



Brighton Council

MINUTES OF THE **PLANNING AUTHORITY MEETING**
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
OLD BEACH AT 5.45PM ON TUESDAY,
10TH OCTOBER, 2017

PRESENT: Cr Gray (Chairperson) Cr Owen; (Deputy Chairperson);
Cr Curran; Cr Foster; Cr Geard; Cr Higgins; Cr Jeffries
and Cr Williams.

IN ATTENDANCE: Mr R Sanderson (General Manager) Mr G Davoren
(Deputy General Manager); Mr H Macpherson
(Municipal Engineer) and Mr D Allingham (Senior
Planner).

1. APOLOGIES:

Cr Garlick requested leave of absence as he was interstate.

Cr Williams moved, Cr Owen seconded that Cr Garlick be granted leave of absence.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Geard	
Cr Gray	
Cr Higgins	
Cr Jeffries	
Cr Owen	
Cr Williams	

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 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*.

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 – DA 2017/191 – 127 ELDERSLIE ROAD, BRIGHTON TRANSPORT DEPOT AND DISTRIBUTION:

Type of Report	Planning Authority - For Decision
Author	Jo Blackwell
Application No:	DA 2017/171
Address:	127 Elderslie Road, Brighton
Applicant:	D S Gangell
Proposal:	Transport Depot
Zone:	Rural Resource Zone
Representations:	One (1)
Discretion:	1. Use (Transport Depot and Distribution (Agricultural Products)) 2. Discretionary Use 3. Road and Railway Assets Code 4. Parking and Access Code 5. Stormwater Management Code

Executive Summary

- 1.1. Planning approval is sought for a Partial Change of Use to Transport Depot in the Rural Resource Zone at 127 Elderslie Road, Brighton. The application is retrospective.
- 1.2. The application is discretionary due to Transport Depot and Distribution (agricultural products) in the zone and reliance on one other performance criteria.
- 1.3. One (1) representation was received raising concerns in relation to noise and vibration. It is considered that the issues raised in the representations do not warrant refusal or modification of the application.
- 1.4. One (1) representation was received by way of email outside of the statutory advertising period, in relation to hours of operation.
- 1.5. Hours of operation have also been raised as a concern by the representor. Accordingly, the concern raised in the non-statutory representation has been considered in this assessment.
- 1.6. The key planning issues relate to the proposed non-agricultural use of the site for a transport depot used in the transportation of agricultural products.
- 1.7. The proposal is recommended for approval subject to various non-standard conditions relating to the above key planning issues and on servicing of the site.
- 1.8. 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 DA 2017/191.
- 2.2. This determination must be made no later than 17th October 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's 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.

4. Relevant Background and Past Applications

- 4.1. The application is a retrospective application for **Transport Depot and Distribution**, which has been established at the site since approximately 2000, when occupancy of the dwelling first occurred. A planning permit was approved in June 1999 for a residential dwelling, garage and shed only. Google Earth shows that that the use had clearly been established prior to March 2005.
- 4.2. Council received a complaint in April 2016. A further complaint was received June 2017, which was the instigator for this application.

5. Site Detail

- 5.1. The subject site, located on the southern side of Elderslie Road, has an area of 3.34ha and is generally rectangular in shape. It slopes gently down towards Elderslie Road to the north and has an average gradient of 1:15. The lot is bounded on all sides by land zoned Rural Resource, with George Street separating the subject site from land zoned Rural Living to the east (See figure 1).
- 5.2. As seen in Figure 1, the subject site and adjoining land form a buffer between residential land uses and significant agricultural zoned land.
- 5.3. Figure 2 is an aerial image of the subject site and surrounding area.

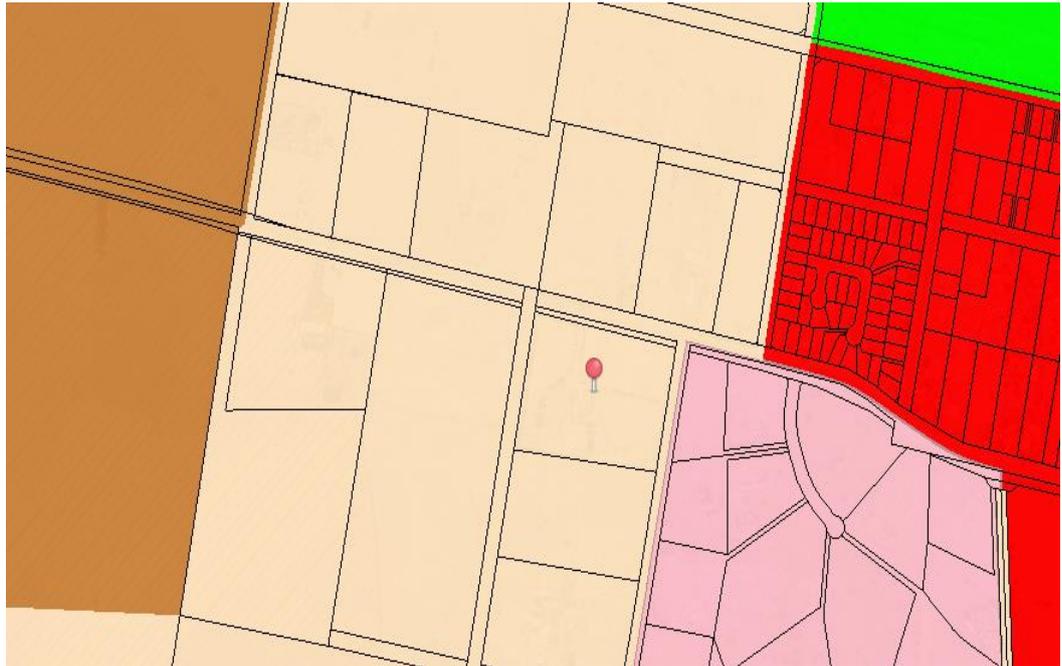


Figure 1: Zoning Map [Cream = Rural Resource; Pink = Rural Living; Red = General Residential; Brown = Significant Agriculture] (Source: Listmap)



Figure 2. Locality Map.

5. Proposal

5.4. The proposal is for a partial change of use to Transport Depot and arises out of the need to seek retrospective approval for a pre-existing use. The use has been operating from the site since approximately 2000, when the dwelling was constructed.

5.5. The application is supported by the attached site plan, planning statement and supporting statement as to operating hours.

6. Assessment against planning scheme provisions

6.1. The following provisions are relevant to the proposed use and development;

- Rural Resource Zone
- Code E5.0 - Road and Railway Assets Code
- Code E6.0 - Parking and Access Code
- Code E7.0 - Stormwater Management Code

6.2. The following discretions are invoked:

		BIPS 2015 requirement	Proposed
1	Use (Transport depot and distribution)	Discretionary Use in Use Table 26.2	Transport depot for the transport and distribution of rural equipment and products.
2.	Discretionary Use D26.3.3	No acceptable solution	Transport depot for the transport and distribution of rural equipment and products.
3.	Intensification of vehicle movements	10% or 10 vehicle movements, whichever is the greater	Variable on the number of drivers required. Presently 3 trucks per day (6 vehicle movements) plus employees' vehicles (6 vehicle movements).
4.	Parking and Access Code -Access Design -Passing -Surfacing -Lighting	Various Australian Standards	Retain existing arrangements

5.	Stormwater Management Code	Connect to Council owned Stormwater gravity fed infrastructure Water Sensitive Urban Design	On-site retention. On-site retention.
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6.3. The application is for a change of use. No development is proposed in relation to the application.

6.4. **Use (D26.2)**

6.4.1 The proposed use is a discretionary use through the qualification in the Use Table which states “only if for transport and distribution of rural equipment and products”. The applicants supporting documents (lodged 4th August 2017) state that:

“The trucks are used to cart agricultural products for primary producers in the region. Products include grain (wheat / barley / oats) and straw bales. The business also supplies naturally sourced raw products to Skretting such as wheat and soy protein for the production of fish food used in aquaculture (Tasmanian Salmon Industry ...”

Accordingly, it is considered that the proposal can satisfy the qualification in the use table.

6.5. **Discretionary Use (D26.3.3)**

6.5.1 There is no acceptable solution for use of the land for a discretionary, non-agricultural use. Accordingly, the performance criteria are relied upon by the applicant, which states:

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;*
- (b) *the characteristics of the existing or likely agricultural use;*
- (c) *setback to site boundaries and separation distance between the proposed non-agricultural use and existing or likely agricultural use;*

- (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.*

6.5.2 In addressing the performance criteria individually:

- (a) The characteristics of the proposed non-agricultural use.

The applicant's business consists of carting agricultural products for primary producers. The applicant is required to ensure that trucks are able to arrive at a specified location to load freight at the time specified. Departure time is variable, dependant on demand, but generally occurs between 5am and 8am, with the usual departure time between 6am and 7.30pm and generally return by 5.30pm, although this can be later during peak harvesting periods (pers. comm G. Youd 28/9/2017).

Further, it is considered that the use of the site as a transport depot in relation to transport and distribution of rural equipment is in accordance with the Zone Purpose Statements of the Rural Resource Zone.

- (b) the characteristics of the existing or likely agricultural use

Not applicable

- (c) Setback to site boundaries and separation distance between the proposed non-agricultural use and existing or likely agricultural use.

The area of land allocated to the transport depot is located adjacent to the rear boundary, as shown in figure 3:



Figure 3: Site image (source: Listmap)

There is approximately 100m distance between the main parking area in the centre of the site to the eastern boundary. The setback between the parking area in the western portion of the site is approximately 20m (Listmap).

The site has been screened along the rear and side boundaries, as well as internally along the driveway.

The eastern side boundary adjoins George Street, which serves as the buffer to the nearby Rural Living Zone, whilst the western boundary is bordered by a 20m wide acquired road in the ownership of the Crown. Land on the western side of the Crown owned road is suitable for agricultural purposes, and appears to be used for grazing purposes at the moment.

Land to the south also has the capacity to be used for agricultural use, albeit limited given the size of the lot (2.7ha).

The land to the north, on the opposite side of Elderslie Road, is zoned Rural Resource. It is predominantly used for horse stabling and training, in accordance with the Brighton Horse Racing Overlay. Residential dwellings have been constructed on the adjacent lots, ancillary to approved stables, breeding or training facilities.

(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.

The applicant has created a buffer between his lot and those adjoining through the planting of screening trees along the side and rear boundaries, as well as along the driveway, as shown in figure 3. This will help to mitigate any impacts caused by nearby agricultural land uses, together with minimising effects that may arise from the use of the subject site as a transport depot.

6.6 Road and Railway Assets Code (E5.0)

6.6.1 See Council's Senior Technical Officer's report for discussion.

6.7 Parking and Access Code (E6.0)

6.7.1 See Council's Senior Technical Officer's report for discussion.

In relation to E6.7.8 of the Code in relation to landscaping, the existing landscaping is considered to satisfy the acceptable solution for landscaping.

6.8 Stormwater Management Code (E7.0)

6.8.1 See Council's Senior Technical Officer's report for discussion.

7. Discussion

7.1. The Zone Purpose Statements for the Rural Resource Zone are:

26.1.1.1 To provide for the sustainable use or development of resources for agriculture, aquaculture, forestry, mining and other primary industries, including opportunities for resource processing.

26.1.1.2 To provide for other use or development that does not constrain or conflict with resource development uses.

26.1.1.3 To provide for non-agricultural use or development, such as recreation, conservation, tourism and retailing, where it supports existing agriculture, aquaculture, forestry, mining and other primary industries.

26.1.1.4 To allow for residential and other uses not necessary to support agriculture, aquaculture and other primary industries provided that such uses do not:

- (a) fetter existing or potential rural resource use and development on other land;
- (b) add to the need to provide services or infrastructure or to upgrade existing infrastructure;
- (c) contribute to the incremental loss of productive rural resources.

26.1.1.5 To provide for protection of rural land so future resource development opportunities are not lost.

It is considered that the proposed partial change of use meets the zone purpose statements, in that the application:

- furthers the sustainable use or development of resources for agriculture, aquaculture, forestry, mining and other primary industries, including opportunities for resource processing (26.1.1.1);
- provides for other use or development that does not constrain or conflict with resource development uses (26.1.1.2); and
- relates to non-agricultural use or development, such as recreation, conservation, tourism and retailing, where it supports existing agriculture, aquaculture, forestry, mining and other primary industries (26.1.1.3).

- 7.2. In relation to the issues raised by the representor, the standards for the Rural Resource Zone are silent on applicable conditions relating to noise or operating hours, given the agricultural uses permitted to occur in the zone. Accordingly, there is no head of power in this assessment to consider the impact trucks leaving the site may have on surrounding residences, once it enters Elderslie Road. Further, the Rural Resource zone is not identified as a residential zone.
- 7.3. In considering discretionary land uses in other zones identified in the Brighton Interim Planning Scheme 2015:
- the **Light Industrial Zone** requires that hours of operation **within 100m of a residential zone** be restricted to 7am to 7pm, Monday to Friday; that noise emissions be measured at the boundary of a residential zone; and that commercial vehicle movements **within 50m of a residential zone** are restricted to 7am to 7pm.
 - Similarly, the **General Business Zone** measures hours of operation, noise and commercial vehicle movements against **distances to a residential zone of 50m**, with a 6am start time Monday to Saturday being considered acceptable.
 - There are no use standards for the General Industrial zone nor the Significant Agriculture Zone pertaining to noise, commercial vehicle movements or hours of operation.
- 7.4. In comparison, the eastern edge of the area proposed for the transport depot is approximately 100m from the adjoining Rural Living zone, and 260m (as the crow flies) from the north-eastern corner of the proposed transport depot to the General Residential zone. Accordingly, it is considered that there is sufficient separation distance between the proposed transport depot and residentially zoned land.
- 7.5. Applying the Environmental Management and Pollution Control Act 1994 (EMPCA) also proves difficult. Whilst there are provisions within the Act to address commercial noise impacts, those regulations, whilst recommending a commencement time of 7.00am, are not legislated. EMPCA also provides remedies under s53 of that Act, which relate to a person unwilfully and unlawfully causing a nuisance. This, however, is a reactive provision rather than a preventative one.
- 7.6. The writer has been informed that should restrictions as to hours of operation be applied, it would severely hamper the operation of the business. The hours of operation are dependent on the specific details relating to each job/order. Vehicles are required to be at a location by a specified time, to allow for loading and transport of goods.

7.7. It is noted that the supporting documentation submitted with the application for development approval includes the following information:

- all works on the vehicles are undertaken off site, such as wash down and servicing.
- Currently there are 3 trucks leaving and departing the site, with the potential for up to 5 trucks, if the need arises.
- When moving along Elderslie Road, the applicant and his drivers use low gears; headlights are on low beam and do not use air brakes.
- Each truck is fitted with a Euro 5 engine,

(which the writer notes is in alignment with the Department of Infrastructure and Regional Development's Vehicle Emission Standards, see <https://infrastructure.gov.au/roads/environment/emission>)

7.8. Referrals

- **Council's Senior Technical Officer**

The site was inspected by Council's Senior Technical Officer. That officer's report is attached as appendix E and addresses the Road and Railway Assets Code, the Parking and Access Code and the Stormwater Management Code. In summary, the proposal is able to satisfy the performance criteria through the inclusion of conditions in any permit in relation to:

- i) upgrading vehicle access arrangements;
- ii) constructing passing bays,
- iii) providing on-site parking for employees;
- iv) and installing lighting in parking and vehicle circulation areas.

7.9. NON-STANDARD CONDITIONS

- In an effort to reduce impact on neighbouring properties, it is recommended that a condition be included which restricts the number of commercial vehicle traffic movements to and from the depot to a maximum of 10 per day. This allows for a maximum of 5 trucks to enter and exit the site each morning and evening, plus arrival and departure of employees.

- It is also recommended that conditions be included in any permit granted requiring:
 - Vehicles to be washed down prior to returning to the subject site;
 - No mechanical work to be undertaken on the subject site.

8. Concerns raised by representors

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

Representation	Brief Response
Excessive noise and vibration in house and effect on horses	There are no use standards provided for the Rural Resource Zone in relation to noise. The relevant legislation is the Environmental Management and Pollution Control Act 1994. See report for discussion.
Early operating hours	The Rural Resource Zone does not restrict operating hours for applicable uses. See report for discussion.
Increase in effects from the establishment of a truck depot.	The transport business has been operating since approximately 2000. There is no significant increase in truck movements proposed by the applicant. Currently 3-4 vehicles exit and enter the site with the possibility of increasing to 5, which would equate to 20 traffic movements per day, (2 each per truck and 2 each per employee) See report for discussion
Council and applicant should consider an alternative route for the transport via George Street, onto Elderslie Road	George Street is zoned Rural Living. Requiring the applicant to enter and exit the property in this manner would result in an increased loss of amenity for the occupants of residential zoned land.

Conclusion

8.2. The proposed use and development of Transport Depot (Transport Depot and Distribution) in the Rural Resource Zone at 127 Elderslie Road, Brighton satisfies the relevant provisions of the Brighton Interim Planning Scheme 2015, and as such is recommended for approval.

RECOMMENDATION:

That pursuant to the Brighton Interim Planning Scheme 2015, Council approve application DA-2017/191 for use and development of Transport Depot (Transport Depot and Distribution) in Rural Resource Zone at 127 Elderslie 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 letter or the date of the last letter to any representor, whichever is later, in accordance with section 53 of the Land Use Planning and Approvals Act 1993.

Use

- (3) The transport depot is approved only insofar as the commercial vehicles used in the operation of the business are permitted to transport rural equipment and products.
- (4) Traffic movements for commercial vehicles are restricted to a maximum of ten (10) vehicle movements per day.
- (5) All commercial vehicles are to be washed down and cleaned prior to entering the subject site each evening;
- (6) No mechanical repair work or servicing of commercial vehicles is to occur at the site.

Services

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

Parking and Access

- (8) Within 6 months of the issue of a planning permit the existing vehicle access to Elderslie Road must be upgraded, including a sealed surface, such that an articulated vehicle (19m Semi Trailer) entering and exiting the property does not leave the sealed portion of Elderslie Road, nor need to cross to the wrong side of the centreline of Elderslie Road.

- (9) The vehicular access must be designed and constructed to comply with Standard Drawing TSD-R05 Truck Access to Rural Properties "Type A" and TSD-RF01 Guide to Intersection and Domestic Access Sight Distance Requirements prepared by the IPWE Aust. (Tasmania Division), Standards Australia (2002): Australia Standard AS 2890.2 – 2002, Parking facilities - Part 2: Off-Street, Commercial vehicle facilities, Sydney and to the satisfaction of Council's Municipal Engineer.
- (10) The vehicle access must include provision for vehicles to pass, to the satisfaction of Council's Municipal Engineer.
- (11) Design drawings for the upgraded vehicular access, prepared and certified by a qualified civil engineer or other person approved by Council's Municipal Engineer, must be submitted to Council for approval prior to or in conjunction with lodgement of a Works in Road Reservation Permit. The design drawings are to include:
 - (a) pavement details,
 - (b) design surface levels and gradients,
 - (c) drainage,
 - (d) turning paths,
 - (e) dimensions,and shall form part of the permit when approved.

ADVICE:

No works on or affecting any Council road reservation is to be commenced until the Brighton Council has issued a WORKS IN ROAD RESERVATION PERMIT. Application for the issue of the necessary works permit is to be made to the Brighton Council's Asset Services department prior to the proposed date of commencement of any works.

- (12) At least five (5) car parking spaces must be provided on the land at all times for the use of the development, in accordance with Standards Australia (2004) Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney.
- (13) The internal driveway and areas set-aside for parking and associated access and turning must be provided in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney / Standards Australia (2002): Australia Standard AS 2890.2 – 2002, Parking facilities - Part 2: Off-Street, Commercial vehicle facilities, Sydney, and to the satisfaction of Council's Municipal Engineer, and must include all of the following;

- (a) Adequate turning space on site to allow that vehicles enter and leave the site in a forward direction.
 - (b) Constructed with a durable all-weather pavement.
 - (c) Stormwater drainage.
 - (d) Minimum carriageway width of 3.5 metres, unless approved otherwise by Council's Municipal Engineer.
 - (e) Vehicular passing areas.
- (14) The internal driveway and areas set-aside for parking and associated access and turning must be designed, constructed and maintained to avoid dust or mud generation, erosion and sediment transfer off site or de-stabilisation of the soil on site or on adjacent properties to the standard required by Council's Municipal Engineer.
- (15) All areas set-aside for parking and associated turning, loading and unloading areas and access must continue to be maintained to the satisfaction of the Council's Municipal Engineer.
- (16) Parking and vehicle circulation roadways and pedestrian paths serving 5 or more car parking spaces, used outside daylight hours, must be provided with lighting in accordance with clause 3.1 "Basis of Design" and clause 3.6 "Car Parks" in AS/NZS 1158.3.1:2005 Lighting for roads and public spaces Part 3.1: Pedestrian area (Category P) lighting, unless approved otherwise by the General Manager.

Stormwater

- (17) Stormwater drainage from the development access must be disposed of on site, or directed to a legal point of discharge, to the satisfaction of Council's Municipal Engineer. No stormwater run-off from the development is permitted to discharge onto an adjoining allotment other than to a registered drainage easement in favour of the source allotment.
- (18) 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.

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. A separate permit is required for any signs unless otherwise exempt under Council’s planning scheme.
- C. **This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.**

DECISION:

Cr Foster moved, Cr Curran seconded that the recommendation be adopted..

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Geard	
Cr Gray	
Cr Higgins	
Cr Jeffries	
Cr Owen	
Cr Williams	

4.2 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 – DA2017/00209 – 600 MILLVALE ROAD BRIGHTON – 3 SHIPPING CONTAINERS:

Type of Report	Planning Authority – For Decision
Application No:	DA2017/00209
Address:	600 Millvale Road, Brighton
Applicant:	C Read & A Stott
Proposal:	3 shipping containers
Zone:	Rural Resource
Representations:	Two (2)
Discretion:	1. Side setback 2. Stormwater disposal
Author:	David Allingham

1. Executive Summary

- 1.1. Planning approval is sought for 3 shipping containers in the Rural Resource Zone at 600 Millvale Road, Brighton.
- 1.2. The application is discretionary due to variation of the side setback and on-site stormwater disposal.
- 1.3. Two representations were received objecting to the proposal on based on privacy and visual impacts. It is considered that the issues raised in the representations do not warrant refusal or modification of the application.
- 1.4. The proposal is recommended for approval subject to standard conditions.
- 1.5. 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 DA201700209.
- 2.2. This determination must be made no later than 17 October 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.

4. Relevant Background and Past Applications

- 4.1. The application is a retrospective application for three shipping containers which already exist on the site. Council staff were made aware of the containers from a complaint. Two of the existing containers, at the time the application was submitted, were located approximately 6m from the eastern boundary directly adjacent to the dwelling at 610 Milvale Road. This application proposes to relocate the two containers further from the boundary as detailed below.

5. Site Detail

- 5.1. The subject site is a 4.78ha rectangular lot which widens out towards the rear. The site has an existing single storey dwelling at the front of the lot with the rear of the lot generally cleared grassland. The land falls moderately to the north-east. A creek runs through the rear of the property.
- 5.2. The adjoining property to the east is a large rural property with an existing dwelling constructed near the creek. Properties to the west and south are similarly sized properties developed by dwellings.

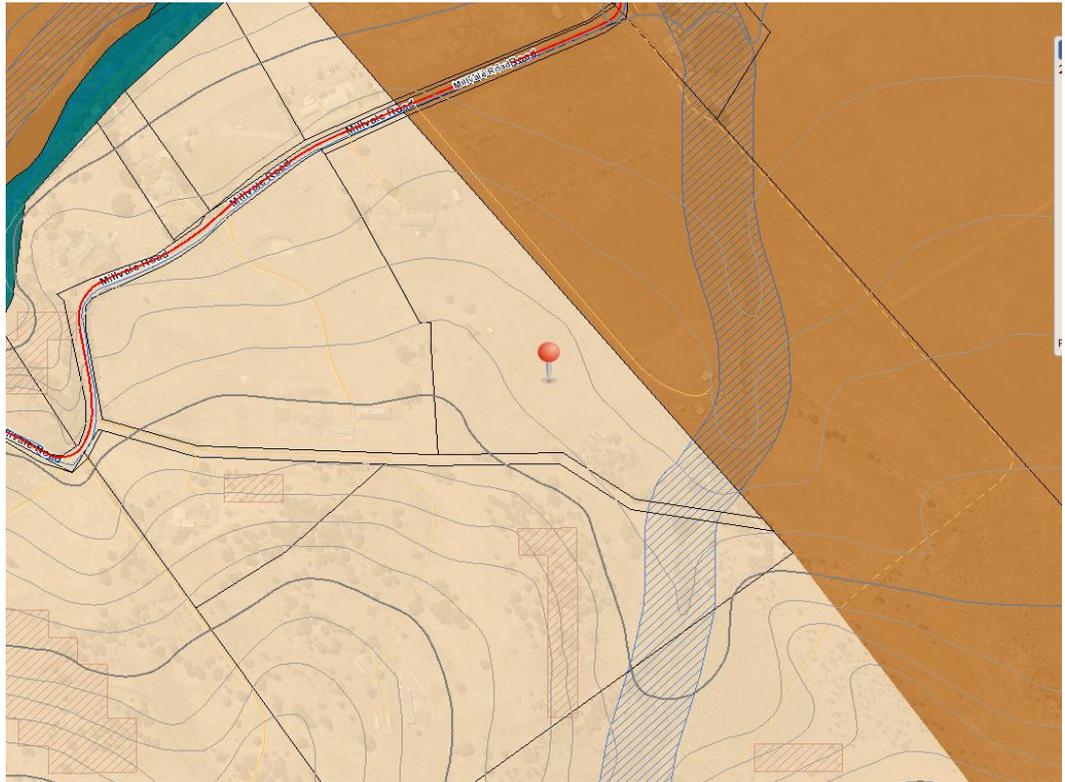


Figure 1. Zoning: Rural (Peach) and Significant Agriculture (Brown). Waterway Overlay (blue hatching).

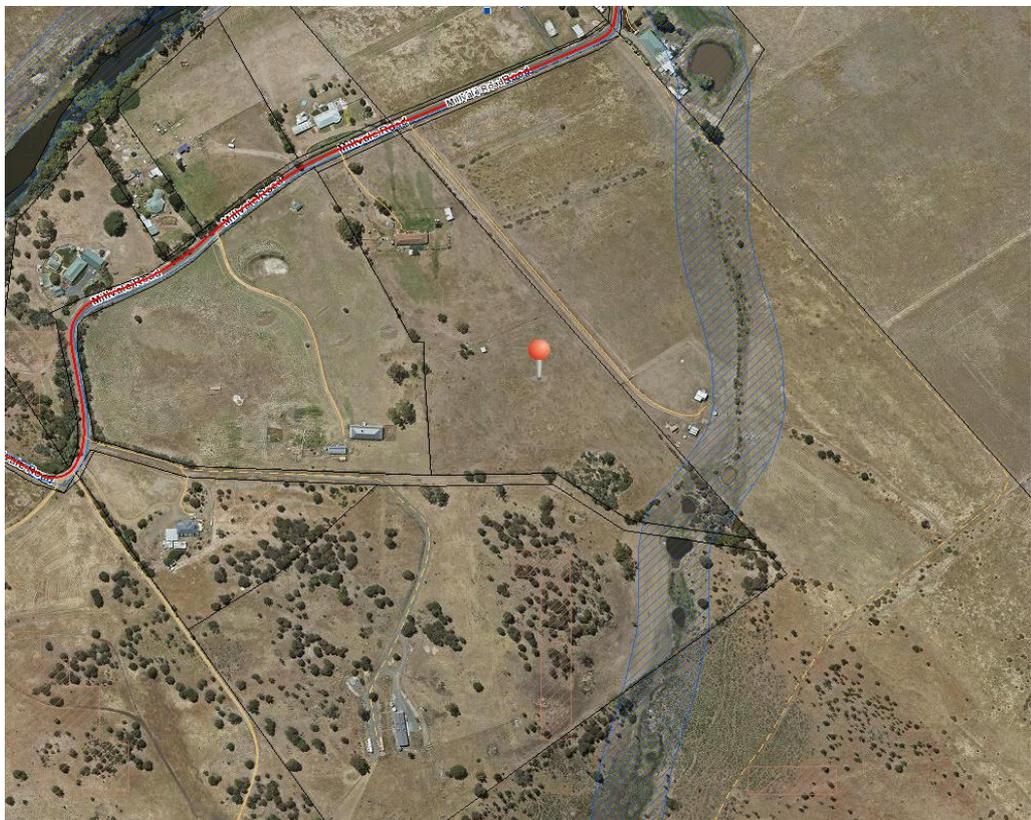


Figure 2. Aerial image.

6. Proposal

6.1. Approval is sought for three shipping containers that already exist on the site. The first is a 20 ft navy blue container, located approximately 14.5m from the eastern boundary, next to the existing shed.

The other two 40 ft terracotta coloured containers will be located approximately 31m from the eastern boundary and approximately 75m from the rear boundary, next to a patch of vegetation. These will be relocated from their current position, 6m from the eastern boundary.

6.2. The application is supported by the attached cover letter and appendices.

7. Assessment against planning scheme provisions

7.1. The following provisions are relevant to the proposed use and development;

- 26.0 Rural Resource Zone
- E6.0 Parking & Access Code
- E7.0 Stormwater Code

7.2. The application satisfies the following relevant Acceptable Solutions (AS):

- 26.2 Use (Residential – Permitted use under 9.2 as previously approved discretionary use)
- 26.4.1 A1 – height
- 26.4.2 A2 – front setback
- 26.4.3 A1, A2 & A3 - design
- E6.0 – Parking & Access Code – all parking and access existing.

7.3. The following discretions are invoked:

		BIPS 2015 requirement	Proposed
1	Side setback	50m	Approx.. 34m to east boundary Approx. 40m the west
2	Stormwater	Dispose to public stormwater infrastructure	Nothing proposed.

7.4. Discretion 1 – Side setback

- The AS at 26.4.2 A2 requires buildings to be setback from side and rear boundaries no less than 50m. The application requests to vary this standard with a setback of approximately 34m to the eastern boundary and 40m to the western boundary for the two shipping containers at the rear of the lot. The shipping container to the front of the house will be setback approximately 14.5m from the eastern boundary.
- The applicable Performance Criteria (PC) is outlined below:

Building setback from side and rear boundaries must maintain the character of the surrounding rural landscape, having regard to all of the following:

- (a) the topography of the site;
- (b) the size and shape of the site;
- (c) the location of existing buildings on the site;
- (d) the proposed colours and external materials of the building;
- (e) visual impact on skylines and prominent ridgelines;
- (f) impact on native vegetation.

The applicant demonstrates in Appendix 1 of their cover letter that satisfying the 50m setback standard would mean that the containers would need to be located in a limited area in the centre of their lot which would result in them being prominent in the landscape.

The proposed location for the single 20 ft container at the front of the lot will be located next to existing buildings, including one that will have a smaller setback than what is proposed.

The two 40 ft containers at the rear of the lot will be located next to existing vegetation on a relatively flat part of the lot, which will minimise the need for cut and fill. The existing vegetation will help to soften the building in the rural landscape and no vegetation is proposed to be removed. The terracotta colour is not considered to blend with the character of the surrounding rural landscape and it is recommended a condition require the containers to be painted a more neutral, darker colour such as greens, blues, greys or blacks.

The application is considered to satisfy the PC subject to conditions.

7.5. Discretion 2 – Stormwater Drainage and Disposal

- The AS at E7.7.1 A1 requires stormwater from new impervious surfaces to be disposed of by gravity to public stormwater infrastructure. As there is no public stormwater infrastructure in the area the AS cannot be satisfied.
- The corresponding PC requires:
 Stormwater from new impervious surfaces must be managed by any of the following:
 - (a) disposed of on-site with soakage devices having regard to the suitability of the site, the system design and water sensitive urban design principles
 - (b) collected for re-use on the site;
 - (c) disposed of to public stormwater infrastructure via a pump system which is designed, maintained and managed to minimise the risk of failure to the satisfaction of the Council.

The application does not address the method of stormwater disposal. However, given the size of the land soakage trenches could easily be incorporated on-site. A condition requiring a plumbing permit to address stormwater disposal is recommended.

The application satisfies the PC subject to conditions.

8. Concerns raised by representors

8.1. The following table outlines the issues raised by the two representors. The representations only relate to the two shipping containers at the rear.

Concern	Planning Response
The location of the two shipping containers will take away peace and privacy and the containers should be located down near the existing house.	Section 7.4 above addresses the relevant PC relating to the variation of the side setback. The application is considered to satisfy the PC.
The containers could be located near the house with minimal earth moving.	There is no requirement for buildings to be located near existing buildings. The applicant can apply to locate buildings where they wish and the application is considered against the Planning Scheme. As noted in section 7.4 the application satisfies the PC.

<p>The containers will obstruct views up the valley and the location is not subtle and unobtrusive.</p>	<p>The shipping containers will be located in front of some existing vegetation which will be a backdrop to the containers and soften the visual impact. A condition to paint the containers in a more neutral colour is recommended to help them blend into the rural landscape.</p>
<p>The noise of the shipping container doors, particularly at night, is intrusive to privacy. It is also possible that they could be used as a workshop.</p>	<p>There are no noise standards for this Zone. It should be noted that the subject site and surrounding properties are in the Rural Resource and Significant Agricultural Zone which have almost no standards to consider residential amenity.</p> <p>The Environmental Management and Pollution Control Act 1994 (EMPCA 1994) regulates unreasonable noise levels if it occurs.</p>
<p>Any new plantings along the boundary to screen the containers from the existing dwelling would take a long time to establish and could be a bushfire threat.</p>	<p>No new plantings are proposed or required as part of the application or permit conditions.</p>
<p>There is potential that the containers will be used as a workshop.</p>	<p>This is a reasonable use of the containers, as long as it is for residential or agricultural purposes and does not cause an unreasonable level of noise impact under EMPCA 1994.</p>

9. Conclusion

- 9.1. The proposal for three shipping containers relies on assessment against the PC for side setback and stormwater disposal.
- 9.2. Two representations were received objecting to the location of the two containers at the rear of the property. The representations suggested that the containers should be located elsewhere on the site because of the impact on privacy and also the visual impact on the landscape.
- 9.3. The applicable Rural Resource and Significant Agricultural Zones do not consider residential amenity in the assessment criteria due to the types of activities (e.g. agricultural) that are encouraged within the zone.
- 9.4. The proposed location for the containers is considered to satisfy the relevant PC subject to conditions regarding external colours and stormwater disposal.

- 9.5. The application is recommended for approval subject to conditions outlined below.

RECOMMENDATION:

That Pursuant to the Brighton Interim Planning Scheme 2015, Council approve application DA2017/00209 for use and development of three shipping containers at 600 Millvale 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 letter or the date of the last letter to any representor, which ever is later, in accordance with section 53 of the *Land Use Planning And Approvals Act 1993*.
- (3) The shipping containers must be relocated to the approved location(s) within 14 days of the date of this permit.
- (4) The building(s) are not to be used for commercial, industrial or habitable purposes.

Amenity

- (5) Within 30 days of the date of this permit, the shipping containers must be painted with finished colours that have low reflectivity and blend in with the natural rural landscape to minimise visual intrusion, such as natural browns, greys, blacks or greens.
- (6) Within 14 days, a schedule specifying the finish and colours of all external surfaces and samples, prepared in accordance with the above condition, must be submitted to and approved by the Council's Manager Development Services. The schedule shall form part of this permit when approved.
- (7) All external metal building surfaces must be clad in non-reflective pre-coated metal sheeting or painted to the satisfaction of the Manager Development Services.
- (8) No vegetation other than that necessary for the construction of the building, associated access and services is to be cleared without the approval of Council.

Stormwater

- (9) 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.

Construction amenity

- (10) 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.
- (11) 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.

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 Owen moved, Cr Geard seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

In favour

Against

Cr Foster

Cr Curran

Cr Geard

Cr Gray

Cr Higgins

Cr Jeffries

Cr Owen

Cr Williams

The meeting closed at 5.50pm

Confirmed:

(Mayor)

Date:

17th October 2017