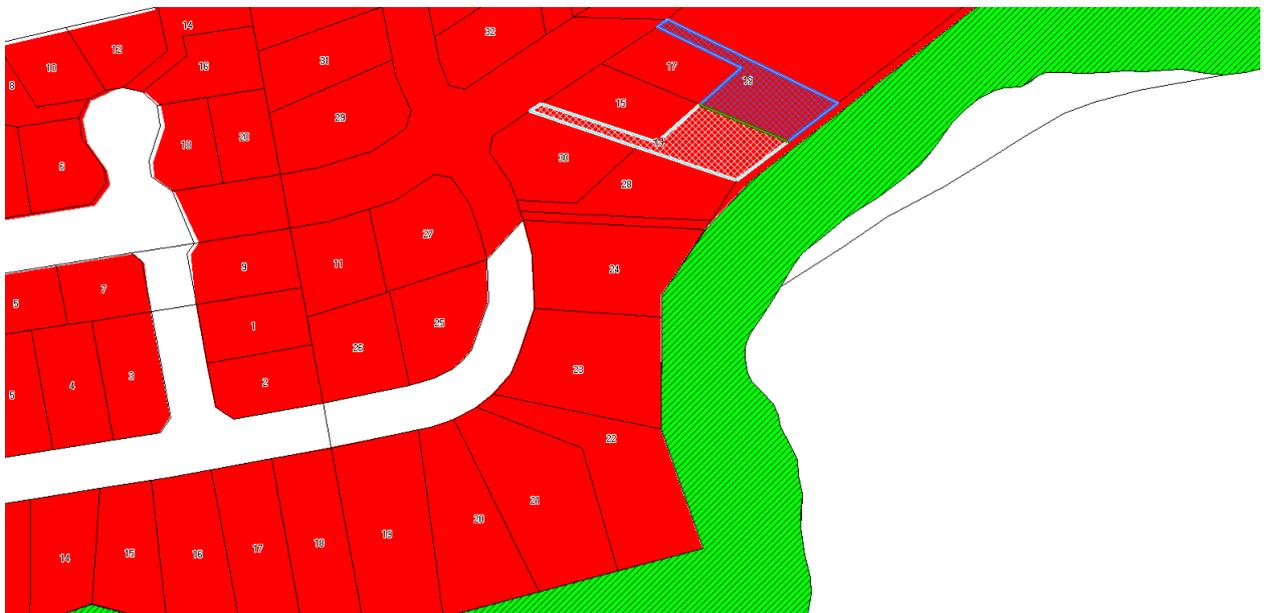


Figure 3: Subject area, illustrating nearby internal lots.

Consultation:

The application was subject to the 14 day statutory notification period. The proposal is discretionary because it relies upon the satisfaction of Performance Criteria in PD4's single dwelling standards (i.e. building envelope and privacy)

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
Representor 1:	
<p>The building should be setback 4.5m from the side fence to comply and is currently only 2.68m.</p> <p>The reduced setback means that the building is not contained within the building envelope which will result in overlooking and loss of privacy.</p>	<p>For the proposed building to fit wholly within the prescribed building envelope it's setback from the western side would need to range from approximately 4 - 4.5m depending on the section taken. This ranges from an increase in setback from the northwest corner of the building of approximately 1.8m to an increase of just 0.35m at the southwest corner, due to the angle of the proposed building to the western side boundary.</p> <p>If approved, it is recommended that the north facing balcony be conditioned to have solid screening along its western edge to a height of at least 1.7m to avoid overlooking issues.</p> <p>Additionally, the west facing windows of the upper level will be conditioned as follows:</p> <ul style="list-style-type: none"> • to have a minimum sill height of 1.7m for the west facing window of Bedroom 1; and • the use of obscured glass for the windows in the walk-in-robe and ensuite adjoining this bedroom. <p>It is worth noting that if the setback was increased and the building sat within the prescribed building envelope (as suggested in the representation), there would be no requirement for a planning permit, therefore conditions requiring screening, raised sill heights and obscured glass could not be imposed.</p>

	<p>It is also worth noting that the areas from which overlooking could occur (the balcony and windows identified above) are in fact located within the prescribed building envelope; only part of the western wall and roof lie outside of the envelope.</p> <p>These issues are discussed further in the Assessment section of this report.</p>
<p>The location and design of the North Facing wall has a significant visual impact due to its size, height, bulk and location.</p>	<p>One design element of the dwelling is a large north-facing façade, however other than the north western top corner (in relation to the western side boundary), this design element is well within acceptable standards.</p>
<p>The proposed dwelling is on an internal lot meaning that under Section 3 of PD4 - Acceptable Solution A2 - a single dwelling must not exceed 5.5m in height.</p>	<p>The proposed dwelling is not on an "internal lot". An "internal lot" means a lot:</p> <ul style="list-style-type: none"> a) <i>Lying predominantly behind another lot; and</i> b) <i>Having access to a road by an access strip, private road or right of way.</i> <p>As an aerial view of the site and surrounds clearly shows, the subject lot is not "predominantly behind" other lots nor is it accessed via an "access strip". The frontage of the lot is double the width of a standard access strip and widens from the frontage backwards. The lot is predominantly next to adjoining lots, sharing only side boundaries and no rear boundaries with neighbours (unlike internal lots, which typically adjoin the rear boundaries of neighbouring properties).</p> <p>There are some good examples of "internal lots" nearby for comparison, such as 28 Churinga Waters Drive and 13 and 19 Eaves Court (see Figure 3 above).</p>

<p>The proposed development is in contravention of a covenant that restricts development on the waterfront to a single dwelling with a single shed no bigger than 4m x 2m.</p>	<p>Private covenants operate outside the planning process. Council cannot consider private covenants when exercising discretion under the Planning Scheme; they are a civil matter between the private land owners that are parties to the covenant.</p>
<p>The proposed location of the carport will mean that the headlights of three cars will shine into the living area of 21 Churinga Waters Drive.</p>	<p>The proposed carport and the neighbouring property at 21 Churinga Waters Drive are separated by a solid paling fence, approximately 1.8m in height. This fence will block most head light glare from vehicles utilising the carport.</p> <p>The carport design meets all relevant acceptable solutions under PD4.</p>
<p>The proposal does not protect the amenity of the existing residences, particularly in reference to overlooking.</p>	<p>Overlooking will be possible from parts of the proposed dwelling, though most of these areas would have been allowed without a permit under PD4.</p> <p>Permit conditions to minimise overlooking, including balcony screening, raising sill heights and obscuring of glass, are recommended should this proposal be approved (as set out above). These conditions will arguably reduce overlooking impacts to a level which is less than would be possible if the proposed dwelling were situated within the building envelope under PD4 (i.e. it would therefore not require a planning permit and could not be conditioned to enhance the privacy of the neighbours).</p> <p>The issue of amenity is discussed further within the Assessment section of this report.</p>

<p>The large amount of bedrooms and bathrooms will mean that balconies are likely to be utilised and increase possibility of overlooking.</p>	<p>Nothing in the Planning Scheme stipulates a minimum or maximum number of bedrooms or bathrooms applicable to single dwellings. The proposal does include a larger than average number of bedrooms and bathrooms, however the issue of overlooking is more one of design and privacy treatment of areas from which overlooking may occur.</p> <p>Further detail is provided in the "Assessment" section of this report regarding suggested design conditions to minimise overlooking and loss of privacy.</p>
<p>The large amount of proposed bedrooms and bathrooms suggests that dwelling may be used as Tourist Accommodation</p>	<p>If approved, the permit will be for use as a single dwelling only. Use of the property for another purpose would be in breach of the planning permit, which Council is required to enforce.</p>
<p>Relaxing of building envelopes sets a precedent in the area.</p>	<p>PD4 is a performance based planning instrument which means that all applicants are able to apply for relaxation of the Acceptable Solutions provided that the Performance Criteria can be met. Each discretionary application is assessed on its individual merits against the relevant Performance Criteria and conditions can be used to ensure that these criteria are met.</p>
<p>The proposal fails to meet the requirements of Schedule 7 - Medium Density Housing.</p>	<p>The application is not for medium density housing, therefore Schedule 7 does not apply.</p>
<p>Representor 2:</p>	
<p>The proposed dwelling is on an internal lot meaning that under Section 3 of PD4 - Acceptable Solution A2 - a single dwelling must not exceed 5.5m in height.</p>	<p>(See response to Representor 1 on this matter).</p>

<p>The required side setback for internal lots is 3m.</p>	<p>(See response to Representor 1 on this matter).</p>
<p>The proposed dwelling does not fit the building envelope as required in PD4 Section 3- Acceptable Solution A1 (b), as the building should be setback 4.5m from the side boundary.</p> <p>Residential amenity will be lost as per PD4 Performance Criteria 1 which states the building must be designed to:</p> <ul style="list-style-type: none"> a) ensure there is no unreasonable loss of amenity on adjoining lots by: <ul style="list-style-type: none"> ii) overlooking and loss of privacy; and iii) visual impacts when viewed from adjoining lots. 	<p>For the proposed building to fit wholly within the prescribed building envelope its setback from the western would need to range from approximately 4 - 4.5m depending on the section taken. This ranges from an increase in setback from the northwest corner of the building of approximately 1.8m to an increase of just 0.35m at the southwest corner, due to the angle of the proposed building to the western side boundary.</p> <p>The western elevation of the proposed building clearly has a visual impact on the neighbouring property at 21 Churinga Waters Drive. However, the visual impact would be very similar if the building were to be moved towards the east to meet the building envelope acceptable solution.</p> <p>If approved, it is recommended that the north facing balcony be conditioned to have solid screening along its western edge to a height of at least 1.7m to avoid overlooking issues.</p> <p>Additionally, the west facing windows of the upper level will be conditioned to have a minimum sill height of 1.7m for the west facing window of Bedroom 1 and obscured glass to be applied to the walk-in-robe and ensuite adjoining this bedroom.</p> <p>It is worth noting that if the setback was increased and the building sat within the prescribed building envelope, as suggested in the representation, there would be no requirement for a planning permit and as such conditions for screening or raised sill heights could not be applied.</p>

	<p>It is also worth noting that the areas from where overlooking could occur (the balcony and windows) are within the prescribed building envelope, it is wall and roof areas that our outside.</p> <p>It is considered that the proposed location of the dwelling with the recommended conditions would actually provide more privacy for 21 Churinga Water Drive than if the proposed building was sited to comply with the building envelope, but unconditioned.</p> <p>These issues are discussed further in the Assessment section of this report.</p>
<p>The location of the western wall has a significant visual impact due to its size, bulk and location.</p>	<p>(See comments directly above)</p>
<p>The proposed development, in particular the proposed car port, is in contravention of a covenant that restricts development on the waterfront to a single dwelling with a single shed no bigger than 4m x 2m.</p>	<p>(See response to Representor 1 on this matter).</p>
<p>The proposed location of the carport will mean that the headlights of three cars will shine into the living area of 21 Churinga Waters Drive.</p>	<p>The carport and the neighbouring property at 21 Churinga Waters Drive are separated by a solid paling fence, approximately 1.8m in height. This fence will block most head light glare from vehicles utilising the carport.</p> <p>The carport design meets all relevant acceptable solution under PD4.</p>
<p>The representors believe Council have erred in its interpretation of the intent of the Planning Scheme clauses, specifically 6.2.1 (b) and 6.2.1 (d).</p>	<p>Clause 6.2.1 (b) is a purpose statement that deals with potential conflict between residential uses and non-residential uses. This application concerns a residential use only, therefore Clause 6.2.1 (b) is not relevant.</p>

	<p>Clause 6.2.1 (d) is also a purpose statement. It places restrictions on non-residential uses within the Residential Zone. Again, this application concerns a residential use only, therefore Clause 6.2.1 (d) is not relevant.</p>
<p>The representors believe Council have erred in its interpretation of the intent of the Planning Scheme clauses, specifically Section 3.3 (j) and (l)</p>	<p>Clause 3.3 (j) and 3.3 (l) are as follows:</p> <p><i>(j) the position and scale of buildings on allotments in relation to boundaries or to other buildings, their density, character, height and harmony in design of facades</i></p> <p><i>(l) the existing character of the site and the buildings and vegetation thereon</i></p> <p>Most of the above matters are defined as “dispensable requirements” under Attachment 3 of PD4 and as such are not relevant to the assessment of this application. It could be argued that density and existing character are not dispensable. The density of the proposed development is consistent with the surrounding area. The existing character of the site is simply that of a vacant residential lot, the purpose of which is to be developed for residential purposes.</p>
<p>The representors believe Council have erred in its interpretation of the intent of the Planning Scheme clauses, specifically 6.2.2 (a) and (b).</p>	<p>In addition to Clause 3.3, Council must consider the Decision Guidelines set out in Clause 6.2.2. These guidelines are considered fully in the Assessment section of this report, however Clauses (a) and (b) raised in the representation are as follows:</p> <p><i>(a) the building appearance from public streets and adjoining sites is visually compatible with surrounding development</i></p> <p><i>(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</i></p>

	<p><i>to residential character and usability of private open space</i></p> <p>Most of the above matters are defined as “dispensable requirements” under Attachment 3 of PD4 and as such are not relevant to the assessment of this application.</p> <p>“(a)” is not considered to be dispensed with. The building will not be highly visible from public streets given it has a very large setback from Churinga Waters Drive. The scale of the proposed dwelling is compatible with surrounding development.</p> <p>It could also be argued that amenity is not specifically dispensed with by PD4. Amenity is discussed in the Assessment section of this report.</p>
<p>The proposal fails to meet the requirements of Schedule 7 - Medium Density Housing.</p>	<p>The application is not for medium density housing, therefore Schedule 7 does not apply.</p>

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 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 area¹: -

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.

The proposal is considered consistent with Council's Strategic Plan as the proposal is for a residential infill development in an appropriate 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 consistent with the objectives of Schedule 1 of the Act.

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.

¹ Brighton Council: *Strategic Plan 2006 – 2016*, Brighton Council, Gagebrook, 2006.

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).² 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.

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 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.

A Soil and Water Management Plan will be required prior to the issue of any Building Permit for the works and a permit condition is recommended to reflect this.

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.

²*State Coastal Policy Validation Act 2003*

Planning Directive Number 4

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 to a great extent override the existing Planning Scheme requirements.

PD4 came into effect on the 29th of August 2011 and introduces a primary set of planning standards for single dwellings in the Residential zone in most planning schemes in the State.

PD4 contains six primary standards. The six standards are as follows:

- *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 following standards:

- *setback from a frontage;*
- *site coverage and rear setback; and*
- *frontage setback and width of garages and carports;*

The standards relating to frontage fences are not applicable to this development.

Discretion is required in relation to the building envelope and privacy standards. Such discretion is exercised with reference to the relevant Performance Criteria attaching to each of these standards.

3. Standard - Building Envelopes for Single Dwellings

The top corner of the western elevation is outside of the building envelope prescribed in PD4 below (see attached elevation plans for clear illustration of the extent of this variation). The variation ranges from a tiny corner of the roof and eaves at the southwest corner to a larger, but still relatively minor, triangular section over a metre in dimensions.

Objective: To ensure that the siting and scale of single dwellings:

- (i) allows for flexibility in design to meet contemporary dwelling requirements; and*
- (ii) protects the residential amenity of neighbours through minimizing visual bulk and overshadowing; and*
- (iii) has regard to streetscape qualities or is consistent with the statements of desired future character.*

Acceptable Solutions	Performance Criteria
<p>A1.</p> <p><i>All single dwellings (excluding minor protrusions extending less than 1.5m) must be contained within either of the following building envelopes:</i></p> <ul style="list-style-type: none"> <i>(a) determined by a minimum setback of 3m from side boundaries and minimum 4m from rear boundary and maximum building height of 5.5m; or</i> <i>(b) determined by projecting at an angle of 45 degrees from the horizontal at a height of 3m above natural ground level at the side boundaries and at a distance of 4m from the rear boundary to maximum building height of 8.5m above natural ground level (see diagrams 1 and 2);</i> <p><i>and walls are setback:</i></p> <ul style="list-style-type: none"> <i>(i) a minimum of 1.5m from a side boundary; or</i> <i>(ii) less than 1.5m provided the wall is built against an existing boundary wall or the wall or walls have a maximum total length of 9m or one third of the boundary with the adjacent property, whichever is lesser.</i> 	<p>P1.</p> <p><i>The siting and scale of single dwellings on must be designed to:</i></p> <ul style="list-style-type: none"> <i>(a) ensure there is no unreasonable loss of amenity on adjoining lots by:</i> <ul style="list-style-type: none"> <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> <i>(ii) overlooking and loss of privacy; and</i> <i>(iii) visual impacts when viewed from adjoining lots; and</i> <i>(b) take into account steep slopes and other topographical constraints; and</i> <i>(c) have regard to streetscape qualities or be consistent with the statements of desired future character.</i>

The applicant has provided a series of shadow diagrams for assessment against Performance Criteria P1 (a) (i). These diagrams demonstrate there will be minimal overshadowing of the lower section of the rear garden of 21 Churinga Waters Drive. This is considered acceptable as it only occurs for a short period in the mornings and not over the area used as outdoor living space. A very minor degree of overshadowing may also be caused by the carport, however most of the shadowing in this area is caused by the side boundary fence and the increase would be negligible.

No overshadowing is caused to 23 Churinga Waters Drive.

P1 (a) (ii) requires that there is no unreasonable loss of amenity through overlooking and loss of privacy. The areas where loss of privacy and overlooking can occur from are balconies and windows. There are no balconies or decks outside the building envelope. It is however recognised that overlooking and therefore a loss of privacy could occur to the detriment of 21 Churinga Water Drive from the west facing upper floor windows and the western section of the north facing. As discussed in the "Consultation" section of this report, Permit conditions are recommended to require the west facing windows of Bedroom 1 on the upper level to have a minimum sill height of 1.7m and obscured glass to be applied to the walk-in-robe and ensuite adjoining this bedroom.

This would allow solar access to the bedroom and the walk-in-robe whilst ensuring a high level of privacy is maintained for the occupants of 21 Churinga Water Drive. It is worth noting that if the building was moved slightly to the east to comply with the building envelope the proposed dwelling would not require a permit and Council could not apply these conditions.

Overlooking and loss of privacy to 23 Churinga Waters Drive is considered minor due to the large separation between the existing and proposed dwellings. It ought be noted that if the proposed dwelling was moved slightly to the east to comply with the building envelope, any potential for overlooking or loss of privacy affecting 23 Churinga Waters Drive (which again is minor given the separation) would in fact be increased.

P1 (a) (iii) requires that there be 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 at 21 Churinga Waters Drive, particularly in comparison to having a vacant lot next door. However, the visual impact brought about by the proposed dwelling is not considered to be significantly greater than the visual impact that would be caused by the development of a dwelling that maximised scale within the prescribed building envelope, especially given that:

- *a building would not need to be moved far to the east in order to comply with the building envelope; and*
- *such a building could have an overall height of 8.5m rather than 7.6m.*

As such, though there is a visual impact, particularly upon 21 Churinga Waters Drive the loss of amenity is not considered to be unreasonable in all of the circumstances.

The visual impact of the proposed dwelling when viewed from 23 Churinga Waters Drive is not considered to give rise to any unreasonable loss of amenity in all of the circumstances. Primarily, this is because a building with an overall height of 8.5 metres located within the building envelope can be constructed without the need for a permit, and such a structure would have a greater impact upon 23 Churinga Waters Drive insofar as 'visual bulk' is concerned than the current proposal.

Turning to P1(b), the site does not contain a steep slope or present any other topographical constraints. Accordingly, this criteria is not relevant.

Regarding P1(c), the proposed dwelling does not have any significant impact on the streetscape qualities of the area as it is setback so far from the street. It will be highly visible from foreshore areas, but not from the street. The overall scale of the proposed dwelling is comparable to that prevailing in the surrounding area.

There are no statements of desired future character relevant to this area.

5. Privacy for Single Dwellings

<i>Objective: To ensure that the location and design of windows of habitable rooms, balconies, decks, roof gardens, parking spaces and carports maintain residential amenity by minimising the potential for overlooking between neighbours.</i>	
Acceptable Solutions	Performance Criteria
<i>A1. Balconies, decks, roof gardens, parking spaces and carports (whether freestanding or part of the dwelling) that have a finished surface or floor level more than 1m above natural ground level must have a minimum side setback of 3m and minimum rear setback of 4m.</i>	<i>P1. The potential for direct overlooking from balconies, decks, roof gardens, parking spaces and carports (whether freestanding or part of the dwelling) with a finished surface or floor level more than 1m above natural ground level on one lot to the habitable rooms and balconies, decks and roof gardens on adjacent lots must be avoided or minimized through their separation or off-set or by use of solid or translucent screening.</i>
<i>A2. Windows of habitable rooms which have a floor level more than 1m above natural ground level must: (a) have a minimum side setback of 3m; or (b) be offset a minimum 1.5m from the windows of habitable rooms on adjacent lots where any part of the windows are on the same horizontal plane; or (c) have a minimum window sill height of 1.7m.</i>	<i>P2. The potential for direct overlooking from windows of habitable rooms with a finished surface or floor level more than 1m above natural ground level on one lot to the windows of habitable rooms, balconies, decks and roof gardens on adjacent lots must be avoided or minimised through their separation and off-set or by use of solid or translucent screening.</i>

The proposal fails to satisfy Acceptable Solution A1. Accordingly, the proposal must be assessed against Performance Criteria P1 of this standard.

The western-most corner of the north facing balcony (approximately a 30-40cm portion) is within the 3m side setback prescribed under A1 above.

Whilst this is a very minor protrusion into the prescribed setback, given the proximity of this section of deck to the outside living area of 21 Churinga Waters Drive it is considered appropriate to require solid screening of the western end of this balcony to a minimum height of 1.7m to ensure any loss of privacy is minimised. This is recommended as a permit condition.

Again, it is worth noting that if the subject deck were 40cm to the east (i.e. complying with the 3m setback) Council would not be able to impose a screening condition, and as such the condition will actually provide a better privacy outcome for 21 Churinga Waters Drive than a PD4 compliant balcony may have.

The proposed dwelling complies with A2 as all windows are sufficiently offset. Accordingly, there is no need to consider Performance Criteria P2 of this standard.

Planning Scheme

Attachment 3 to PD4 sets out the “dispensable requirements” in planning schemes (this means the sections that are no longer relevant due to the operation of PD4).

Relevant to this application, “dispensable requirements” include provisions relating to:

- *solar access or daylight penetration or orientation on the site or to the neighbouring site*
- *visual or acoustic privacy including screening*
- *private open space and outdoor living space and landscaped areas*
- *security and surveillance*
- *materials, colours, finishes, building character*
- *car parking, the siting or garages and carports*
- *design of street frontage facades*
- *roof design and pitch*
- *site coverage and building envelope*
- *building height*

As discussed in the “Consultation” section of this report, these “dispensable requirements” render most of decision guidelines under Clause 3.3 of the Planning Scheme irrelevant to this application.

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. It is considered that the proposal is consistent with the character of the locality and should have no major impact on the amenity of the area in that it is a single dwelling of a scale comparable to the many surrounding single dwellings.

All other considerations under Clause 3.3 have been addressed in other sections of this report or are dispensed with under PD4.

Clause 6.2.1 establishes the purpose for the Residential Zone. As discussed in the "Consultation" section of this report, subclauses (b) and (d) are not relevant in that they deal with non-residential uses. Subclause (a) is not relevant as this proposal has no bearing on land supply. The proposal is consistent with subclauses (c) and (e) in that the proposed dwelling provides another house in the area that achieves satisfactory levels of amenity.

Clause 6.2.2 establishes the decision guidelines for the Residential Zone. Most considerations within 6.2.2 are either dispensed with by PD4 or, in the case of subclause (c) refer to multi-unit housing and as such are not relevant. The proposed dwelling will not be highly visible from the public street and is visually compatible with surrounding development.

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.

The proposal complies with all relevant provisions of Schedule 1.

Council's Senior Technical Officer has indicated that the proposed car parking arrangement complies 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.

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.

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. The lot is existing and serviced. There are no servicing issues.

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.

Southern Water

The proposal was referred to Southern Water who provided a response indicating that they wish to impose conditions on the planning permit. The conditions from the water authority shall form part of the recommended permit conditions.

Traffic and Access:

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

Conclusion:

The proposal requires a variation to the building envelope acceptable solution and a minor variation to the privacy acceptable solution under PD4. The proposal has been assessed under the relevant performance criteria and the relevant sections of the Brighton Planning Scheme and is considered consistent with these provisions. As such, the proposed single dwelling is recommended for approval.

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.

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 Volume 139306 Folio 22, to be developed by a single dwelling, and associated works be granted planning approval subject to the following conditions:

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) This permit shall not take effect and must not be acted on until 15 days after the date of receipt of this permit unless, as the applicant and the only person with a right of appeal, you notify Council in writing that you propose to commence the use or development before this date, in accordance with Section 53 of the *Land Use Planning and Approvals Act 1993*.
- (3) Amended plans must be submitted to Council prior to or in conjunction with lodgement of the Building Application. The plans must be to the satisfaction of Council's Manager Strategic Planning and are to include:
 - The introduction of solid screening of the western elevation of the north-facing balcony to a minimum height of 1.7m;
 - The redesign of the west-facing window(s) of "Bedroom 1" on the upper floor to have a minimum sill height of 1.7m; and
 - The windows of the walk-in-robe and ensuite on the upper level to be obscured glass.

The amended plans will form part of this permit once approved.

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.
- (5) Before any work commences a schedule specifying the finish and colours of all external surfaces and samples must be submitted to and approved by the Council's Manager Strategic Planning. The schedule shall form part of this permit when approved.

Private open space

- (6) The private open space must be formed or constructed to the satisfaction of Council's Manager Strategic Planning before the use commences.

Landscaping

- (7) The landscaping works must be completed in accordance with the endorsed landscape plan and to the satisfaction of Council's Manager Strategic Planning within six (6) months of the first use of the development or prior to the sealing of a stratum plan. All landscaping must continue to be maintained to the satisfaction of Council.

Parking & access

- (8) At least (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.

- (9) 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.
- (10) 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; and
 - (c) drainage discharging to the stormwater system in accordance with the requirements of a plumbing permit issued by the plumbing Permit Authority.

Services

- (11) 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.
- (12) The approved structure(s) must be sited clear of any easement and located at least 1.00 metre measured horizontally from any Council service mains.

Stormwater

- (13) 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*.

Southern Water

- (14) The development must meet all required Conditions of approval specified by Southern Water Response to the Council Notice of Planning Application Referral, date 3/1/2013 (SWDA 2012/00892-BTN).

Protection of water quality

- (15) 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.

Construction amenity

- (16) 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.
- (17) 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.
- (18) 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.
- (19) 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.
- (20) 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. Appropriate temporary erosion and sedimentation control measures include, but are not limited to, the following -
- Minimise site disturbance and vegetation removal;
 - Diversion of up-slope run-off around cleared and/or disturbed areas, or areas to be cleared and/or disturbed, provided that such diverted water will not cause erosion and is directed to a legal discharge point (eg. temporarily connected to Council's storm water system, a watercourse or road drain);
 - Sediment retention traps (e.g. sediment fences, straw bales, grass turf filter strips, etc.) at the down slope perimeter of the disturbed area to prevent unwanted sediment and other debris escaping from the land;
 - Sediment retention traps (e.g. sediment fences, straw bales, etc.) around the inlets to the stormwater system to prevent unwanted sediment and other debris blocking the drains;
 - Gutters spouting and downpipes installed and connected to the approved stormwater system before the roofing is installed; and
 - Rehabilitation of all disturbed areas as soon as possible.
- D. **If you notify Council that you intend to commence the use or development before the date specified above you forfeit your right of appeal in relation to this permit.**
- E. **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 Owen moved, Cr Garlick seconded that this item be held over until the Council meeting pending further advice from an independent planning lawyer on whether the subject site is an "internal lot" under PD4.

CARRIED

VOTING RECORD

In favour	Against
Cr Garlick	
Cr Geard	
Cr Owen	
Cr Taylor	

The meeting closed 6.05 p.m.

Confirmed: _____
(Mayor)

Date: _____
19th February 2013