



Brighton Council

MINUTES OF THE **PLANNING AUTHORITY MEETING**
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
OLD BEACH AT 5.35PM ON TUESDAY,
13TH FEBRUARY, 2018

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

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

1. APOLOGIES:

Cr Geard moved, Cr Owen seconded that 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 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 RZ2017/02 - SECTION 39 REPORT - AMENDMENT TO BRIGHTON INTERIM PLANNING SCHEME 2015 – REMOVAL OF MAPPED ATTENUATION AREA SURROUNDING 149 WILLIAM STREET, BRIGHTON:

SECTION 39 REPORT:

Author:	Patrick Carroll, Planning Officer
Applicant:	Brighton Council
Owner:	Tasmanian Water and Sewerage Corporation Pty Ltd
Location:	149 William Street, Brighton and land within 350m of that address Removal of Mapped Attenuation Area
Proposal:	
Reference:	RZ 2017 / 02
Zoning:	Utilities Zone, Rural Resource Zone, Rural Living Zone
Planning instrument:	<i>Brighton Interim Planning Scheme 2015</i>
Date advertised:	23 December 2017 to 29 January 2018
Representations:	Two (2)

Decision required 5 March 2018

1. Executive Summary

- 1.1 The report considers an amendment to the *Brighton Interim Planning Scheme 2015*, pursuant to s.33 of the *Land Use Planning and Approvals Act 1993* (the Act). The draft amendment is for the purposes of removing the mapped Attenuation Area that surrounds the William Street sewage treatment plant.
- 1.2 The request to initiate the amendment was approved by Council's Planning Authority at its meeting on 12 December 2017.
- 1.3 A notice of draft amendment was forwarded to the Tasmanian Planning Commission on 18 December 2017.
- 1.4 The draft amendment was advertised in The Saturday Mercury newspaper on 23 December 2017 and The Mercury newspaper on 10 January 2018. The draft amendment was available for public comment between 23 December 2017 and 29 January 2018.
- 1.5 Two (2) representations were received in relation to the draft amendment.
 - 1.5.1 One representation was TasWater's Submission to Planning Authority Notice, TasWater Ref No TWDA 2017/02004-BTN, dated 19 December 2017, received during the statutory representation period.
 - 1.5.2 Another representation was from the Environment Protection Authority (EPA), received outside the statutory representation period. Nevertheless, the non-statutory representation from the EPA was considered by the Planning Authority in its assessment of the draft amendment.
- 1.6 The recommendation of this report is that Council resolves to:
 - 1.6.1 Advise the Tasmanian Planning Commission (the 'TPC') that two representations were received in respect to draft amendment RZ 2017/02; and
 - 1.6.2 Advise the Tasmanian Planning Commission that no modifications to the draft amendment RZ 2017/02 are considered necessary.

2. Background

- 2.1 Council resolved at its meeting of 12 December 2017 to initiate draft amendment RZ 2017/02 of the *Brighton Interim Planning Scheme 2015* (the 'planning scheme') by:
 - Deleting the mapped Attenuation Area that surrounds the sewage treatment plant at 149 William Street, Brighton.

2.2 Not including road, Council or Crown parcels, the draft amendment impacts the following properties:

- 500 Briggs Road, Brighton
- 504 Briggs Road, Brighton
- 509 Briggs Road, Brighton
- 516 Briggs Road Brighton
- 593 Briggs Road, Brighton
- 620 Briggs Road, Brighton
- 5 Harris Road, Brighton
- 143 William Street, Brighton
- 145 William Street, Brighton
- 147 William Street, Brighton
- 149 William Street, Brighton
- 157 William Street, Brighton

2.3 The application was made pursuant to Section 33 of the Act.

Council's report under Section 35 and associated documentation, which provides the strategic justification for the planning scheme amendment has been endorsed by Council and completed its period of public exhibition on 29 January 2018.

2.4 Two representations were received in respect of the draft amendment.

2.5 This report provides for the consideration of both representations received, as well as any changes that may be appropriate to the certified draft amendment.



Figure 1. Aerial photography of 149 William Street and the surrounding area.

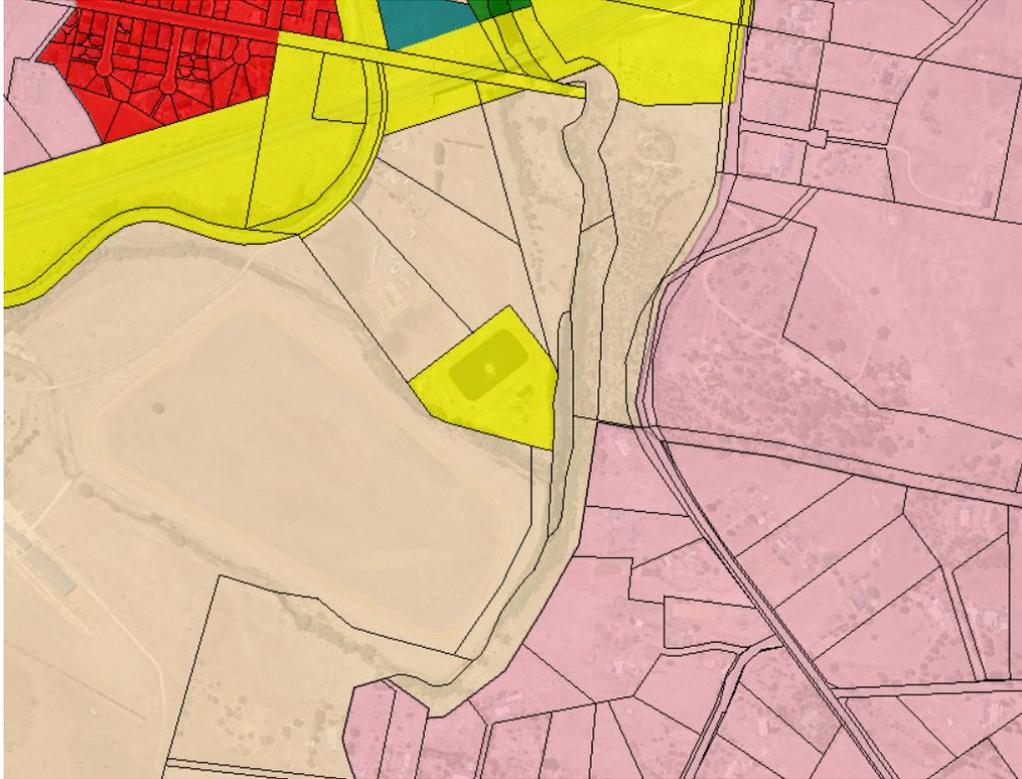


Figure 2. Aerial photograph of 149 William Street and the surrounding area. Yellow denotes the Utilities Zone, light brown denotes the Rural Resource Zone, and pink denotes the Rural Living Zone.

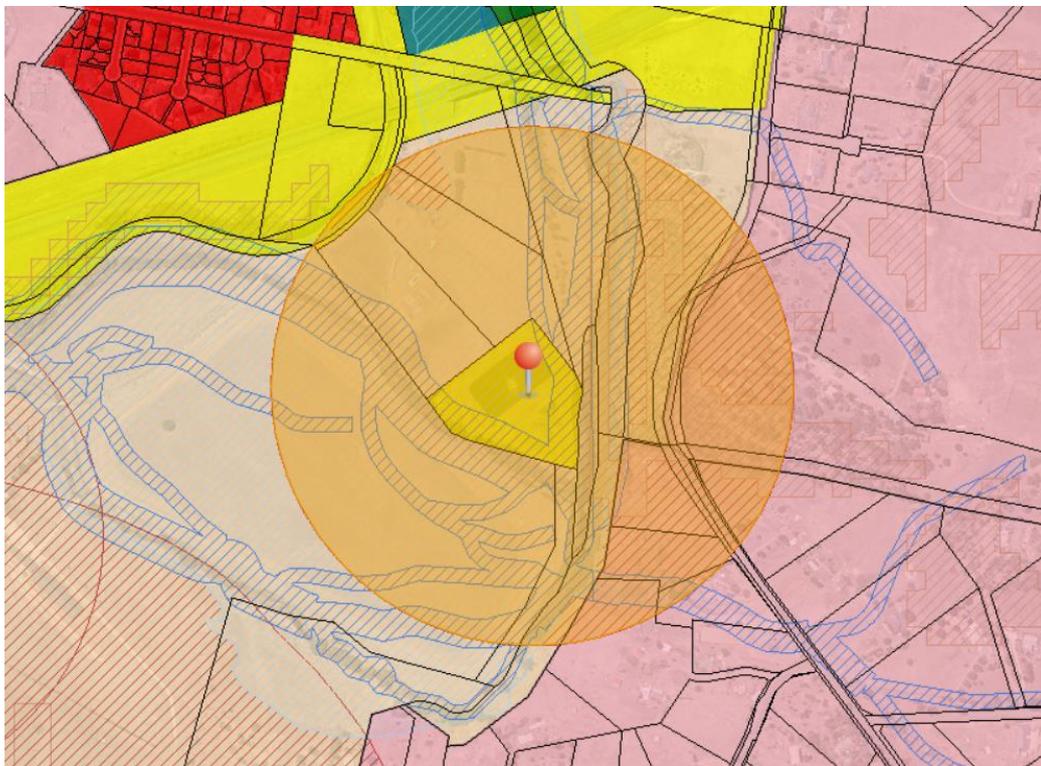


Figure 3. The existing mapped Attenuation Area that surrounds 149 William Street is highlighted above. All residential development is presently prohibited within this area.

3. Consultation

- 3.1 The proposed amendment was exhibited in accordance with Section 38 of the Act and Section 6 of the *Land Use Planning and Approvals Act Regulations 2004* from 23 December 2017 to 29 January 2018.
- 3.2 In TasWater’s Submission to Planning Authority Notice (TasWater Ref No TWDA 2017/02004-BTN, dated 19 December 2017), it was stated that TasWater does not object and has no formal comments for the Tasmanian Planning Commission in relation to this matter.
- 3.3 No other representations were received during the statutory representation period.
- 3.4 Notwithstanding the above, a representation was received from the Environment Protection Authority outside the statutory representation period, which objected to the proposed amendment. The representation was dated 24 January 2018, but was not received by Council until 30 January 2018.
- 3.5 Although the EPA’s representation was received outside the statutory representation period, and Council has no statutory obligation to do so, the representation was still considered by Council in the assessment of the application. The concerns raised by the representor are outlined in the following table together with an officer response.

Concern Raised	Planning Officer Response
<p>I refer to the decision by Brighton Council in December 2017 to certify draft amendment no RZ2017/02 relating to the <i>Brighton Interim Planning Scheme 2015</i> (the Scheme) pursuant to Section 32 of the <i>Land Use Planning and Approvals Act 1993</i>. As per the public notice relating to the amendment, the amendment comprises deletion of the attenuation area overlay relating to the sewage treatment works (hereafter the wastewater treatment plant (WWTP)) at 149 William Street, Brighton. This WWTP is a Level 2 activity under the <i>Environmental Management and Pollution Control Act 1994</i>, and as such is regulated by the Environment Protection Authority (EPA).</p>	<p>Noted.</p>

I wish to highlight that this change may have regulatory implications for the EPA, as well as for Brighton Council and for TasWater. Section E9.2.3 of the Scheme currently prohibits residential use or development within the Attenuation Areas shown on the planning scheme maps. It is my understanding that following the removal of the overlay, residential use could be allowed within the attenuation distances shown in Table E9.2 based on performance criteria from Section E9.7.2. I wish to reinforce that thorough application of performance criteria is critical to avoid new land uses that conflict with the WWTP. Such conflicts, typically nuisance odours, are often problematic and require significant resources to manage.

It is correct that Section E9.2.3 currently prohibits residential use or development within Attenuation Areas. This clause was inserted via urgent amendment to the Brighton Interim Planning Scheme 2015 by the Minister on 31 July 2015.

It should be noted that this provision is unique only to Brighton's Interim Scheme, and is primarily used to protect the public from environmental impacts emanating from the Boral Quarry at Bridgewater - a regionally significant piece of infrastructure. It was not the intention that smaller 'potentially contaminating activities' (i.e. small wastewater treatment plants), and the land surrounding them, were to be affected by this provision.

Council is satisfied that the provisions of the Performance Criteria in Section E9.7.2 are strong enough to restrict new inappropriate sensitive developments from encroaching on existing potentially contaminating activities. A site-specific study (i.e. odour modelling study) would be required to demonstrate compliance with the relevant Performance Criteria.

Council does not intend to include a provision similar in drafting to Section E9.2.3 in its Local Provisions Schedule. Regardless, there is no provision within the SPPs that will outright prohibit residential development within Attenuation Areas.

	<p>Council intends on submitting its Local Provisions Schedule in the second quarter of 2018 for assessment by the Tasmanian Planning Commission.</p>
<p>I am advised that there have been discussions between TasWater, Brighton Council and the owner of an adjoining parcel of land regarding potential development for residential use, during which TasWater has advised the landowner that odour modelling prior to removal of the overlay would be prudent. I support this recommendation and submit that Draft Planning Scheme Amendment No. RZ2017/02 should be deferred until odour modelling is undertaken to provide a sound basis from which to consider land development near the WWTP.</p>	<p>This point of the representation was referred to TasWater for comment. Jason Taylor, Development Assessment Manager, TasWater stated:</p> <p><i>Initial verbal advice was given to the customer at the neighbouring property of 147 William St Brighton over a year ago, that odour modelling may be prudent as if he were to apply to make the Scheme Amendment personally, as the process could be time consuming and costly for a private member of the community, with no guarantee of an outcome favourable to him at either the amendment or development application stage.</i></p> <p><i>However, as time has gone on, our position has become clearer, hence our SPAN (as attached) not requiring any modelling at this stage. The approach to not have formal buffers is consistent with our advice to other Councils and the Commission with respect to the preparation of Local Provisions Schedules and other previous Planning Scheme amendments. It is our understanding that the subject buffer will also automatically be removed when the State Planning Provisions come into effect.</i></p> <p><i>As Council have initiated the amendment themselves, the best course of action would be to simply remove the formal buffer and then let individual customers prepare a study which could be site specific to their property and development (minor in nature, rather than trying to cover all aspects of every property), as required under the</i></p>

	<p><i>Attenuation Code at the development application stage.</i></p> <p>It is the Officer's opinion that it is inappropriate to obtain odour modelling prior to the amendment being determined, especially when the prospect of future development within the current Attenuation Area is speculative, at best.</p> <p>It is, however, entirely appropriate that, should the amendment be approved, odour modelling for the impacts on any new sensitive development be required at development application stage, in order to assess any potential impacts as part of Council's assessment of the Performance Criteria contained in Section E9.7.2 P1.</p>
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4. Legislation

- 4.1 Section 39(2) of the Act provides that a Planning Authority (Council) must, within 35 days after the public notification period concluding, forward to the TPC a report comprising:
- (a) a copy of each representation received by the authority in relation to the draft amendment or, where it has received no such representation, a statement to that effect; and*
 - (b) a statement of its opinion as to the merit of each such representation, including, in particular, its views as to–*
 - (i) the need for modification of the draft amendment in the light of that representation; and*
 - (ii) the impact of that representation on the draft amendment as a whole; and*
 - (c) such recommendations in relation to the draft amendment as the authority considers necessary.*
- 4.2 Subsection (b) relates specifically to any representation received.
- 4.3 Subsection (c) allows the Planning Authority (Council) to provide any additional information or recommendation in relation to the draft amendment as certified or the recommend to the Tasmanian Planning Commission that a modification should be made, regardless of any representation.

- 4.4 As the draft amendment has been initiated and certified the Tasmanian Planning Commission must make a determination on the matter.

5. Assessment

- 5.1 TasWater's Submission to Planning Authority Notice (TasWater Ref No TWDA 2016/01703-BTN, dated 17 November 2016) does not warrant modification to the proposal.
- 5.2 It is the Officer's opinion that, following consideration of the issues raised in the EPA's representation, there is no requirement for the draft amendment to be altered.
- 5.3 The rationale for the Officer's opinion are discussed in Section 6, below.

6. Discussion

6.1 Odour Modelling

The Environment Protection Authority has requested that the draft amendment be deferred until odour modelling is undertaken.

The Officer's opinion is that it is more appropriate that, if and when a development application is lodged with Council, odour modelling is undertaken by a suitably qualified individual as part of the application of that particular development, taking into account the nature of the development and the topography and other site constraints of the lot subject to the application.

Costs of the odour modelling assessment would also be met by the developer, and not imposed on the EPA, TasWater or Council. The developer would only be required to assess impacts to their own lot, and not to the entire Attenuation Area – an area in excess of 38 ha.

Undertaking odour assessments at development application stage will also allow the specifics and complexities of the development proposed to be considered, including land constraints and any mitigation measures recommended to be implemented. A thorough, site-specific report will allow for a rigorous assessment of the development proposed against the Performance Criteria contained in E9.7.2.

In correspondence with Council, TasWater also supports the approach of removing the buffer on the planning scheme maps now as part of this amendment, and then requiring individual developers to undertake odour modelling as part of a future development applications. TasWater are of the view that it is inappropriate defer the amendment process to undertake such assessments prior to the removal of the mapped Attenuation Area.

6.2 Planning Schemes

Brighton Planning Scheme 2000

Under the former Brighton Planning Scheme 2000 (the 'former Scheme'), development within 350m of the William Street sewage treatment facility was assessed under the Attenuation Schedule.

Pursuant to Table S10.1 of the former Scheme, sensitive uses were discretionary, and were required to satisfy the relevant Performance Criteria contained in Table S10.1 P1, which stated:

Council may permit and application for a sensitive use that reduces the attenuation distance standards listed in Tables S10.2 and S10.3 provided it can be demonstrated by a site specific study that the occupants and users of the sensitive use will not be adversely affected by hazardous emissions or environmental nuisance from activities within the attenuation area.

- a) *Matters to be taken into account in the site specific study include:-*
- b) *The degree of encroachment, and the nature of the emitting operation being protected by the attenuation area'*
- c) *The degree of hazard or pollution that may emanate from the emitting operation;*
- d) *Where the emitting operation is in existence, the level of investment in the emitting operation or facility being protected by the attenuation areas, and the value of the facility to the local or regional economy; and*
- e) *Topography, climatic conditions and other specific circumstances.*

As per the Performance Criteria, in the event that a sensitive use or development was proposed within the Attenuation Area that surrounded the William Street facility, a site-specific study (in this case, an odour modelling study) would have been required to demonstrate the impacts of the existing sewage treatment plant on the proposed sensitive development.

However, despite the above, it should be noted that there was an additional Environmental Buffer overlay that prohibited residential development in this area.

Brighton Interim Planning Scheme 2015

As part of the transition from the former Scheme to the Interim Scheme, the Attenuation Schedule was translated into the Interim Scheme in accordance with the interim planning scheme model framework template.

The *Brighton Interim Planning Scheme 2015* became operational in May 2015.

In July 2015, the Minister approved an urgent amendment to the Interim Scheme, and Section E9.2.3 was inserted. Section E9.2.3 states:

Residential use or development is prohibited within the Attenuation Areas shown on the planning scheme maps.

Section E9.2.3 applies only to mapped Attenuation Areas. It does not apply to residential use or development within the Attenuation Distances of potentially contaminating activities described by Tables E9.1 and E9.2 of the Interim Scheme. Section E9.2.3's inclusion in the Interim Scheme was a translation of the Environmental Buffer Overlay from the former 2000 Scheme. Section E9.2.3 is unique to Brighton's Interim Scheme, and is not included within the Attenuation Code of any other Interim Planning Scheme.

Council submits that the intention of Section E9.2.3 is to protect regionally significant infrastructure, such as the Boral Quarry at Bridgewater, from being encroached upon by inappropriate residential development. It is not the intention that the application of Section E9.2.3 would outright prohibit residential development from occurring within proximity to other less significant, existing potentially contaminating uses, such as the William Street facility. As such, Council is pursuing an amendment to remove the mapped Attenuation Area that surrounds the William Street facility from the Interim Scheme.

Instead, the thorough application of the Performance Criteria contained in Section E9.7.2 is considered rigorous enough to adequately assess the impacts of existing uses on new sensitive uses, and, where appropriate, permit (at the Council's discretion) those uses that satisfactorily comply with the Performance Criteria, and conversely, refuse any development that cannot demonstrate that it performs against the provisions of E9.7.2 P1.

By removing the mapped Attenuation Area that surrounds the William Street sewage treatment plant from the planning scheme maps, Section E9.2.3 will not apply. However, any development of a new sensitive use will still need to demonstrate compliance with the Performance Criteria contained in Section E9.7.2 P1. This will bring the development of sensitive uses in proximity of wastewater treatment plants in Brighton into greater conformity with both all other current Interim Schemes and the incoming SPPs.

Tasmanian Planning Scheme and Brighton Local Provisions Schedule

At this stage, Council does not intend to map the 350m radius around 149 William Street sewage treatment plant as an Attenuation Area within Section C9.0 - Attenuation Code of the Brighton Local Provisions Schedule. Instead, Council will rely on Table C9.2 -

Attenuation Distances for Sewage Treatment Plant Processes within the Statewide Planning Provisions (SPPs) for application of attenuation distances for such facilities. Any new sensitive use within an attenuation area described in Table C9.2 will need to demonstrate compliance against the relevant Performance Criteria contained in Section C9.5.2 P1 of the SPPs.

Table C9.2 of the SPPs states that, for an aerobic lagoon with a sewage treatment plant designed capacity of less than 1375 kL per day, then the attenuation distance is 350m.

The distance in Table C9.2 of the SPPs is the same as both the mapped Attenuation Area and the default Attenuation Distance contained in Table E9.2 in the current Brighton Interim Planning Scheme 2015.

Council aims to submit its draft LPS to the Tasmanian Planning Commission in the second quarter of 2018. Regardless of whether the Attenuation Area is mapped or not in the LPS, there is nothing in the SPPs that outright prohibits residential development within Attenuation Areas.

7. Options:

- 7.1 To adopt the recommendation; or
- 7.2 To adopt an alternative recommendation satisfying the provisions of Section 39 of the Act, with a full statement of reasons as determined by Council.

RECOMMENDATION

That in accordance with Section 39(2) of the *Land Use Planning and Approvals Act 1993*, Council resolves to:

- A. Advise the Tasmanian Planning Commission that two (2) representations were received in respect to draft amendment RZ 2017/02; and
- B. Advise the Tasmanian Planning Commission that no modification to draft amendment RZ 2017/02 is considered necessary to the initial Section 35 report:

DECISION

Cr Owen 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

4.2 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 – DA 2017/310 – 16 MORRISBY ROAD, OLD BEACH ALTERATIONS AND ADDITIONS (ROOF OVER EXISTING DECK):

Type of Report Planning Authority – For Decision
Author Jo Blackwell
Application No: DA 2017/310
Address: 16 Morrisby Road, Old Beach
Applicant: N J Pearson
Proposal: Roofed deck
Zone: General Residential
Representations: One (1)

Discretions:
1. Privacy (D10.4.6 A1)
2. Waterway and Coastal Protection Code (E11.0)
3. Coastal Erosion Hazard Area (E16.0)

Executive Summary

- 1.1. Planning approval is sought for alterations and additions to a single dwelling, which incorporates retrospective approval for a previously constructed roofed deck at 16 Morrisby Road, Old Beach. The application is retrospective.
- 1.2. The application is discretionary arising from reliance on performance criteria in relation to privacy standards, the development standards in the Waterway and Coastal Protection Code and the Coastal Erosion Hazard Area.
- 1.3. One (1) representation was received raising concerns in relation to overlooking and loss of privacy. 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 various non-standard conditions relating to the above key planning issues and on servicing of the site.

- 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 DA 2017/310.
- 2.2. This determination must be made no later than 27th February 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 alterations and additions to a single dwelling, which includes the construction of a deck in the first instant, and more recently a roof over that deck.

5. Site Detail

5.1. The subject site, located on the western side of Morrisby Road, Old Beach, has an area of 639m² and is generally rectangular in shape. The site slopes gently down towards the Derwent River.

The lot is bounded to the north, south and east by residential dwellings (See figure 1).

5.2. Figure 2 is an aerial image of the subject site and surrounding area.



Figure 1: Zoning Map [Green = Open Space; Red = General Residential;] (Source: Listmap)

The Blue line indicates the extent of the Waterway and Coastal Protection Code, whilst the red hashed area is the Coastal Erosion Hazard Code.



Figure 2. Locality Map.

5. Proposal

- 5.3. The proposal is for a roofed deck, and arises out of the need to seek retrospective approval for a pre-existing use. Satellite imagery shows that the original deck has been in situ for a significant period of time, and most certainly was constructed prior to March, 2005 (Google Earth, 2017). In 2017, laserlite roofing was added to cover the deck.
- 5.4. The application is supported by the attached site plan, elevations and photographic representation of the deck, as constructed.

6. Assessment against planning scheme provisions

- 6.1. The following provisions of the Planning Scheme are relevant to the proposed use and development;
 - General Residential Zone
 - Code E7.0 - Stormwater Management Code
 - Code E11.0 - Waterway and Coastal Protection Code
 - Code E16.0 - Coastal Erosion Hazard Code
- 6.2. The following discretions are invoked:

		BIPS 2015 requirement	Proposed
1	Privacy D10.4.6 A1	<p><i>"A balcony, deck, roof terrace, parking space, or carport (whether freestanding or part of the dwelling), that has a finished surface or floor level more than 1 m above natural ground level must have a permanently fixed screen to a height of at least 1.7 m above the finished surface or floor level, with a uniform transparency of no more than 25%, along the sides facing a:</i></p> <p><i>(a) side boundary, unless the balcony, deck, roof terrace, parking space, or carport has a setback of at least 3 m from the side boundary; ..."</i></p>	Screening for a distance of approximately 50% (2m) of the width of the deck.

2	Waterway and Coastal Protection Code	Building and works within a Waterway and Coastal Protection Area must be within a building area on a plan of subdivision approved under this planning scheme.	Nil
3.	Coastal Erosion Hazard Zone	No acceptable solutions for Building and Works	Nil

6.3. Privacy (D 10.4.6. A1)

6.3.1 The proposed development is discretionary due to reliance on performance criteria. The acceptable solution states:

D10.4.6. Privacy for all Dwellings:

A1 *A balcony, deck, roof terrace, parking space, or carport (whether freestanding or part of the dwelling), that has a finished surface or floor level more than 1 m above natural ground level must have a permanently fixed screen to a height of at least 1.7 m above the finished surface or floor level, with a uniform transparency of no more than 25%, along the sides facing a:*

- (a) *side boundary, unless the balcony, deck, roof terrace, parking space, or carport has a setback of at least 3 m from the side boundary; and*
- (b) *rear boundary, unless the balcony, deck, roof terrace, parking space, or carport has a setback of at least 4 m from the rear boundary; and*
- (c) *dwelling on the same site, unless the balcony, deck, roof terrace, parking space, or carport is at least 6 m:*
 - (i) *from a window or glazed door, to a habitable room of the other dwelling on the same site; or*
 - (ii) *from a balcony, deck, roof terrace or the private open space, of the other dwelling on the same site.*

The proposal is for retrospective approval for a roofed deck. The deck has a setback to the southern side boundary, of 1.5m, and a height above natural ground level ranging between 1.183m adjoining the existing dwelling and 1.5m at the western end, which does not satisfy (a) of the acceptable solution. Accordingly, the application is required to address the performance criteria:

- P1 A balcony, deck, roof terrace, parking space or carport (whether freestanding or part of the dwelling) that has a finished surface or floor level more than 1 m above natural ground level, must be screened, or otherwise designed, to minimise overlooking of:
- (a) a dwelling on an adjoining lot or its private open space; or
 - (b) another dwelling on the same site or its private open space; or
 - (c) an adjoining vacant residential lot.

The proposal documents show that a screen half the width of the deck has been placed along the southern end of the deck, which provides some privacy to the neighbouring property to the south. However, figure 3 shows that should a person standing on the southern end of the deck, there is the opportunity for overlooking:



Figure 3: Image taken standing on southern end of deck adjacent to screening. (Photo: Blackwell site visit, 10 January 2018).

As shown in figure 3, by standing at the southern end of the deck adjacent to the stairs which leading to the rear of the property, there is opportunity to look directly to a window of the property and the private open space. The private open space for the adjoining property is currently screened by an outbuilding and vegetation on the neighbouring site, however, reliance on neighbouring land owners for mitigation cannot be undertaken, and must occur on the Applicant's property.

The representors have supported the possibility of maintaining the status quo in relation to the existing screening, stating in their representation that “although the present structure is most imposing, if it remains as is there would be no objections from us”. However, the performance criteria is quite clear in its wording that:

“A balcony, deck, roof terrace, parking space or carport (whether freestanding or part of the dwelling) that has a finished surface or floor level more than 1 m above natural ground level, **must** be screened, or otherwise designed, to minimise overlooking”

Accordingly, it is considered that whilst the adjoining property owners are content for the existing screening to remain as is, the performance criteria cannot be satisfied without a condition which requires screening along the total length of the south facing deck be included in the permit.

It is recommended that a condition be included that requires additional screening similar to that already in place, which should be between 25% and 50% transparent, which help to increase the visual amenity to the adjoining property.

6.4. **Waterway and Coastal Protection Code (E11.0)**

6.4.1 The site is overlaid by the Waterway and Coastal Protection Code. The acceptable solution for Building and Works is that:

Building and works within a Waterway and Coastal Protection Area must be within a building area on a plan of subdivision approved under this planning scheme.

The sealed plan does not delineate a building area. Accordingly the performance criteria must be considered which requires:

Building and works within a Waterway and Coastal Protection Area must satisfy all of the following:

- (a) *avoid or mitigate impact on natural values;*
- (b) *mitigate and manage adverse erosion, sedimentation and runoff impacts on natural values;*
- (c) *avoid or mitigate impacts on riparian or littoral vegetation;*
- (d) *maintain natural streambank and streambed condition, (where it exists);*
- (e) *maintain in-stream natural habitat, such as fallen logs, bank overhangs, rocks and trailing vegetation;*

- (f) *avoid significantly impeding natural flow and drainage;*
- (g) *maintain fish passage (where applicable);*
- (h) *avoid landfilling of wetlands;*
- (i) *works are undertaken generally in accordance with 'Wetlands and Waterways Works Manual' (DPIWE, 2003) and "Tasmanian Coastal Works Manual" (DPIPWE, Page and Thorp, 2010), and the unnecessary use of machinery within watercourses or wetlands is avoided.*

The works for the proposed deck were undertaken in excess of 10 years ago (Google Earth, 2017 satellite imagery). It is considered unlikely that any further impact on natural values will be minimal occur. Accordingly the performance criteria can be satisfied.

6.5 **Coastal Erosion Hazard Code (E16.0)**

6.5.1 The site is subject to the Coastal Erosion Hazard Code, for which there is no acceptable solution for the development standards for building and works. The performance criteria requires:

Buildings and works must satisfy all of the following:

- (a) *not increase the level of risk to the life of the users of the site or of hazard for adjoining or nearby properties or public infrastructure;*
- (b) *erosion risk arising from wave run-up, including impact and material suitability, may be mitigated to an acceptable level through structural or design methods used to avoid damage to, or loss of, buildings or works;*
- (c) *erosion risk is mitigated to an acceptable level through measures to modify the hazard where these measures are designed and certified by an engineer with suitable experience in coastal, civil and/or hydraulic engineering;*
- (d) *need for future remediation works is minimised;*
- (e) *health and safety of people is not placed at risk;*
- (f) *important natural features are adequately protected;*
- (g) *public foreshore access is not obstructed where the managing public authority requires it to continue to exist;*
- (h) *access to the site will not be lost or substantially compromised by expected future erosion whether on the proposed site or off-site;*

- (i) *provision of a developer contribution for required mitigation works consistent with any adopted Council Policy, prior to commencement of works;*
- (j) *not be located on an actively mobile landform.*

As stated previously, the deck has been in situ for in excess of 10 years and works are fully contained within the site boundaries. The deck is set back from the rear boundary approximately 8m, and from the river approximately 20m. Council GIS identifies a difference between the water line of the river and natural ground level at the rear boundary of the site as approximately 10m. It is therefore considered that there is no future need for remediation works, risk is minimised, and important natural features remain protected.

It is recommended, however, that an advice clause be included in any permit granted as to the existence of the Coastal Erosion Hazard Overlay.

6.6 Discussion

The Zone Purpose Statements for the General Residential Zone are:

- 10.1.1.1 To provide for residential use or development that accommodates a range of dwelling types at suburban densities, where full infrastructure services are available or can be provided.
- 10.1.1.2 To provide for compatible non-residential uses that primarily serve the local community.
- 10.1.1.3 To provide for the efficient utilisation of services.

The proposal is considered to meets the zone purpose statements.

6.5. Referrals

7. Concerns raised by representors

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

Representation	Brief Response
Structure is imposing, but the representors are willing to accept it, if it remains as is.	See report for discussion.

Conclusion

The proposed use and development of Residential (alterations and additions) in the General Residential Zone at 16 Morrisby Road, Old Beach satisfies the relevant provisions of the Brighton Interim Planning Scheme 2015, and as such is recommended for approval.

RECOMMENDATION:

Pursuant to the Brighton Interim Planning Scheme 2015, Council approve application DA-2017/310 for use and development of Residential (alterations and additions) at 16 Morrisby Road, Old Beach, 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*.

Amenity

- (3) 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.

Services

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

Stormwater

- (5) Drainage from the proposed development must drain to a legal discharge point to the satisfaction of Council's Municipal Engineer and in accordance with a Plumbing permit issued by the Permit Authority in accordance with the *Building Act 2016*.

Privacy

- (6) A 1.7 metre-high screen with a minimum transparency of twenty-five percent (25%) and maximum transparency of fifty per cent (50%) must extend the full length of the southern elevation of the deck. Plans showing compliance with this condition and documentation demonstrating the transparency of the screen must be submitted to and approved by Council's Manager Development Services prior to commencement of the development. The screening must be erected within three (3) months of the date of this permit.

Construction amenity

- (7) 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.
- (8) 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.
- (9) 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.
- (10) 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.
- (11) The developer must make good and/or clean any footpath, road surface or other element damaged or soiled by the development to the satisfaction of the Council's Municipal Engineer.

THE FOLLOWING ADVICE APPLIES TO THIS PERMIT:

- A. This permit does not imply that any other approval required under any other legislation or by-law has been granted.
- B. The land owner is advised that the subject site has been identified as being vulnerable to coastal erosion due to climate change and may be susceptible to erosion, recession or wave run up.
- 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 Geard moved, Cr Higgins 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 5.40pm

Confirmed:

(Mayor)

Date:

20th February 2018