



# 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,  
12<sup>TH</sup> SEPTEMBER, 2017

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

**IN ATTENDANCE:** Mr G Davoren (Acting General Manager); Mrs J Banks  
(Governance Manager) and Mr D Allingham (Senior  
Planner).

## 1. APOLOGIES:

*Cr Curran moved, Cr Garlick seconded that Cr Gray and Cr Williams be granted leave of absence.*

**CARRIED**

## VOTING RECORD

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

## 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.

*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 – DA2017/00176 – UNIT 2 23 STANFIELD DRIVE OLD BEACH – BOAT STORAGE SHED & CARPORT**

Type of Report	Planning Authority - For Decision
Application No:	DA2017/00176
Address:	Unit 2 23 Stanfield Drive Old Beach
Applicant:	P Krause
Proposal:	garage and carport
Zone:	Low Density Residential
Representations:	1 (one)
Discretion:	1. Type (Use): Changes to an existing non-conforming use.

#### **1. Executive Summary**

- 1.1. Planning approval is sought for a garage and carport in the Low Density Residential Zone at Unit 2 23 Stanfield Drive Old Beach.
- 1.2. The application is discretionary due to the status of the use in the zone. One representation was received. It is considered that the issues raised in the representation do not warrant refusal or modification of the application.

- 1.3. The key planning issues relate to the visual bulk of the garage when viewed from adjoining properties.
- 1.4. The proposal is recommended for approval subject to various non-standard conditions relating to retention of existing screening vegetation and overall height to reduce the visual bulk of the garage.
- 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 DA2017/00176.
- 2.2. This determination must be made no later than 26 September 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 land is strata titled for two units that were built in the early 1990's.

#### 5. Site Detail

5.1. The subject site is a 2,479m<sup>2</sup> "battle-axe" strata lot containing an existing single storey dwelling. The strata titles are separated as if they were subdivided. The site falls moderately towards the Derwent River Foreshore reserve which adjoins the western boundary. The site has well maintained established landscaping.

5.2. The site is bounded by residential dwellings to the north, south and east and the Derwent River foreshore to the west. The site is zoned Low Density Residential.

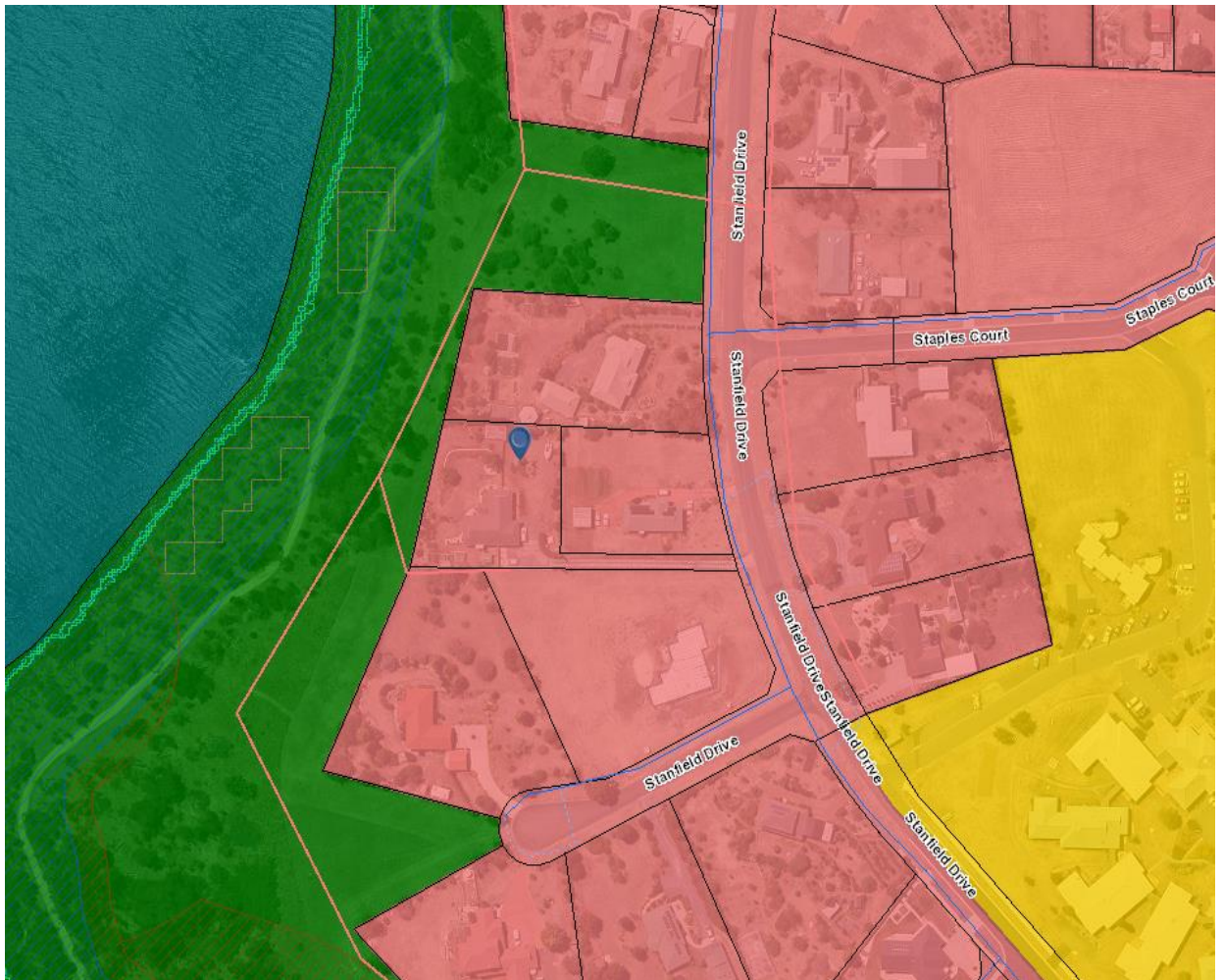


Figure 1. Zoning: Low Density Residential (Pink), Open Space (Green) and Community Purpose (yellow).



Figure 2. Aerial image.

**6. Proposal**

6.1. The proposal is for a 6m L x 6m W x 3m H open sided carport and 8m L x 6m W x 4.6m H garage. The proposed carport will be located at the western end of the existing driveway. The garage will be located in the north-eastern corner of the property and setback 2m from the north and west boundaries. A compacted gravel driveway will be extended from the existing sealed driveway.

6.2. 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;

- 12.0 - Low Density Residential Zone
- E6.0 - Parking & Access Code
- E7.0 - Stormwater Code

7.2. The application satisfies the following Acceptable Solutions:

- 12.4.2 A1-A3 – setbacks and building envelope
- 12.5.3 A1 & A2 – Site coverage and private open space
- 12.4.4. A1 – A3 – sunlight and overshadowing
- E6.6.1 A1 – number of car parking spaces
- E6.7.2 A1 – Design of vehicular access
- E6.7.5 A1 – Layout of parking areas
- E7.7.1 A1 – Stormwater drainage and disposal

7.3. The following discretions are invoked:

		Acceptable Solution	Proposed
1	Use	Addition to multiple dwelling	Prohibited (Existing use rights apply)

- Discretion 1 – Multiple dwelling use

7.3..1. The proposal involves an addition to a multiple dwelling in the form of outbuildings. In the Low Density Residential Zone Use Table (Clause 12.2) residential use is a “No Permit Required” use with the qualification “only if a single dwelling”. Residential use is not listed as Permitted or Discretionary and therefore more than one dwelling is Prohibited. However, the strata units at 23 Stanfield Drive have existed since the early 90s and therefore have existing use rights.

7.3..2. Under clause 9.1 of the Scheme, the planning authority, may at its discretion approve an application:

(a) to bring an existing use of land that does not conform to the scheme into conformity, or greater conformity, with the scheme; or

(b) to extend or transfer a non-conforming use and any associated development, from one part of a site to another part of that site; or

**(c) for a minor development to a non-conforming use,**

**where there is -**

**(a) no detrimental impact on adjoining uses; or**

**(b) the amenity of the locality; and**

**(c) no substantial intensification of the use of any land, building or work.**

**In exercising its discretion, the planning authority may have regard to the purpose and provisions of the zone and any applicable codes.**

- 7.3..3. The proposal is considered to be a minor development to a non-conforming use and is assessed against (c) above. In regard to the relevant zones and codes, proposal meets all the relevant Acceptable Solutions of the Scheme as outlined in paragraph 7.2 of this report.
- 7.3..4. In regards to (a), one representation was received for the application in regards to obstruction of views. This is discussed further in section 8.
- 7.3..5. In regards to (b) the amenity of the locality will not be impacted.
- 7.3..6. In regards to (c), the proposed garage and carport are not considered to be a substantial intensification of the land, building or work.
- 7.3..7. Thus, it is considered reasonable to grant this discretion with conditions as outlined at paragraph 8.2.

## **8. Concerns raised by representors**

- 8.1. One representation was received, which claimed that the proposed garage to be located in the north-east corner will block the view up the Derwent River. The representor suggests that conditional approval should be granted upon the removal of certain trees on the eastern and northern boundaries to allow other views.
- 8.2. There are no standards in the Scheme that relate to the right of someone having a view and therefore the planning assessment must consider the visual bulk of the garage. As noted above, the proposal satisfies all the relevant Acceptable Solutions of the Scheme. Additionally, the garage will be screened by existing trees on both the eastern and northern boundary, which are approx. 3.5m - 4m which will reduce the visual bulk of the proposed garage. A condition is recommended that no established screening trees be removed as part of the proposal and that the finished floor level of the garage does not exceed 400mm above natural ground level.

## **9. Conclusion**

- 9.1. The proposed carport and garage are a minor intensification of the pre-existing use for multiple dwellings which triggers a discretion. The proposal satisfies the relevant standards of the Scheme.

- 9.2. One representation was received in regards to the garage obstructing their views. A view is not a relevant consideration under the Scheme, and rather the key consideration is visual bulk. Conditions relating to height and vegetation screening are proposed to address the visual bulk and the proposal is recommended for conditional approval.

## **RECOMMENDATION:**

That Pursuant to the Brighton Interim Planning Scheme 2015, Council approve application DA2017/00172 for residential use and development of two outbuildings in the Low Density Residential Zone at 2/23 Stanfield Drive, 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.
- (3) The approved outbuildings are not to be used for commercial, industrial or habitable purposes.

### *Amenity*

- (4) All external metal building surfaces must be clad in non-reflective pre-coated metal sheeting or painted to the satisfaction of the General Manager.
- (5) The proposed colours and materials for the garage walls (Colorbond "Mangrove") and roof (Colorbond "Monument") and carport walls (Colorbond "Monumnet") and roof (Colorbond "Classic Cream") are approved. Any variation in the colours and materials must be submitted to and approved by the Council's General Manager.
- (6) The existing screening trees along the northern and eastern boundaries must be retained.
- (7) The finished floor level of the garage must be no more than 400mm above natural ground level.

### *Parking and Access*

- (8) At least two (2) 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.



- (9) The extension of the existing driveway to the garage must be designed, constructed and maintained to avoid dust or mud generation, erosion and sediment transfer off site or destabilisation of the soil on site or on adjacent properties to the standard required by Council's Municipal Engineer

*Stormwater*

- (10) Stormwater drainage from the proposed development must be retained on site (or) drain to a legal point of discharge to the satisfaction of Council's General Manager and in accordance with a Certificate of Likely Compliance or Plumbing permit issued by the Permit Authority in accordance with the Building Act 2016.

*Soil and Water Management*

- (11) Before any work commences install temporary run-off, erosion and sediment controls 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 Program and NRM South and to the satisfaction of Council's General Manager.

**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 site is part of a strata title and the development approved by this permit may not be able to proceed without the written approval of the Body Corporate.**
- 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. 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 Geard moved, Cr Curran 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: \_\_\_\_\_  
19<sup>th</sup> September 2017