



Brighton Council

MINUTES OF THE **PLANNING AUTHORITY MEETING**
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
OLD BEACH AT 5.30PM ON TUESDAY,
13TH JUNE, 2017

PRESENT: Cr Gray (Chairperson); Cr Curran; Cr Foster; Cr Garlick; Cr Geard; Cr Higgins and Cr Owen.

IN ATTENDANCE: Mrs J Banks (Governance Manager) and Mr D Allingham (Senior Planner).

1. APOLOGIES:

Cr Geard moved, Cr Owen seconded that Cr Jeffries and Cr Williams be granted leave of absence.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Higgins	
Cr Owen	

2. QUESTION TIME & DEPUTATIONS:

There was no requirement for public 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 2015, 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 2015.

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 2015, 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 UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 – DA2017/00112 – 117 STONEFIELD ROAD, BRIGHTON – HORSE TRAINING TRACK:

Author:	Senior Planner (Mr D Allingham)
Type of Report	Planning Authority – For Decision
Application No:	DA2017/00112
Address:	117 Stonefield Road, Brighton
Applicant:	B Heenan
Proposal:	Horse Training Track
Zone:	Significant Agricultural
Representations:	One
Discretion:	1. Use (Sport and Recreation) 2. Discretionary Use 3. Side setbacks

1. Executive Summary

- 1.1. Planning approval is sought for a Horse Training Track and ancillary sheds in the Significant Agricultural Zone at 117 Stonefield Road, Brighton. The application is retrospective.

- 1.2. The application is discretionary due to the Sport and Recreation use in the Zone and reliance on two other performance criteria.
- 1.3. One representation was received raising concerns with an ongoing environmental nuisance associated with the use. It is considered that the issues raised in the representation can be addressed through the implementation of the supporting Environmental Management Plan (EMP).
- 1.4. The key planning issues relate to the proposed non-agricultural use on agricultural land and the impact of that use on surrounding properties.
- 1.5. The proposal is recommended for approval subject to various non-standard conditions relating to the above key planning issues.
- 1.6. The final decision must be made by the Planning Authority or by full Council acting as a planning authority due to the receipt of representations via the public exhibition period for the development application.

2. Legislative & Policy Content

- 2.1. The purpose of this report is to enable the Planning Authority to determine application DA2017/00112.
- 2.2. This determination must be made no later than 20th June 2017, which has been extended beyond the statutory timeframe with the consent of the applicant.
- 2.3. The relevant legislation is the Land Use Planning and Approvals Act 1993 (LUPAA). The provisions of LUPAA require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the Judicial Review Act 2000 and the Local Government (Meeting Procedures) Regulations 2005.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the State Policies and Projects Act 1993.
- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application. Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

3. Risk & Implications

- 3.1. Approval or refusal of this application will have no direct financial implications for the Planning Authority.
- 3.2. Implications for Council include general matters related to rate income, and addressing potential non-compliance with the EMP.

4. Relevant Background and Past Applications

- 4.1. The application is a retrospective application for a horse training track that was established in mid-2013 (Source: Google Earth). The applicant submits that they asked planning staff whether they would need a permit for training horses at the property prior to buying it and were advised that they didn't. As outlined in the report below, a horse training facility does require a planning permit in the Significant Agriculture Zone. Council has no record of this advice and the application fees were waived, given the possibility that the wrong advice was given. However, it is noted that in many instances when Council staff show lenience in relation to planning matters, the use often intensifies beyond what was originally described.
- 4.2. In mid-December 2015 Council received complaints from 119 Stonefield Road that large levels of dust were being created from the horse training activities on the property located at 117 Stonefield Road. These were investigated by Council Officers and it was clearly demonstrated that a severe dust nuisance was being created by the activity and Council had a legal responsibility to abate the nuisance under the Environmental Management & Pollution Control Act 1994.
- 4.3. Council's Senior Environmental Health Officer (EHO) has been dealing with the nuisance and has provided the following information in regards to the activity:

An Environmental Protection Notice (EPN) was issued to the property owners of 117 Stonefield on 18th December 2015 to provide a site report from a suitably qualified person and implement the recommended works necessary to abate the nuisance within reasonably nominated time periods.

This report was presented to Council within the required time, the implementation of the works however were not done within the required time so additional time was allowed for the works to be completed, the works were still not completed 12 months past the original nominated time period.

A final completion date (17th March 2017) was awarded to have all the required works completed before the most severe months when the dust nuisance occurred, these works were clearly not done with the following works still outstanding:

- *Horses had not been excluded from the most problematic areas – This involves excluding horses from one paddock directly adjacent to the complainants property;*

- *A minimum 90% vegetation coverage was required to be established in the above paddock to limit the amount of sand blowing off site into the complainants property;*
- *Trees had not been planted as per the requirement of the report to screen/contain the dust to the offending property, a very clear and detailed plan was included of how this was to be done, a very limited number of trees (9 out of a required 70) were planted, these were saplings, were not guarded, staked, fertilised or accompanied by a weed mat as per the planting requirements.*

The property owners of 117 Stonefield Drive have been advised in correspondence (28th April 2017) that in the event the nuisance continues Council will proceed with legal action as they have failed to comply with the requirements of the EPN.

There have been very clear measures implemented under the EPN to control the dust nuisance associated with the horse training activity, a prolonged time period has been allocated for these works to be completed, the property owners have failed to complete the works and openly displayed little regard for not doing so to the Council Officers inspecting the property (17th March 2017).

I must conclude based on the evidence to date that the current operators of the activity are incapable of managing it accordingly to abate the nuisance it creates and therefore it is not appropriate for the area.

5. Site Detail

- 5.1. The subject site is a 5.087ha internal lot with access off the end of Stonefield Road. The site is developed by a horse training track loop with an approximate length of 560m, a "temporary" feed shed and "temporary" shelter. The structures do not have permits. A broad acre and foal paddock is located to the rear of the site adjacent to the Jordan River.
- 5.2. The site is bounded by lots of a similar size to the west and south. The lot to the south is developed by polytunnels for the growing of plants for a nursery. The sites to the west are developed by residential dwellings. The adjoining lot to the north-east is a smaller internal lot developed by a residential dwelling close to the boundary. Further to the north-east is the Stonefield reception centre.

5.3. The subject site and surrounding properties are zoned Significant Agricultural Zone.

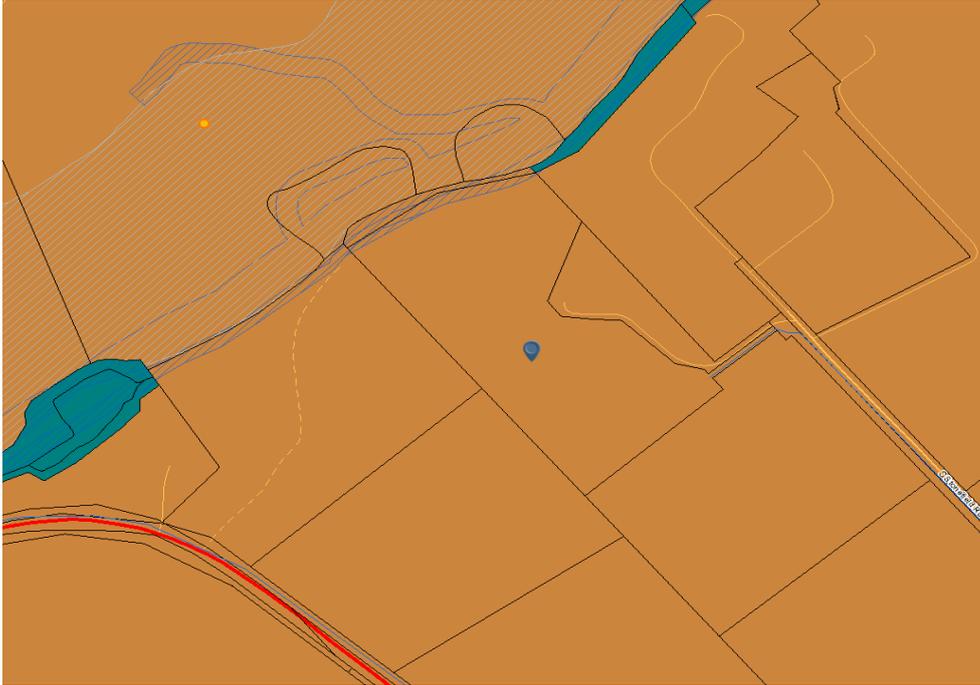


Figure 1. Zoning: Subject Site is within the Significant Agricultural Zone (brown).



Figure 2. Aerial image from April 2017 (Source: Google Earth)

6. Proposal

- 6.1. The application is a retrospective application for a Sport and Recreation use developed by a horse training track and two ancillary outbuildings. The horse training track is a dirt track with no imported materials. The track runs close to property boundaries to the south, west and particularly close to the dwelling to the east which is where complaints have been received from.
- 6.2. The application is supported by a Site Plan and Environmental Management Plan (EMP) prepared by LMRS Pty Ltd.

7. Assessment against planning scheme provisions

- 7.1. The following provisions are relevant to the proposed use and development;
 - Significant Agricultural Zone
 - Code E6.0 – Parking and Access
 - Code E7.0 – Stormwater Management
- 7.2. The application satisfies the following Acceptable Solutions:
 - 7.2.1. 27.4.1 A1 – Building height
 - 7.2.2. 27.4.2 A1 – Front setback
 - 7.2.3. 27.4.3 A1 – Design
 - 7.2.4. 27.4.3 A3 – Cut and fill
- 7.3. The following discretions are invoked:

		BIPS 2015 requirement	Proposed
1	Use (Sport and Recreation)	Discretionary Use in Use Table 27.2	Horse training track
2	Discretionary Use	No Acceptable Solution	Sport and Recreation (horse training track)
3	Setbacks	100m	Approximately 5m

- Discretion 1 - Use (Sport and Recreation)

7.3..1.1. Correctly determining the Use category for the proposal is critical to the assessment of the application. Clause 8.2.4 of the Scheme states:

If a use or development does not readily fit any use class, it must be categorised into the most similar use class.

The horse training track is determined to be a "Sport and Recreation" use as the best fit use for the development and is defined as:

use of land for organised or competitive recreation or sporting purposes including associated clubrooms. Examples include a bowling alley, fitness centre, firing range, golf course or driving range, gymnasium, outdoor recreation facility, public swimming pool, race course and sports ground.

The proposed horse training facility best fits this use as it is related to a "race course" in the same way a cricket training facility would be related to a "sports ground".

Serious consideration has been given to the use that best fits the proposal, particularly as the applicant was previously told no permit was required for the use. It is possible that the advice was based on the use being considered "Resource Development" which is "No Permit Required" with the qualification "only if for agricultural use". However, as explained below, this would have been a misinterpretation of the Scheme.

Resource Development is defined as:

use of land for propagating, cultivating or harvesting plants or for keeping and breeding of livestock or fishstock. If the land is so used, the use may include the handling, packing or storing of produce for dispatch to processors. Examples include **agricultural use**, aquaculture, bee keeping, controlled environment agriculture, crop production, **horse stud**, intensive animal husbandry, plantation forestry and turf growing.

It may have been possible to consider "horse stud" as the use, however the land is used predominantly for training and keeping horses as opposed to breeding them. It is also worth noting that in the definition above, "agricultural use" and "horse stud" are listed as two separate examples which means that a "horse stud" could not be an "agricultural use" and therefore not satisfy the "No Permit Required" qualification in the Use Table.

For information, the definition of agricultural use is as follows:

means use of the land for propagating, cultivating or harvesting plants or for keeping and breeding of animals, excluding pets. It includes the handling, packing or storing of plant and animal produce for dispatch to processors. It includes controlled environment agriculture, intensive tree farming and plantation forestry.

A third use that could have been considered was "Domestic animal breeding, boarding or training". However, this was also dismissed because "horse stud" is listed as an example under "Resource Development", so if it was a domestic animal it wouldn't need to be listed separately under a different use.

7.3..1.2. Clause 8.10.2 of the Scheme requires an application for a permit for discretionary use to be considered against the purpose of the applicable zone. The purpose of the Significant Agricultural Zone is reproduced below in italics and consideration of each Zone Purpose Statement is also provided:

27.1.1.1 - To provide for the use or development of land for higher productivity value agriculture dependent on soil as a growth medium.

The majority of the site will be used for training and keeping horses, however the quality of the land in the area for agricultural purposes is limited. This information is based on a number of agricultural reports that have been submitted as part of previous subdivision proposals. The reports identify the land as being limited due to water supply, soil type and climatic constraints. However, the land has potential for small scale agriculture/horticulture operations such as stonefruit and dryland floriculture (e.g. bulbs).

This agricultural constraints have been further identified by the 2017 Agricultural Land Mapping Project undertaken as part of the preparation for the Tasmanian Planning Scheme. The Project identifies the land as being Land Potentially Suitable for Agriculture Zone, but Potentially Constrained due the land having limited connectivity with other unconstrained agricultural land.

27.1.1.2 - To protect the most productive agricultural land and ensure that non-agricultural use or development does not adversely affect the use or development of that land for agriculture.

As discussed above, the land is not the most productive land, however the proposed activity does limit that land for agriculture use.

27.1.1.3 - To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

The application is supported by an EMP that would provide for sustainable land management practice if all the measures were implemented.

27.1.1.4 - To provide for limited non-agricultural uses that support the continued use of the land for agricultural use.

The proposed horse training track is a non-agricultural use. The keeping of horses has been common in the area over the years and allows some of the land to be used for grazing pasture.

27.1.1.5 - To protect regionally significant areas of significant agricultural land identified in the Regional Land Use Strategy, including areas subject to existing or proposed irrigation schemes, from conversion to non-agricultural use.

The mapping provided in the Southern Tasmania Regional Land Use Strategy (STRLUS) is conceptual representation prepared at a State level and it is very difficult to tell whether the subject land is identified as regionally significant.

The Agricultural Land Mapping Project mentioned above is a more thorough analysis at the property level and does not identify the parcel as significant agricultural land.

27.1.1.6 - To protect areas used for reuse water irrigation.

No re-use irrigation is available in the area.

27.1.1.7 - To ensure that new residential use is only established where necessary to facilitate the management of the land for agricultural purposes and does not fetter existing or potential agricultural use on other land.

No residential use is proposed.

7.3..1.3. The Zone purpose encourages agricultural use on the land, however provides for other uses where not displacing agricultural land. Given the land is not identified as significant agricultural land in the Agricultural Land Mapping Project, the proposal is considered to satisfy the Zone Purpose.

7.3..2. Discretion 2 – Discretionary Use

7.3..2.1. Clause 27.3.3 provides for a Discretionary Use standard with no Acceptable Solution. The Performance Criteria is reproduced as follows:

P1

A discretionary non-agricultural use must not conflict with or fetter agricultural use on the site or adjoining land having regard to all of the following:

a. *the characteristics of the proposed non-agricultural use;*

The proposed horse racing track can loosely be considered a rural activity, which is generally consistent with the area.

b. *the characteristics of the existing or likely agricultural use;*

As discussed in sections above, the land is not highly productive agricultural land and there is no existing agricultural use. Establishing agricultural uses may prove difficult according to agricultural reports for the area.

c. *setback to site boundaries and separation distance between the proposed non-agricultural use and existing or likely agricultural use;*

The proposed use only has small setback to the existing agricultural use to the south. However, this is controlled agriculture in polytunnels and is unlikely to be heavily impacted from the use, particularly if the EMP recommendations are implemented. The largest impact is likely to be on the residential use to the west, however this is not considered under the Performance Criteria.

d. *any characteristics of the site and adjoining land that would buffer the proposed non-agricultural use from the adverse impacts on amenity from existing or likely agricultural use.*

There are no adverse impact from existing or likely agricultural use expected for the proposed non-agricultural activity.

7.3..2.2. The proposal is considered to satisfy the Performance Criteria.

7.3..3. Discretion 3 – Side Setbacks

7.3..3.1. The Acceptable Solution at Clause 27.4.2 of the Scheme requires building setbacks from side and rear boundaries to be 100m. The “temporary” feed shed and “temporary” shelter are setback less than 10m from the southern boundary.

7.3..3.2. The corresponding Performance Criteria is reproduced as follows:

P2

Building setback from side and rear boundaries must satisfy all of the following:

(a) *be sufficient to prevent potential for land use conflict that would fetter non-sensitive use of adjoining land;*

(b) be no less than:

40 m, if the lot is greater than 1 ha or if there is an existing building set back less than this distance, the setback must not be less than the existing building;

20 m, if the lot is less than or equal to 1 ha or if there is an existing building set back less than this distance, the setback must not be less than the existing building.

The Performance Criteria is clear that the absolute minimum setback on the land is 40m. The existing buildings should be removed. A condition to this effect is recommended.

8. Discussion

8.3. Referrals

- Environmental Health

As noted in Section 4.2 and 4.3 of this report there has been an ongoing dust nuisance as a result of the establishment of the horse training track and Council's Senior EHO has had difficulties getting the current operators to comply with their EPN.

Council's Senior EHO concludes that the current operators do not have the capability of complying with their EPN and that the activity is not suitable for the area.

However, as discussed in the planning assessment at section 7, the proposal is considered to satisfy the relevant provisions of the Scheme. This is largely due to the Significant Agricultural Zone (SAZ) which applies to the subject site and surrounding land and gives no consideration of what impact the proposed use and development has on residential amenity.

The dust nuisance from the activity does however have the potential to impact on future agricultural uses in the area and a condition requiring that the recommendations of the EMP are implemented within 30 days of the permit being issued. Failure to implement the recommendations will result in statutory enforcement proceedings under the Land Use Planning and Approvals Act 1993.

9. Concerns raised by representors

9.3. One representation was received during the public notification period. The following table outlines the issues raised.

Concerns raised	Planning response.
Strongly objects on the basis of the dust nuisance, due to the proximity of the track to dwellings on adjoining property.	The dust nuisance is being addressed by Council's Senior EHO under EMPCA. Furthermore, it is recommended that the recommendations of the EMP be implemented within 30 days as a permit condition. Failure to do so will result in statutory enforcement proceedings under the Land Use Planning and Approvals Act 1993.
The operator should be using the Brighton Horse Training Track as required by the EMP.	The EMP suggests that the Brighton Horse Racing Track be used on days during N, NW, W and SW winds. Failure to do so will be in breach of the EPN and planning permit.
There is also a noise nuisance. The operation is 7 days a week, including early track training sessions and loading/unloading at 1am some mornings.	The noise from the non-agricultural use should be regulated through conditions as follows: <ul style="list-style-type: none"> • Monday to Friday 6.30 a.m. to 8:00 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.
Shade cloth has been erected as a buffer, but it is an eyesore and devalues surrounding properties.	The shade cloth is a recommendation of the EMP. There is no ability to control the colours used for the shade cloth in the Scheme.
There is an overwhelming abundance of flies which has increased significantly since the establishment of the race track.	There is no evidence to suggest that the large number of flies is a direct result of the horse racing track.

10. Conclusion

10.3. The proposal is a retrospective application for a Sport and Recreation use developed by a horse racing track and ancillary buildings and infrastructure at 117 Stonefield Road, Brighton.

10.4. The proposal is complicated due to an ongoing dust nuisance that is created by the use of the horse racing track. Council's Senior EHO has issued an Environmental Protection Notice on the property. An EMP was prepared, however the recommendations have not been implemented.

- 10.5. The standards of the Significant Agricultural Zone, as outlined in the planning assessment at Section 7, do not consider the impact of a use on residential amenity. Rather it considers the impacts of non-agricultural use on agricultural use, and it has been determined that the impacts on adjoining agricultural use would be minimal, particularly if the EMP is implemented.
- 10.6. As the application is retrospective and there has been ongoing issues with the site, the recommendations of the EMP should be implemented within 30 days of the date of the permit. A condition to this effect is recommended.
- 10.7. A further condition requiring the relocation or removal of the existing “temporary” buildings within 30 days is also recommended.
- 10.8. It is recommended to approve the application with conditions.

RECOMMENDATION:

That pursuant to the Brighton Interim Planning Scheme 2015, Council approve application DA2017/00112 for use and development of Sport and Recreation (Horse Training Track) in Significant Agricultural Zone at 117 Stonefield Road, Brighton for the reasons outlined in the officer’s report and a permit containing the following conditions be issued:

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 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.

Temporary Buildings

- (3) The “Temporary Feed Shed” and “Temporary Shelter” and any other buildings, such as shipping containers, must be removed from the site within 30 days of the date of this permit.

Environmental Management Plan

- (4) The “Solutions” at Section 3.0 of the endorsed “Environmental Management Plan” (dated January 2016) prepared by LMRS Pty Ltd must be implemented to the satisfaction within 30 days of the date of this permit and continue to be maintained to the satisfaction of Council’s Manager Development Services.

Hours of Operation

(5) The use or development must only operate between the following hours unless otherwise approved by Council’s Manager Development Services:

- Monday to Friday 6:30 a.m. to 8:00 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.

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

CARRIED

VOTING RECORD

In favour	Against
Cr Foster	Cr Curran
Cr Higgins	Cr Garlick
Cr Gray	Cr Geard
Cr Owen	

4.2 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 – DA2017/00114 – 4 DEAK STREET GAGEBROOK – SHED

Author:	Planning Officer (Mrs J Farmer)
Type of Report	Planning Authority – For Decision
Application No:	DA2017/00114
Address:	4 Deak St Gagebrook
Applicant:	A & B Bilac
Proposal:	Shed
Zone:	General Residential
Representations:	1 (One)
Discretion:	1. Rear Setback

1. Executive Summary

- 1.1. Planning approval is sought for an Outbuilding in the General Residential Zone at 4 Deak St, Gagebrook.
- 1.2. The application is discretionary due to the rear boundary setback and reliance on performance criteria.
- 1.3. One representation was received. It is considered that the issues raised in the representations do not warrant refusal or modification of the application.
- 1.4. The key planning issues relate to variation to the rear setback standard.
- 1.5. The proposal is recommended for approval subject to standard conditions.
- 1.6. The final decision must be made by the Planning Authority or by full Council acting as a planning authority due to the receipt of representations via the public exhibition period for the development application.

2. Legislative & Policy Content

- 2.1. The purpose of this report is to enable the Planning Authority to determine application DA2017/00114.
- 2.2. This determination must be made no later than 13th of June 2017.
- 2.3. The relevant legislation is the Land Use Planning and Approvals Act 1993 (LUPAA). The provisions of LUPAA require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.

- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the Judicial Review Act 2000 and the Local Government (Meeting Procedures) Regulations 2005.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the State Policies and Projects Act 1993.
- 2.6. This report has been prepared with appropriate regard to Council’s Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application. Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

3. Risk & Implications

- 3.1. Approval or refusal of this application will have no direct financial implications for the Planning Authority.
- 3.2. No specific implications for Council asset maintenance or renewal or need for new capital works have been identified.

4. Relevant Background and Past Applications

- 4.1. Not applicable.

5. Site Detail

- 5.1. The subject site is a 617m² large General Residential zoned parcel of land, containing a dwelling. The site is within a well established street in Gagebrook. The site slopes gently towards the south west.
- 5.2. The site is bounded to the north, east and south by residential land with Deak Street located to the west.



Figure 1. Zoning: Residential (Red)



Figure 2. Aerial image.

6. Proposal

- 6.1. The proposed use is for a 6m x 9m residential shed with a wall height of 2.4m and apex height of 3.04m. The floor area will be 54m². The proposed setback is 0.2m from the side and rear boundaries. The proposed colours are Colorbond manor red for the walls and Colorbond paperbark for the roof.
- 6.2. There is an existing driveway which will need to be slightly extended due to the proposal. Stormwater will be disposed of via stormwater tank as shown on the plans.
- 6.3. The application is supported by the attached building design plans.

7. Assessment against planning scheme provisions

- 7.1. The following provisions are relevant to the proposed use and development;
 - Residential Zone
 - E6.0 - Parking and Access Code
 - E7.0 - Stormwater Code
- 7.2. The application satisfies the following relevant Acceptable Solutions:
 - 7.2.1. 10.4.2 A1 & A2 - Frontage setback
 - 7.2.2. 10.4.2 A3 (b)(ii) - Side setback
 - 7.2.3. 10.4.3 A1 & A2 - Site coverage and private open space
 - 7.2.4. 10.4.4 A1 - Sunlight

- 7.2.5. 10.4.5 A1 - Width of openings for garages and carports
- 7.2.6. E6.6.1 A1 - Number of car parking spaces
- 7.2.7. E7.7.1 A1 - Stormwater drainage and disposal.

7.3. The following discretions are invoked:

		BIPS requirement	2015	Proposed
1	Rear setback	4m		0.2m

7.3.1. Discretion 1 - Rear Setback

- Clause 10.4.2 A3(a)(ii) of the Scheme requires a rear setback standard of 4m, however due to the location of the existing dwelling and driveway the applicant proposes to locate the shed in the rear south western corner of the property. This will allow for a reasonable clearance of 2m between the shed and dwelling and result in the existing driveway location not changing.
- The relevant performance criteria states:
The siting and scale of a dwelling must:
 - (a) not cause unreasonable loss of amenity by:
 - (i) reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining lot; or
 - (ii) overshadowing the private open space of a dwelling on an adjoining lot; or
 - (iii) overshadowing of an adjoining vacant lot; or
 - (iv) visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining lot; and
 - (b) provide separation between dwellings on adjoining lots that is compatible with that prevailing in the surrounding area.
- The proposed location of the shed is in the south-west corner of the site. Using modelling from www.suncalc.org on June 21 there will be some reduction in sunlight to the dwelling at 2 Deak St between 7.30am and 9.30 am. There will be some overshadowing of the private open space (POS) at 2 Deak St for approximately 3 hours between 7.30am and 12pm. There will also be some overshadowing of the rear of the vacant lot at 56 Tottenham Road between 2pm and 4.30pm. It is generally accepted that a reasonable amount of solar access is 3 hours and therefore the proposal will not result in unreasonable loss of amenity from overshadowing.

In regard to the bulk and scale, the proposed shed is not excessively large or high in a residential setting, particularly given it will only be a 700-800mm higher than the fence.

There is generally larger separation between dwellings in the area, however the proposal is for a residential garage which will not have a significant impact.

- The application complies with the performance criteria.

8. Discussion

8.1. Referrals

8.1.1. TasWater – The application did not warrant referral to TasWater.

9. Concerns raised by representors

9.1. The following table outlines the issues raised by representors.

Representor 1	
Concerns Raised	Planning Response
The representor is concerned that the shed is too close to the side boundary which will result in visual and shadowing impacts on their backyard.	The shed is 9m in length which complies with the acceptable solution of clause 10.4.2 A3(b)(ii) under the Scheme. The proposed side boundary setback complies with the requirements of the Scheme. The discretion relates to the rear setback only.
The representor would like the shed to be relocated to 1m from the side boundary.	This concern is not considered warranted as the discretion relates to the rear setback only.

10. Conclusion

10.1. The proposed use and development of Residential (Outbuilding) in General Residential Zone at 4 Deak St, Gagebrook satisfies the relevant provisions of the Brighton Interim Planning Scheme 2015, and as such is recommend for approval.

RECOMMENDATION:

That pursuant to the Brighton Interim Planning Scheme 2015, Council approve application DA-2017/114 for use and development of Residential (Outbuilding) in General Residential Zone at 4 Deak St, Gagebrook, for the reasons outlined in the officer’s report and a permit containing the following conditions be issued:

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.

Amenity

- (3) The proposed colours and materials for the walls (Colorbond "Manor Red") and roof (Colorbond "Paperbark") are approved. Any variation in the colours and materials must be submitted to and approved by the Council's Manager Development Services.
- (4) The building is not to be used for commercial, industrial or habitable purposes.

Services

- (5) 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.
- (6) 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

- (7) Drainage from the proposed development must be retained on site or 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 2016.

Protection of water quality

- (8) Before any work commences install temporary run-off, erosion and sediment controls (refer to advice below) and maintain these 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 Development Services.

Construction amenity

- (9) The development must only be carried out between the following hours unless otherwise approved by the Council's Manager Development Services:
- 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.
- (10) 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.
- (11) 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 Development Services.
- (12) 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.
- (13) 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. Appropriate temporary erosion and sedimentation control measures include, but are not limited to, the following:
 - (a) Minimise site disturbance and vegetation removal;

- (b) 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);
 - (c) 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;
 - (d) 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;
 - (e) Gutters spouting and downpipes installed and connected to the approved stormwater system before the roofing is installed; and
 - (f) Rehabilitation of all disturbed areas as soon as possible.
- C. **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.**
- D. **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 Geard seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Higgins	
Cr Owen	

The meeting closed at 5.50pm

Confirmed:

(Mayor)

Date:

20th June 2017