



Brighton Council

**MINUTES OF THE ORDINARY COUNCIL MEETING
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
OLD BEACH AT 5.35 P.M. ON TUESDAY,
16th JULY 2019**

PRESENT: Cr Foster (Mayor); Cr Curran (Deputy Mayor); Cr Garlick; Cr Geard; Cr Gray; Cr Jeffries; Cr Murtagh; Cr Owen and Cr Whelan.

IN ATTENDANCE: Mr R Sanderson (General Manager); Mr C Pearce-Rasmussen (Acting Municipal Engineer); Mr J Dryburgh (Manager Development Services); Mrs J Banks (Governance Manager) and Ms G Browne (Corporate Executive).

1. CONFIRMATION OF MINUTES:

1.1 CONFIRMATION OF MINUTES OF THE ORDINARY COUNCIL MEETING OF 18th JUNE 2019.

Cr Geard moved, Cr Curran seconded that the Minutes of the Ordinary Council Meeting of 18th June 2019 be confirmed.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Murtagh	
Cr Owen	
Cr Whelan	

1.2 CONFIRMATION OF MINUTES OF THE PLANNING AUTHORITY MEETING OF 9TH JULY 2019.

Cr Gray moved, Cr Curran seconded that the Minutes of the Planning Authority Meeting of 9th July 2019 be confirmed.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Murtagh	
Cr Owen	
Cr Whelan	

2. APPLICATIONS FOR LEAVE OF ABSENCE:

All members were present.

3. PUBLIC QUESTION TIME AND DEPUTATIONS:

There was no requirement for public question time.

4. 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*.

Cr Geard and Cr Whelan declared an interest in Item 10.1

5. REPORTS FROM COUNCILLORS:

5.1 MAYOR’S COMMUNICATIONS:

AUTHOR: Mayor
(Cr T Foster)

The Mayor’s communications were as follows:-

- Jun 20 Meeting at Town Hall re homelessness
- Jun 24 Taswater meeting of Board Selection Committee.
- Jun 25 Meeting with Federal Member for Lyons Brian Mitchell.
General Manager also attended.
- Jun 26 Meeting with Hazell Bros re waste
General Manager, Council Engineer Heath Macpherson attended.
- Jul 02 Meeting with GM and COO.
- Jul 04 LGAT dinner
- Jul 08 Meeting with Reuben Eberhardt at his request.
Also attended GM, COO, Deputy Mayor and Cr Gray
- Jul 09 Meeting with Bright Consultants
Also attended GM, COO, Deputy Mayor and Cr Gray.
- Jul 09 Planning Authority meeting.
- Jul 10 Bill Casimaty funeral service
GM and Mrs Sanderson also attended.
- Jul 16 Roger Curtis and Nathan Street from Abetz Curtis.
- Jul 16 Ordinary Council Meeting.

Deputy Mayor Barbara Curran will be Acting Mayor from 17th July until 29th July inclusive.

RECOMMENDATION:

That the Mayor’s communications be received.

DECISION:

Cr Garlick moved, Cr Jeffries seconded that the report be received.

CARRIED

VOTING RECORD

- | In favour | Against |
|------------|---------|
| Cr Curran | |
| Cr Foster | |
| Cr Garlick | |
| Cr Geard | |
| Cr Gray | |

Cr Jeffries
Cr Murtagh
Cr Owen
Cr Whelan

5.2 REPORTS FROM COUNCIL REPRESENTATIVES WITH OTHER ORGANISATIONS:

DECISION:

Cr Geard advised that he had met with the Tas Canine Defence League regarding their proposed relocation to Pontville Park.

Cr Gray recently attended a STCA Waste management meeting with Municipal Engineer, Heath Macpherson.

Cr Curran moved, Cr Whelan seconded that the reports be received.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Murtagh	
Cr Owen	
Cr Whelan	

5.3 CORRESPONDENCE FROM SOUTHERN TASMANIAN COUNCILS ASSOCIATION (STCA), LGAT, TASWATER AND JOINT AUTHORITIES:

Correspondence and reports from the STCA, LGAT, TasWater and Joint Authorities.

If any Councillor wishes to view documents received contact should either be made with the Governance Manager or General Manager.

6. NOTIFICATION OF COUNCIL WORKSHOPS:

In accordance with the requirements of Section 8(2)(c) of the Local Government (Meeting Procedures) Regulations 2015, it was reported that there were no workshops held since the last Council Meeting.

7. NOTICE OF MOTION:

There were no notices of motion.

8. CONSIDERATION OF SUPPLEMENTARY ITEMS TO THE AGENDA:

In accordance with the requirements of Part 2 Regulation 8(6) of the Local Government (Meeting Procedures) Regulations 2015, the Council, by absolute majority may approve the consideration of a matter not appearing on the agenda, where the General Manager has reported:

- (a) the reason it was not possible to include the matter on the agenda, and
- (b) that the matter is urgent, and
- (c) that advice has been provided under Section 65 of the *Local Government Act 1993*.

RECOMMENDATION:

That the Council resolve by absolute majority to deal with any supplementary items not appearing on the agenda, as reported by the General Manager in accordance with the provisions of the Local Government (Meeting Procedures) Regulations 2015.

DECISION:

The General Manager advised that there were no supplementary agenda items.

9. REPORTS FROM COMMITTEES:

There were no Committee meetings held in July.

Cr Garlick moved, Cr Whelan seconded that the Council meeting be adjourned to allow the Planning Authority to discuss the following Planning item.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Murtagh	
Cr Owen	
Cr Whelan	

Cr Gray took the Chair.

Cr Geard and Cr Whelan had declared an interest in Item 10.1 and left the meeting 5.44pm

10. 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 10 on this agenda, inclusive of any supplementary items.

The following Item 10.1 was discussed and recommended for approval at the Planning Authority meeting held on 9th July 2019, subject to independent planning advice being received for the permit conditions. The Planning report in its entirety (excluding attachments) with decisions was as follows:-

10.1 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 - DA2018/00226 – 27 FERGUSSON ROAD, BRIGHTON - DWELLING (NECESSARY TO SUPPORT AGRICULTURAL USE):

Type of Report	Planning Authority – For Decision
Application No:	DA2018/00226
Address:	27 Fergusson Road, Brighton
Proposal:	Dwelling (Necessary to Support Agricultural Use)
Zone:	Significant Agricultural Zone
Representations:	Two (2)
Discretions:	<ol style="list-style-type: none">1. Use table (27.2)2. Sensitive use (27.3.1 A1)3. Discretionary use (27.3.3 A1)4. Building setback for buildings for sensitive use (27.4.2 A3)5. Surface treatment of parking areas (E6.7.6 A1)6. Stormwater drainage and disposal (E7.7.1 A1)
Author:	Planning Officer (Richard Cuskelly) Senior Planner (David Allingham)

1. Executive Summary

- 1.1. Planning approval is sought for a dwelling necessary to support agricultural use at 27 Fergusson Road, Brighton. The site is located within the Significant Agricultural Zone of the Brighton Interim Planning Scheme 2015 (the 'Interim Scheme').
- 1.2. The application invokes six (6) discretions under the Interim Scheme, specifically:
 - Use table (27.2)
 - Sensitive use (27.3.1 A1)
 - Discretionary use (27.3.3 A1)
 - Building setback for buildings for sensitive use (27.4.2 A3)
 - Surface treatment of parking areas (E6.7.6 A1)
 - Stormwater drainage and disposal (E7.7.1 A1)
- 1.3. Two representations were received within the statutory public advertising period. Both representations objected to the proposed development. The concerns of the representors were considered as part of the assessment of the proposal.
- 1.4. The key issues are the necessity for a dwelling on-site for the proposed agricultural use, and the potential for the proposed residential use to conflict with or fetter agricultural use both on the site and adjoining land.
- 1.5. The proposal is recommended for refusal as an on-site dwelling is not considered necessary to support the proposed agricultural use, and the discretionary non-agricultural use would likely conflict with or fetter agricultural use on the site.
- 1.6. The final decision is delegated to 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 DA2018/00226.
- 2.2. This determination must be made no later than 31 July 2019, 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 2015.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the State Policies and Projects Act 1993.
- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application. Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

3. Risk & Implications

- 3.1. Approval or refusal of this application will have no direct financial implications for the Planning Authority.
- 3.2. Implications for Council include general matters related to rate income, asset maintenance and renewal and responding to future building applications.

4. Application History

- 4.1. This application was first advertised in September 2018 and consisted of plans and a cover letter prepared by the applicant. A representation was received opposing the application and identifying several ways the information provided was deficient. The applicant requested an extension of time to address the representor's concerns and in February 2019 a revised application was submitted which included a Planning Report prepared by Southern Planning and an Agricultural Review of the Twelve Stones Farm Plan prepared by Complete Agricultural Consulting Services.
- 4.2. The application was subsequently re-advertised to include the above information in March 2019. Two representations were received (one of which was an amended submission from the initial representor).

5. Relevant Background

5.1. The site was created from a 2 lot plus balance subdivision approved in 2015 (permit SA 2015/00005). The justification for the subdivision was that the land could be used for higher value and more diverse agricultural/horticultural operations, thus facilitating more effective utilisation of the existing land.

5.2. Several subdivisions have been approved in the area with a similar lot layout (i.e. lots 5-8ha) and similar justification. The subdivisions were approved with a condition for a Part 5 Agreement, which required a Farm Management Plan. SA 2015/00005 was approved with a Part 5 Agreement and for a dwelling to be integral to an agricultural use, and approved only if:

Council is satisfied that substantial commencement of an intensive agricultural activity has occurred and that the dwelling would not conflict with neighbouring activities.

5.3. The owner subsequently lodged a request for a minor amendment to their permit to remove the requirement for a Part 5 Agreement, arguing on the basis that the Part 5 Agreement was superfluous, and that the Significant Agricultural Zone (SAZ) provisions under the Brighton Interim Scheme had similar requirements. For example, a residential use is discretionary within the SAZ with a qualification only if a single dwelling necessary to support agricultural use on the property.

5.4. This minor amendment was approved, and the requirement for a Part 5 Agreement was removed from the permit.

5.5. Historically, Council has approved a number of dwellings in the area under similar circumstances to this application. Unfortunately, this has resulted in many dwellings being constructed without an agricultural use being established and the area around the Stonefield Rd and Elderslie Rd beginning to take the form of a pseudo rural-living area. This has the potential to fetter existing and potential agricultural use on land that is zoned for the protection of agricultural land.

5.6. Several recent occurrences have caused Council's Development Services Department to re-assess its approach to applications for residential use on agricultural land and elevate the importance of protecting agricultural land and the rigour of information that should be provided with an application for a dwelling in the Significant Agricultural Zone. These include:

- The Agricultural Land Mapping Project undertaken by the State Government to inform the preparation of the Agriculture and Rural Zones for the Tasmanian Planning Scheme.

- The growing body of evidence that past approvals have not produced the outcomes that were proposed in their respective development applications.
 - The formation of the Technical Reference Group and Statutory Planners Reference Group for planners across the southern region. The two groups shared their approaches to assessing dwellings on agricultural land.
 - Becoming aware of the Resource Management and Planning Appeal Tribunal ('Tribunal') decision in P & K Degenhardt v Waratah Wynyard Council and A & M Jackson (2015) TASRMPT 10 which examines in detail the necessity of a dwelling to support an agricultural use and a realisation that Council has not been stringent enough in its assessment against the Scheme.
 - Lobbying by farmers in the area to protect the land as an agricultural resource.
 - Mapping of the Agricultural Zone for the draft Brighton Local Provisions Schedule (LPS) with input from agricultural consultants AK Consulting.
- 5.7. Due to the issues identified above, Council staff have initiated a project to investigate the most appropriate zoning of the Brighton West area with specialist input from an agricultural consultant. However, as it stands the land is zoned Significant Agriculture and all applications must be assessed under the requirements of this zone.

6. Site Detail

- 6.1. The subject site is a 7.131-hectare (ha) undeveloped lot with existing access to Fergusson Road. The corner lot has frontage to both Fergusson Road and Elderslie Road.
- 6.2. The site has recently been used for sheep grazing and hay production.
- 6.3. The site is within the Significant Agricultural Zone and approximately half is subject to the Elderslie Quarry Attenuation Area overlay.
- 6.4. The surrounding land to the north and south is organised in larger agricultural lots (see Figure 1 below). These lots contain the Fehlberg's Produce operation which undertakes multi-cropped, seasonally rotated cereal and grass hay production, as well as Merino wool production over multiple titles adjoining and nearby the subject site.
- 6.5. The land to the west is in two similarly sized vacant lots in the same ownership as the subject property. To the east are lots ranging from 1ha to 4ha which are within the Brighton Horse Racing Overlay.

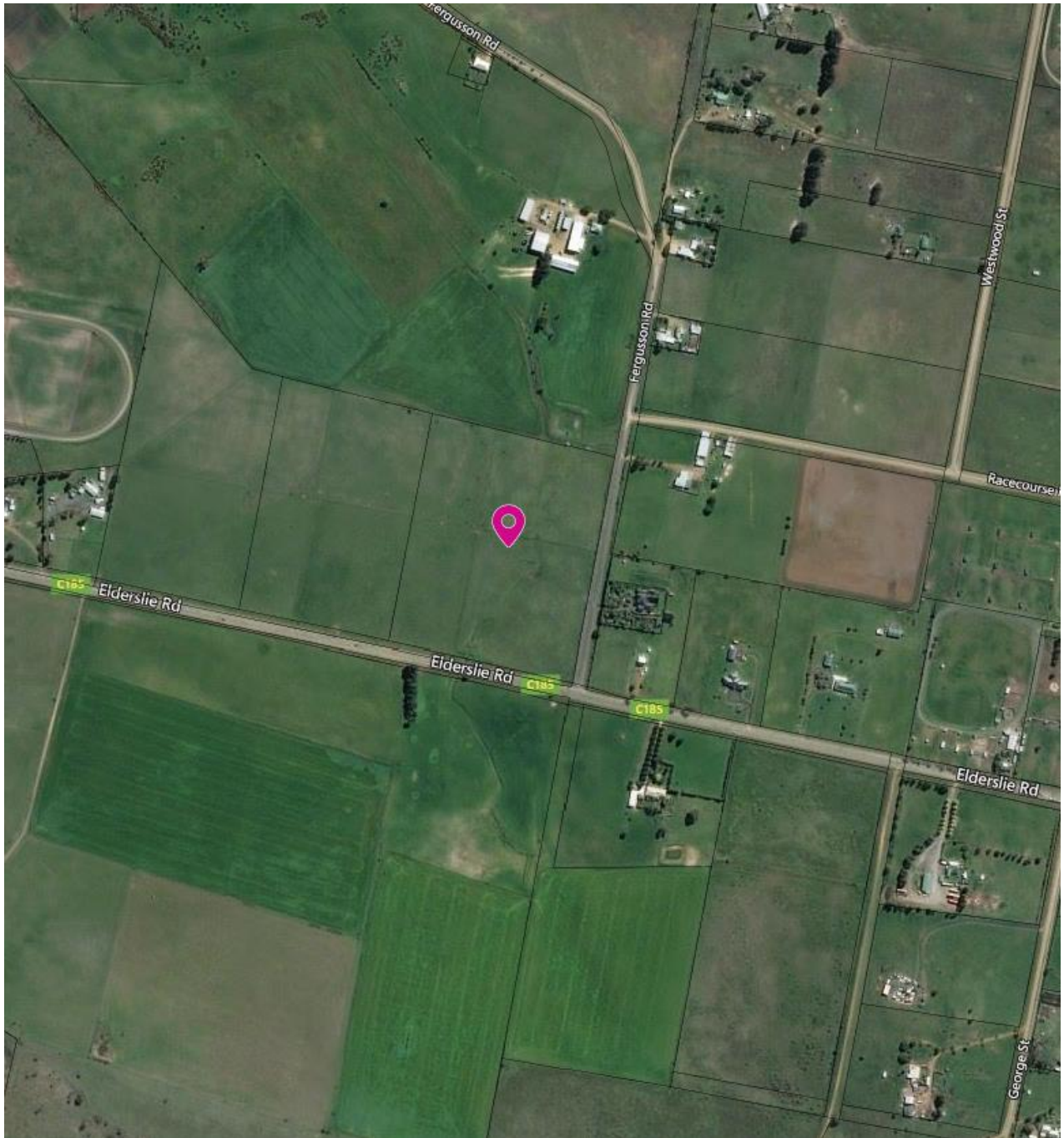


Figure 1. Aerial image: 27 Fergusson Rd and surrounds

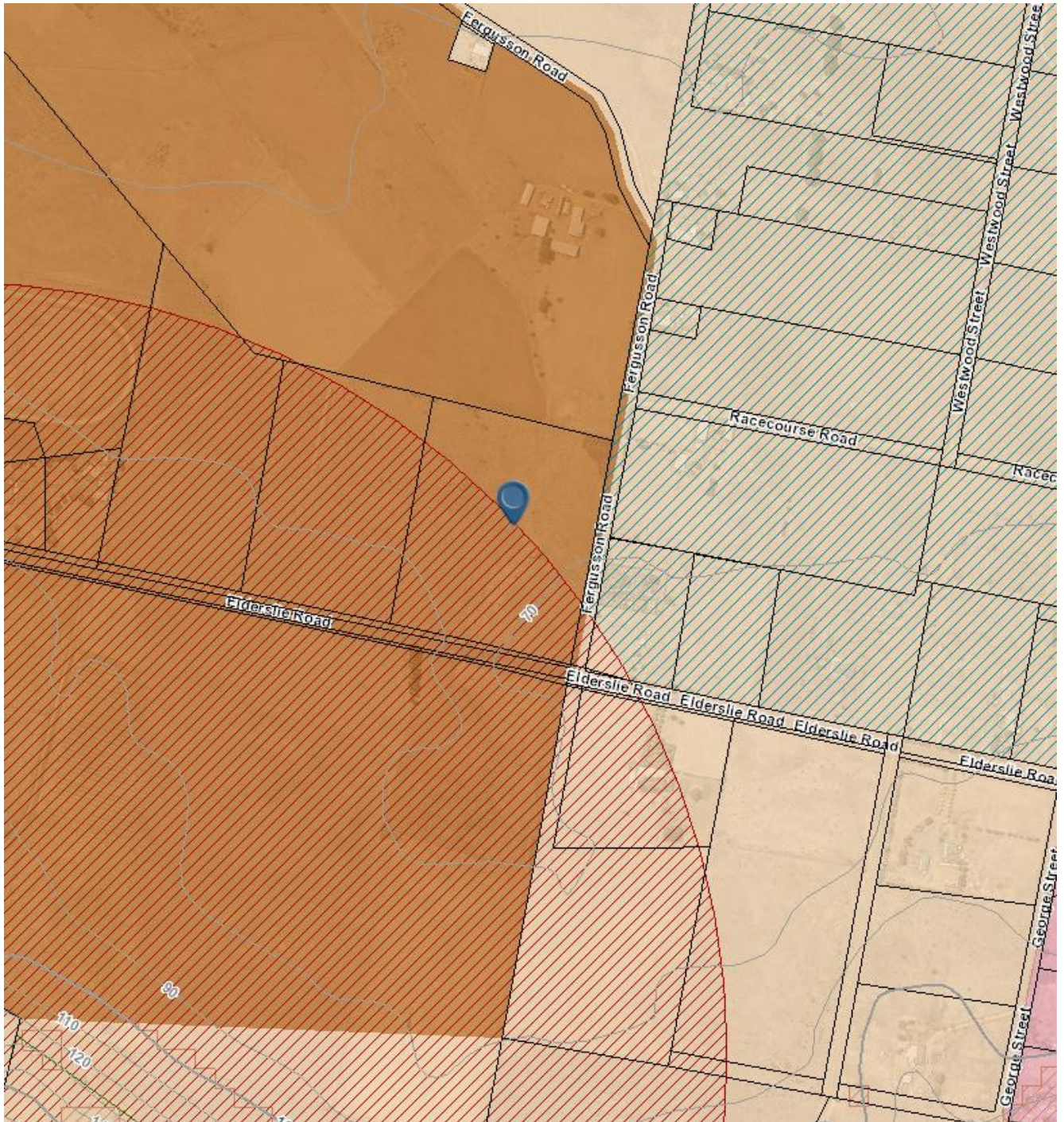


Figure 2. Zones: Significant Agricultural (Dark Brown), Rural Resource (Light Brown) and Rural Living (pink); Codes: Attenuation Area (Hatched Red) and Brighton Horse Racing (Hatched Blue)

7. Proposal

- 7.1. Proposed is a dwelling necessary to support agricultural use. The dwelling is a barn-style 3 bedroom with carport attached. The floor area (incl. carport) is 216m² and the maximum height is 5.9m. The exterior of the building is Colourbond 'Monument'.

- 7.2. The dwelling is sited just out of the Elderslie Road Quarry Attenuation Area.
- 7.3. The proposed agricultural use involves:
- Boundary fencing
 - 94m² greenhouse for various crops
 - Apricot and nectarine orchard with frost protection system on south-east of site. The applicant contends that the frost protection system requires a constant on-site presence to monitor the system from late winter to spring. Stage 1 of the orchard will be 100 trees on 0.25ha to be planted before completion of the dwelling. The orchard is proposed to eventually occupy 0.8ha.
 - 1 megalitre dam to ensure available water over the summer period and renewal of groundwater bore
 - Animal husbandry and hay production.
 - The return from the orchard is expected to be approximately \$11,800 per annum; the grass hay approx. \$2,300 per annum. No information is given on the expected income from the stud sheep or greenhouse production.
- 7.4. The Applicant contends that it may have been appropriate for Council to consider the classification of use under Section 8.2.2 of the Scheme, which states:
- A use or development that is directly associated with and a subservient part of another use on the same site must be categorised into the same use class as that other use.
- 7.5. Specifically, the proposition contends that the proposed dwelling could be classified as Resource Development Use (the use within which agriculture falls) under Section 8.2.2, because it is “directly associated with and a subservient part of another use”.
- 7.6. In relation to what the term “directly associated with and a subservient part of another use” means, the Tribunal decision in *R & R Pearshouse and Anor v Kingborough Council and Anor* [2018] TASRMPAT 24 at [89] stated:
- In the Tribunal’s view, Clause 8.2.2 does not require ancillary use to be a fundamental and necessary activity to the visitor accommodation, but rather must serve that use and that there must be a genuine and direct link between the relevant uses and / or developments.
- 7.7. The conclusion of planning officers is that the application does not demonstrate that the dwelling is directly associated with and a subservient part of the agricultural use.

- 7.8. As such, the dwelling is considered in this assessment as a Residential Use: a Discretionary Use in the Significant Agricultural Zone with the qualification only if a single dwelling necessary to support agricultural use on the property.

8. Assessment

- 8.1. The *Brighton Interim Planning Scheme 2015* is a performance-based planning scheme.
- 8.2. To meet an applicable standard, a proposal must demonstrate compliance with either an acceptable solution or a performance criterion. Where a proposal complies with a standard by relying on one or more performance criteria, the Council may approve or refuse the proposal on that basis. The ability to refuse the proposal relates only to the performance criteria relied upon.
- 8.3. As per the precedent set by the Resource Management and Planning Appeal Tribunal (RMPAT) in *Henry Design and Consulting v Clarence City Council & Ors* [2017] TASRMPAT 11, the standards of an Acceptable Solution are not relevant for the planning authority in determining whether a proposal meets the corresponding Performance Criteria. Instead, Performance Criteria are a standalone control, and no consideration should be made by the Planning Authority back to the corresponding Acceptable Solution.

Assessment against planning scheme provisions

- 8.4. The following provisions are relevant to the proposed use and development:
- Part D – Clause 27 – Significant Agricultural Zone
 - Part E – Clause E6.0 – Parking & Access Code
 - Part E – Clause E7.0 – Stormwater Management Code
- 8.5. The application satisfies the following relevant AS of the applicable provisions:
- 27.4.1 A1 – Building height
 - 27.4.2 A1 – Building setback from frontage
 - 27.4.2 A2 – Building setback from side and rear boundaries
 - 27.4.3 A1 – Design
 - 27.4.3 A2 – Colour
 - 27.4.3 A3 – Cut/fill

- E6.6.1 A1 - Number of parking spaces
 - E6.7.1 A1 - Number of vehicular accesses
 - E6.7.2 A1 - Design of vehicular accesses
 - E6.7.14 A1 - Access to a road
- 8.6. The following discretions are invoked and are discussed in more detail below:
- 27.2 - Use table
 - 27.3.1 A1 - Sensitive use
 - 27.3.3 A1 - Discretionary use
 - 27.4.2 A3 - Building setback for buildings for sensitive use
 - E6.7.6 A1 - Surface treatment of parking areas
 - E7.7.1 A1 - Stormwater drainage and disposal
- 8.7. **Discretion 1 - 27.2 - Use table**
- 8.7.1 The applicant has proposed a Residential Use at the site.
- 8.7.2 Residential use is defined in Table 8.2 of the Interim Scheme as:
- Use of land for self contained or shared living accommodation. Examples include an ancillary dwelling, boarding house, communal residence, home-based business, hostel, residential aged care home, residential college, respite centre, retirement village and single or multiple dwellings.
- 8.7.3 Under Table 27.2 of the Interim Scheme, Residential is a Discretionary use in the Significant Agricultural Zone, with the qualification “only if a single dwelling necessary to support agricultural use on the property”.
- 8.7.4 All other uses not specified within Table 27.2 are prohibited. This would include other residential uses, such as single dwellings not necessary to support agricultural use, or multiple dwellings.
- 8.7.5 Single dwelling is defined in Section 4.1.3 of the Interim Scheme as:
- A dwelling on a lot on which no other dwelling is situated, or a dwelling and an ancillary dwelling on a lot on which no other dwelling is situated.

- 8.7.6 Agricultural use is defined in Section 4.1.3 of the Interim Scheme as:

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

- 8.7.7 Specifically in relation to this discretion invoked, Section 8.8.1(a) of the Interim Scheme states:

The planning authority has a discretion to refuse or permit a use or development if:

- a) the use is within a use class specified in the applicable Use Table as being a use which is discretionary;*

- 8.7.8 Section 8.10.2 of the Interim Scheme states:

In determining an application for a permit for a discretionary use the planning authority must, in addition to the matters referred to in subclause 8.10.1, have regard to:

- a) the purpose of the applicable zone;*
b) any relevant local area objective or desired future character statement for the applicable zone;
c) the purpose of any applicable code; and
d) the purpose of any applicable specific area plan,

but only insofar as each such purpose, local area objective or desired future character statement is relevant to the particular discretion being exercised.

- 8.7.9 As mentioned, the site is located within the Significant Agricultural Zone of the Interim Scheme. Section 27.1.1 of the Interim Scheme provides for the Zone Purpose Statements for the Significant Agricultural Zone:

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

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

- 27.1.1.3 *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*
- 27.1.1.4 *To provide for limited non-agricultural uses that support the continued use of the land for agricultural use.*
- 27.1.1.5 *To protect regionally significant areas of significant agricultural land identified in the Regional Land Use Strategy, including areas subject to existing or proposed irrigation schemes, from conversion to non-agricultural use.*
- 27.1.1.6 *To protect areas used for reuse water irrigation.*
- 27.1.1.7 *To ensure that new residential use is only established where necessary to facilitate the management of the land for agricultural purposes and does not fetter existing or potential agricultural use on other land.*
- 8.7.10 As such, the Zone Purpose Statement found in Section 27.1.1.7 of the Interim Scheme is deemed to be relevant in assessing the discretion invoked by the Use Table (Table 27.2).
- 8.7.11 It is satisfied that the proposed development is for a single dwelling and an agricultural use. Therefore, it is required to assess whether the proposed single dwelling is necessary to support the proposed agricultural use on the property.
- 8.7.12 The applicant's planning consultant submits that:
- The advantages of establishing and maintaining a residential presence on the site are spelt out in Mr Walker's Agricultural Review of the proposal. Mr Walker states that a dwelling is "necessary to effectively implement the intensive farming program" proposed for the site. A less intensive program, that is less reliant upon direct supervision and intervention, is unlikely to be viable on the site given its obvious limitations for agricultural production. Therefore, the proposal meets with the above qualification for residential use within the Significant Agriculture Zone. A single dwelling is proposed that would support agricultural use on the site.*
- 8.7.13 The Resource Management and Planning Appeal Tribunal (the 'Tribunal') decision in *P & K Degenhardt v Waratah Wynyard Council and A & M Jackson* (2015) TASRMPT 10, relating to a new residential dwelling within a zone dedicated for agricultural use (albeit a different scheme and zone), considered various dictionary definitions of the word 'necessary' as "that cannot be dispensed with" (Macquarie Concise Dictionary) and "requiring to be done, achieved, etc: requisite, essential" (Australian Concise Oxford Dictionary).

- 8.7.14 In that matter, the Tribunal required the applicant to provide sufficient evidence to demonstrate why a residential development on the particular site was “necessary”, as opposed to the dwelling simply affording a more convenient lifestyle.
- 8.7.15 The terms used in the *Waratah-Wynyard Interim Planning Scheme 2013* do slightly differ from the test identified in Table 27.2 of the Interim Scheme. Whilst different phrases are used, i.e. “necessary” vs “required”, the mandatory nature of the requirements remains.
- 8.7.16 The intent of the discretionary qualification in the Use Table at 27.2 of the Scheme and the provisions of the scheme in the context of *P & K Degenhardt v Waratah Wynyard Council and A & M Jackson [2015] TASRMPAT 10* are the same. Both state that, for the Residential use to occur, it is a mandatory requirement that a Residential use be linked to and be integral to the agricultural activity.
- 8.7.17 Using both the Macquarie Dictionary definitions for “necessary” and “support” the following definition of the relevant qualification can be arrived at, that gives proper effect to the purpose of the Significant Agricultural Zone:

Only if a single dwelling that is unable to be done without or dispensed with to supply the things necessary and provide for agricultural use on the property.

- 8.7.18 The application does not provide compelling evidence nor a persuasive argument as to why the proposed residential use is necessary to support the proposed agricultural use on-site. The application includes no supporting information, evidence and/or approvals regarding:
- No indication of when the water storage dam will be constructed and no detail or correspondence/permits from dam authority provided re: the proposed dam. No detail provided from TasWater re: proposed bulk water supply.
 - Details of the proposed frost protection system and why it requires constant on-site monitoring during several months of the year when there are automated systems available.
 - Reasons why an on-site residence is required for the proposed animal husbandry use.
 - Timeline for orchard expansion and no reason why the orchard needs to be planted in stages rather than the full 0.8ha up front.

- Identification of markets for sale of produce.
 - Crops planned for the greenhouse.
 - Indication of labour inputs.
- 8.7.19 The representors also objected to the proposed residential use on this basis and provided evidence as to why a dwelling for an on-site farm manager was not required (see Table 10.1 for summary).
- 8.7.20 It is considered that the development of a single dwelling on the property is nothing more than that of convenience to the applicant. Of note is the fact that General Residential zoning is less than 850m from the Property. An agricultural use could be established on the site, and the operator living elsewhere, within a reasonably commutable distance.
- 8.7.21 The proposed agricultural use would provide a modest income of approximately \$14,000 per year which suggests that the agricultural use is not a significant commercial activity and is little more than a hobby farm.
- 8.7.22 Further, it can be argued that should the Planning Authority determine to approve the proposed development, it would essentially convert the property into a rural-residential site in a way that is contrary to the Zone Purpose Statement found in Section 27.1.1.2, in that the most productive agricultural land will not be protected and that the Residential use will adversely affect the use or development of that land for agriculture.
- 8.7.23 As such, it is considered that the application does not adequately demonstrate that the proposed single dwelling is necessary to support agricultural use of the property.
- 8.7.24 The proposed residential use would then simply be defined as a 'single dwelling' and would be prohibited pursuant to Table 27.2.
- 8.7.25 It is recommended the application be refused on this discretion.
- 8.8. **Discretion 2 - 27.3.1 A1 - Sensitive use**
- 8.8.1 A residential use is a 'sensitive use'. The Acceptable Solution in Section 27.3.1 A1 states:
- A sensitive use is for a home-based business or an extension or replacement of an existing dwelling or existing ancillary dwelling.*
- 8.8.2 There is no existing dwelling on-site, nor is the application for a 'home-based business'. Therefore, the application does not comply with the Acceptable Solution found in Section 27.3.1 A1.

The development invokes discretion under this standard, and must be assessed against the relevant Performance Criteria.

8.8.3 Section 27.3.1 P1 states:

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

- (a) the characteristics of the proposed sensitive use;*
- (b) the characteristics of the existing or likely non-sensitive use in the surrounding area;*
- (c) setback to site boundaries and separation distance between the proposed sensitive use and existing or likely non-sensitive use on adjoining land;*
- (d) any characteristics of the site and adjoining land that would buffer the proposed sensitive use from the adverse impacts on residential amenity from existing or likely non-sensitive use.*

8.8.4 The site adjoins 2 parcels of land: 192 Elderslie Road (C/T 175792/2) and 59 Fergusson Road (C/T 111887/1).

8.8.5 The 192 Elderslie Road site is similar in size and characteristics to the subject site. It is within the same ownership and recently been used for sheep grazing and hay production.

8.8.6 The 59 Fergusson Road site provides for an existing agricultural operation which undertakes multi-cropped, seasonally rotated cereal and grass hay production, as well as Merino wool production. This operation is well established, having operated for decades across multiple parcels of land in the immediate vicinity.

8.8.7 Both representors objected to the proposed sensitive use based on the likelihood it would conflict with and fetter the existing operation's current and future ability to:

- Irrigate crops or pasture,
- Spray weeds/pests,
- Control pests by shooting,
- Farm during the night/early morning &
- Minimise potential wind drift of soil

on the adjoining parcel of land at 59 Fergusson Road. Specific supporting evidence was not provided by the representors.

- 8.8.8 The applicant also did not address this performance criteria in great detail. However, the applicant noted the existing mix of agricultural and residential uses in the immediate area, and the minimum 159.45m setback of the proposed dwelling to the adjoining agricultural use at 59 Fergusson Road. Also noted was that potential future occupants may have a greater empathy and consideration of the agricultural activities surrounding the site.
- 8.8.9 On balance, it is considered that, should the Planning Authority determine to approve the application, appropriate conditioning of the permit (for example, a requirement for screening vegetation) could satisfactorily ensure the sensitive use would not conflict with or fetter non-sensitive use on adjoining land.
- 8.8.10 It is considered that, with appropriate conditioning, the proposed development satisfies the Performance Criteria contained in Section 27.3.1 P1.

8.9. **Discretion 3 - 27.3.3 A1 - Discretionary use**

- 8.9.1 There is no Acceptable Solution contained in Section 27.3.3 A1. As such, the proposed development invokes discretion under this standard, and must be assessed against the corresponding Performance Criteria.
- 8.9.2 Section 27.3.3 P1 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.*
- 8.9.3 Whilst similar to Section 27.3.1 P1 (Discretion 2 above), an important distinction is that Section 27.3.3 P1 looks not just at the adjoining land, but also the land to which the assessment specifically relates.
- 8.9.4 It is considered that the proposed Residential use will conflict with and fetter the agricultural use, both on the site, and on adjoining land.

- 8.9.5 The quasi-conversion of the property to that of a rural-residential site, and the subsequent conflict this will have on the adjoining agricultural use, will, in all practical terms, limit the scope of agricultural pursuits that will be able to be undertaken both on the subject site, and on adjoining land in the future. Further, at some stage, the property could be consolidated with other surrounding lots to create a more financially-viable agricultural operation.
- 8.9.6 Should the proposed development be approved, it will permanently alter the property in such a way that it will only be a perpetual hobby farm. This is further supported by the information provided by the applicant that the proposed agricultural use would provide an income of approximately \$14,000 per year, and not that of an operation of significant agricultural importance.
- 8.9.7 Furthermore, the characteristics of the proposed Residential use will shift the fundamental nature of the site, further limiting the agricultural potential of the land. Proceeding on the basis that the Residential use is not “necessary” or “required” for the intensified nature of the farming practices, the Residential use of the site will only limit into the future the type of agricultural uses that can be undertaken. That is because the intensive agriculture activities proposed could be undertaken on the site without the Residential use.
- 8.9.8 It is therefore considered that the proposed development does not fully satisfy the Performance Criteria contained within Section 27.3.3 P1 of the Interim Scheme, particularly (a) and (b).
- 8.10 Discretion 4 – 27.4.2 A3 - Building setback for buildings for sensitive use**
- 8.10.1 The Acceptable Solution contained in Section 27.4.2 A3 requires:
- Building setback for buildings for sensitive use must comply with all of the following:*
- (a) be sufficient to provide a separation distance from horticultural use or crop production on adjoining land of 200m;*
 - (b) be sufficient to provide a separation distance from land zoned Rural Resource of 100m.*
- 8.10.2 The dwelling is setback a minimum of 159.45m from horticultural use and crop production on adjoining land, and a minimum of 40m from land zoned Rural Resource.
- 8.10.3 Therefore, the proposed development does not comply with the Acceptable Solution. The application invokes discretion, and must be assessed against the corresponding Performance Criteria. Section 27.4.2 P3 states:

Building setback for buildings for sensitive use must satisfy all of the following:

- (a) be sufficient to prevent potential for land use conflict that would fetter non-sensitive use of adjoining land;*
- (b) be sufficient to provide a separation distance no less than:*

80m from horticultural use or crop production on adjoining land or if there is an existing building with a separation distance less than this distance, the separation distance must not be less than the existing building;

40m from land zoned Rural Resource or if there is an existing building with a separation distance less than this distance, the separation distance must not be less than the existing building. setback to site boundaries and separation distance between the proposed non-agricultural use and existing or likely agricultural use;

8.10.4 Should the Planning Authority determine to approve the proposed development, the permit can be adequately conditioned so that screening vegetation for the sensitive use is required, resulting in compliance with Section 27.4.2 P3 (a).

8.10.5 The proposal complies with Section 27.4.2 P3 (b).

8.10.6 As such, it is considered that the proposed development satisfies the Performance Criteria contained in Section 27.4.2 P3 with appropriate conditioning of a permit, should approval be granted.

8.11 Discretion 5 – E6.7.6 A1 - Surface treatment of parking areas

8.11.1 The Acceptable Solution contained in Section E6.7.6 A1 states:

Parking spaces and vehicle circulation roadways must be in accordance with all of the following;

- (a) paved or treated with a durable all-weather pavement where within 75m of a property boundary or a sealed roadway;*
 - (b) drained to an approved stormwater system,*
- unless the road from which access is provided to the property is unsealed.*

8.11.2 Fergusson Road is sealed along the frontage of the subject site. The proposed surface treatment does not comply with the Acceptable Solution. Therefore, the application invokes discretion, and must be assessed against the corresponding Performance Criteria. Section E6.7.6 P1 states:

Parking spaces and vehicle circulation roadways must not unreasonably detract from the amenity of users, adjoining occupiers or the quality of the environment through dust or mud generation or sediment transport, having regard to all of the following:

- (a) the suitability of the surface treatment;*
- (b) the characteristics of the use or development;*
- (c) measures to mitigate mud or dust generation or sediment transport.*

8.11.3 Should the Planning Authority determine to approve the proposed development, it is considered that the proposed development can satisfy this Performance Criteria with the inclusion of standard rural access permit conditions.

8.12 Discretion 6 – E7.7.1 A1 - Stormwater drainage and disposal

8.12.1 The Acceptable Solution contained in Section E7.7.1 A1 states:

Stormwater from new impervious surfaces must be disposed of by gravity to public stormwater infrastructure.

8.12.2 Public stormwater infrastructure is not available to the subject site. Therefore, the proposal invokes discretion, and must be assessed against the corresponding Performance Criteria. Section E7.7.1 P1 states:

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.

8.12.3 It is considered that the proposal can meet this Performance Criteria with the inclusion of a standard permit condition that stormwater must be collected on site for re-use, in accordance with the requirements of the *Building Act 2016*.

9. Concerns raised by representors

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

Concern	Response
The author (Southern Planning) of the planning report submitted is not an expert in the agricultural field.	Noted. This report has only been considered as a linking document to support how the Agricultural Review submitted accords with the requirements of the Significant Agricultural Zone.
The Southern Planning report statement, "I note that the predominant land use to the east and north east of the site is rural residential rather than agricultural" is false. Most of these land parcels are pursuing agricultural practices combined as a 2 nd and 3 rd generation family business.	Noted. This land is zoned Rural Resource and there is a mixture of agricultural and residential uses.

<p>The Southern Planning report states, “the site does not have the capacity to support commercial agriculture” and “the agricultural potential of these lots is clearly compromised by their relatively small area”. This is strong support for the amalgamation of titles to provide for a commercially viable enterprise.</p>	<p>Noted. There is no requirement for land to be consolidated in the Scheme.</p> <p>However, the three titles along Elderslie Rd are all in the same ownership. If a high value enterprise was proposed across all three titles it would have strengthened the argument that a dwelling was necessary to support an agricultural use.</p>
<p>The Part 5 Agreement on the title was not addressed in the application.</p> <p>a) Each lot owner will be required to produce a site management plan for their lot prior to the establishment of any intensive agricultural activity. The site management plan shall utilise the ‘Agricultural Assessment of Proposed Three Lot Subdivision for B.E. Knight, 192 Elderslie Road, Brighton, Tasmania’ prepared by Complete Agricultural Consulting Services and address the following issues:-</p> <ul style="list-style-type: none"> i. Description of crops to be irrigated; ii. Design of irrigation system, including necessary on site storage for the restricted off-peak water supply; iii. Measures to prevent spray drift beyond boundaries; iv. Measures to prevent run-off from irrigation areas; v. Use of machinery, pumps and hours of operation; vi. Scaled plans of all permanent sub-surface potable reticulation system and method of back flow prevention; vii. Potential house site showing access road, outbuildings, recreational areas and waste disposal method and location. 	<p>There is currently no Part 5 Agreement on the property title.</p> <p>The Part 5 Agreement the representor refers to was a condition of the original subdivision permit, however, this requirement was removed prior to the completion of the subdivision (i.e. issuing of titles) after a successful Minor Amendment application by the owner. The rationale provided for this was that the Agreement was superfluous, as it created a duplication of the applicable Significant Agricultural Zone standards.</p>

<p>b) A dwelling is discretionary only if integral to the agricultural use and will not be approved by Council on any lot unless there is an approved site management plan for that lot, Council is satisfied that substantial commencement of an intensive agricultural activity has occurred and that the dwelling would not conflict with neighbouring activities. The council must be satisfied that the rural activity shall be the primary activity on that lot.</p>	
<p>The applicant intends to gain residential approval and on-sell as a rural residence, as highlighted by the recent advertising of the property on realestate.com.au as a residential block.</p>	<p>If a permit is granted for the application, conditions tying the dwelling to the ongoing agricultural use will be necessary.</p>
<p>The proposed sensitive use conflicts with and fetters existing and likely non-sensitive use on adjoining land, does not meet 27.3.1 or 27.3.3.</p> <p>Further fettering threatens the sustainable viability of existing agricultural enterprises. Contrary to the supporting planning report, intense and sensitive farming practices are in operation over multiple titles adjoining and nearby the subject site. The operation undertakes multi-cropped, seasonally rotated cereal and grass hay production, as well as super/ultra-fine Merino wool production.</p>	<p>Noted. See Sections 8.8 and 8.9 above.</p>
<p>The dwelling setback is insufficient to prevent land use conflict that would fetter non-sensitive use of adjoining land. The 159.45m setback to the adjoining 59 Fergusson Rd land could impact on the operation's ability to:</p> <ul style="list-style-type: none"> • Irrigate crops or pasture • Spray weeds/pests • Control pests by shooting • Farm during the night/early morning • Minimise potential wind drift of soil. 	<p>Noted. See Sections 8.7, 8.8 and 8.9 above.</p>

<p>The proposal fails to demonstrate that the primary use of the land is agricultural, and the farm plan is deficient and flawed.</p> <ul style="list-style-type: none"> • No supporting information and/or approvals regarding proposed water supply/ies provided. <ul style="list-style-type: none"> ○ No detail or correspondence/permits from dam authority/ies provided re: the proposed dam. ○ No detail provided from TasWater re: proposed bulk water supply. • No supporting information and/or approvals regarding bio security for proposed livestock production. • Information on proposed hay production is deficient. 	<p>Noted. See Section 8.7 above.</p>
<p>The proposed agricultural use does not require an on-site dwelling.</p> <ul style="list-style-type: none"> • No details are provided regarding the proposed frost protection system that requires constant monitoring, and there are alternative methods for frost protection that requires less water use and only intermittent monitoring. • Stone fruit orchids are very low maintenance before their first fruit season, which can be up to 4 years after planting. If a dwelling were to be required, it would only be evident after this period (examples cited of existing operations without an on-site dwelling in the Coal Valley and Hansons Orchid in Old Beach). • Best practice animal husbandry does not require an on-site manager (example cited of representor's existing merino lamb operation in Richmond). 	<p>Noted. See Section 8.7 above.</p>
<p>The proposed full Colourbond dwelling will have an adverse impact on the rural landscape when viewed from the road and therefore does not meet the Performance Criteria related to building setback from frontage.</p>	<p>The proposed development satisfies the relevant Acceptable Solutions regarding building setback from a frontage.</p>

The Bushfire-Prone Areas Code has not been addressed. The proposed dwelling materials are at higher bushfire risk than a brick-walled building.	Not a relevant consideration.
The Stormwater Management Code has not been addressed.	See Section 8.12
The Waterway and Coastal Protection Code has not been addressed.	Not a relevant consideration.

10. Conclusion

- 10.1. The proposal is for a dwelling necessary to support agricultural use at 27 Fergusson Road, Brighton. The site is within the Significant Agricultural Zone of the Interim Scheme.
- 10.2. The key issues are the necessity for a dwelling on-site for the proposed agricultural use, and the potential for the proposed discretionary non-agricultural use (residential, in this case) to conflict with or fetter agricultural use on the site or adjoining land.
- 10.3. The proposal is not considered to meet the relevant provisions of the Brighton Interim Planning Scheme 2015, and as such is recommended for refusal.

RECOMMENDATION:

That Pursuant to the *Brighton Interim Planning Scheme 2015*, Council refuse application DA2018/00226 for a dwelling necessary to support agricultural use at 27 Fergusson Road, Brighton, for the following reasons:

- a) The proposed single dwelling is not necessary to support agricultural use on the property, as required by the Residential use qualification in Table 27.2; and
- b) The proposed use does not comply with the Acceptable Solution or the Performance Criterion with respect to Section 27.3.3 A1 or P1 (a) and (b) of the *Brighton Interim Planning Scheme* because the proposed residential use would likely conflict with and fetter agricultural use on the site and on adjoining land.

DECISION:

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

MOTION LOST

VOTING RECORD

In favour	Against
Cr Curran	Cr Foster
Cr Gray	Cr Garlick
Cr Owen	Cr Jeffries
	Cr Murtagh

Cr Jeffries moved, Cr Murtagh seconded that the application be approved subject to conditions. The conditions to be provided by an independent planning consultant for adoption at the July Ordinary Council Meeting.

CARRIED

VOTING RECORD

In favour	Against
Cr Foster	Cr Curran
Cr Garlick	Cr Gray
Cr Jeffries	Cr Owen
Cr Murtagh	

RECOMMENDATION:

PLANNING PERMIT (DA 2018 / 00226)

In accordance with Division 2 of Part 4 section 57 of the *Land Use Planning and Approvals Act 1993*, the Brighton Council (Planning Authority) grants a permit -

To: M A Whelan

Of: PO Box 270, BRIGHTON TAS 7030

For land described as:

27 Fergusson Road, Brighton

Certificate of Title Volume 175792 Folio 3

THIS PERMIT ALLOWS FOR:

The land to be developed by *Dwelling (Necessary to Support Agricultural Use)* and ancillary site works in accordance with the information and particulars set out in the development application and the endorsed drawings.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

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*.

Amenity

- (3) The proposed colours and materials for the walls and roof (Colorbond "Monument") and roof are approved. Any variation in the colours and materials must be submitted to and approved by the Council's Manager Development Services.
- (4) All external metal building surfaces must be clad in non-reflective pre-coated metal sheeting or painted to the satisfaction of the Council's Manager Development Services.

Agricultural Uses

- (5) The use of the dwelling is incidental to the primary use of land for agricultural purposes, which include a commercial stud breeding enterprise and commercial fruit orchard. Residential use of the property is dependent upon the establishment of these agricultural activities and their ongoing operation, and the residential use must cease if and when the approved agricultural use ceases.
- (6) Prior to the issue of a Certificate of Occupancy for the dwelling under the *Building Act 2016*, planting of at least 0.25ha of the approved fruit orchard must be completed.
- (7) Within 24 months of the issue of a Certificate of Occupancy under the *Building Act 2016*, the balance of the approved planting of the 0.8ha fruit orchard must be completed in order for the approved dwelling to continue to be occupied for residential purposes.
- (8) Prior to the issue of a Certificate of Occupancy for the dwelling under the *Building Act 2016*, the approved greenhouse must be constructed.
- (9) Prior to the issue of a Certificate of Occupancy for the dwelling under the *Building Act 2016*, the approved dam must be constructed.

Landscaping

- (10) Prior to the issue of building consent under the *Building Act 2016* or the commencement of works (whichever occurs first), a landscape plan must be prepared by a landscape architect or other person and approved by Council's Manager Development Services.

Ordinary Council Meeting

16/7/19

Advice: The property is adjacent to land used for agricultural purposes. The screening is to prevent fettering of the use of adjacent land and impacts from potential spray drift.

Agreements

- (11) Prior to commencement of works, the owner and Council must enter into an agreement pursuant to Part 5 of the *Land Use Planning and Approvals Act 1993* in respect of the land. The Agreement is to provide that the owner covenants and agrees with the Brighton Council to undertake the agricultural use approved as part of this permit, unless otherwise agreed to by Council's Manager Development Services.
- (12) Agreement(s) made pursuant to Part 5 of the *Land Use Planning and Approvals Act 1993* must bind the current owner and his/her successors in title and must be prepared on a blank instrument form and registered with the Recorder of Titles in accordance with Section 78 of the *Land Use Planning and Approvals Act 1993* by the applicant at no cost to Council.

Services

- (13) 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

- (14) 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.
- (15) 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 and to the satisfaction of Council's Municipal Engineer, and must include all of the following:
 - (a) Constructed with a durable all weather pavement.
 - (b) Minimum carriageway width of 4 metres
 - (c) Drained to an approved stormwater system.
 - (d) Vehicular passing areas 6 metres wide (total) x 20 metres long every 200 metres, or as otherwise required by an approved Bushfire Hazard Management Plan.
- (16) 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

Access to Road

- (17) Unless approved otherwise by Council's General Manager the existing vehicular access, from the road carriageway to the property boundary, must be upgraded (including a minimum 2 coat seal) to comply with Standard Drawings TSD-R03-v1 Rural Roads Typical Property Access, TSD-R04-v1 Rural Roads Typical Driveway Profile and TSD-RF01-v1 Guide To Intersection And Domestic Access Sight Distance and to the satisfaction of Council's General Manager.

Stormwater

- (18) Stormwater drainage from the proposed development must be retained on site 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*.

Wastewater

- (19) Wastewater from the development must discharge to an on-site waste disposal system 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

- (20) Before any work commences a soil and water management plan (SWMP) prepared in accordance with the guidelines Soil and Water Management on Building and Construction Sites, by the Derwent Estuary Programme and NRM South, must be approved by Council's General Manager before development of the land commences. The SWMP shall form part of this permit when approved.
- (21) Before any work commences install temporary run-off, erosion and sediment controls in accordance with the recommendations of the approved SWMP and maintain these controls at full operational capacity until the land is effectively rehabilitated and stabilised after completion of the development in accordance with the guidelines Soil and Water Management on Building and Construction Sites, by the Derwent Estuary Programme and NRM South and to the satisfaction of Council's General Manager.

Construction Amenity

- (22) 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.

- (23) 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.
- (24) 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.
- (25) 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.
- (26) 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. 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 Jeffries moved, Cr Garlick seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Gray	
Cr Jeffries	
Cr Murtagh	
Cr Owen	

Cr Geard and Cr Whelan rejoined the meeting 5.55pm.

Cr Jeffries moved, Cr Owen seconded that the Ordinary Council meeting be resumed.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Murtagh	
Cr Owen	
Cr Whelan	

11. REPORTS FROM OFFICERS:

11.1 LOCAL GOVERNMENT SHARED SERVICES MONTHLY REPORTS:

AUTHOR: Corporate Consultant
(Mrs K Hossack)

Background:

When the Local Government Shared Services (LGSS) was formalised, there was an undertaking that monthly reports would be provided to member Councils. There are now fourteen (14) Councils that have joined to date.

One report is for the overall performance of the shared service agreement which is provided to all member Councils. The other report is Council specific for each member Council that is provided only to that individual Council. The second attachment is for Brighton Council's performance for the previous months.

Consultation:

General Manager

Risk Implications:

Nil

Financial Implications:

See attached reports for financial information about the Local Government Shared Services and Brighton Council.

Other Issues:

These reports provide detailed information to assist in dealing with the amalgamation program and the financial sustainability of the shared services and individual Councils.

Assessment:

The reports provide updates of proposed actions and collaborations which will build the overall capability and outputs of the group.

Options:

1. Adopt the recommendation
 2. Do nothing
-

RECOMMENDATION:

That the reports be received.

DECISION:

Cr Gray moved, Cr Curran seconded that the report be received.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Murtagh	
Cr Owen	
Cr Whelan	

11.2 SOUTH EASTERN COMMUNITY CARE – REQUEST WAIVE OF HIRE FEES FOR USE OF THE OLD COUNCIL CHAMBER PONTVILLE - TO PROVIDE A FOOT CLINIC:

AUTHOR: Governance Manager
(Mrs J Banks)

Background:

Southern Eastern Community Care (SEC Care), Sorell is a not-for-profit business that has been supporting the community for more than 45 years.

SEC Care had until 2018 hired the Old Council Chambers, Pontville until they relocated their service to the Tea Tree Community Hall. SEC Care now wish to provide a Foot (this is not a Podiatry service) clinic once a month in the Old Council Chambers in Pontville. They hope to expand this to twice a month.

Consultation:

Janine Banks (Governance Manager), Sarah Telega (Acting Council Services Officer) and Julianne Pedler (Enrolled Nurse – South Eastern Community Care)

Risk Implications:

Nil.

Financial Implications:

The hire rate for the Old Council Chambers is \$35/hour. SEC Care have indicated they would hire the building for 8 hours = \$280/day.

Total cost for 12 months @ one clinic a month would be \$2,800.

SEC Care provide a foot clinic at a subsidised rate for pensioners.

Assessment:

The Foot Clinic is not a podiatry service but can refer clients onto a Podiatry Service if necessary.

Options:

1. As per the recommendation.
2. Council approves the fee waiver for the use of the Old Council Chambers in Pontville to allow South Eastern Care to provide a foot clinic.
3. Council charge the SEC Care the full hire fee i.e. \$35/hour.

RECOMMENDATION:

That Council charge the South Eastern Community Care 50% of the scheduled hire fee for the Old Council Chambers for their foot clinic.

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 Jeffries	

Cr Murtagh
Cr Owen
Cr Whelan

11.3 CARAVANS IN RESIDENTIAL ZONE:

AUTHOR: Governance Manager
(Mrs J Banks)

Background:

Due to a recent Councillor request the matter of 'allowing' temporary caravans in residential zones is for discussion.

Cr Owen's request was "*Request the issue be investigated with report to Council on pros, cons, possibilities and suggested conditions re relaxing restrictions on temporary caravan occupation in residential zones particularly during the current and future housing crisis periods.*"

The restrictions regarding the occupation of a caravan in a 'Residential' Zoned area from the *Environmental Health By-Law* ("By-Law") came into effect because of the nuisances this activity had caused in the past.

Specifically nuisances such as:

- Occupants of caravans urinating/defecating in backyards and along fence lines
- Effluent from storage tanks not being appropriately disposed of onsite creating nuisances
- Grey water being discharged directly onto the ground and running offsite creating nuisances
- Noise
- Electrical/fire safety
- Unsightliness

Consultation:

Senior Environmental Health Officer (Brent Basstian)

Risk Implications:

May set a precedent.

Risk to public health by not having appropriate wastewater disposal.

Financial Implications:

May require extra resources to monitor temporary accommodation requests and on-going assessments and compliance.

If necessary, enforcement of the By-law could potentially be costly, if conditions are not complied with, which is likely to have an effect on the financial strain that those requiring temporary accommodation may already be experiencing.

Other Issues:

Housing Tasmania or Centacare Evolve have not been contacted in relation to this matter, but they may have a different view of allowing temporary accommodation on their properties, as might private rentals.

Amendments to a By-Law can be a lengthy process, particularly if a Regulatory Impact Statement and public consultation is required. Under the *Local Government Act 1993*, if Council decides to alter a By-law it must do so by an absolute majority and may not require public consultation unless the alteration substantially changes the purpose or the effect on the public; the interpretation is, that this would require public consultation if an amendment was made to this By-Law ie substantially changes the effect on the public.

An amendment can take up to 12 months to approve.

Assessment:

Prior to the introduction of the By-Law investigations into these complaints required significant officer time to investigate and obtain the necessary evidence to prosecute as it could only be dealt with under the 'nuisance' provisions of the *Local Government Act* and the *Environmental Management & Pollution Control Act*.

It is expected that a dwelling in a residential area would be occupied and trying to identify if someone was occupying a caravan on the property proved to be extremely difficult to confirm. The majority of these investigations needed to be done after hours when the van was allegedly being occupied and this not only presented safety issues to the investigating officer but often involved numerous visits to the one site as, in a lot of circumstances, the van was not being occupied full time.

In direct contrast investigating allegations of illegal occupation of a caravan in non-residential areas is straight forward as generally there are no legal dwellings that have occupancy on the site being investigated so illegal occupation can be easily established.

In an effort to regulate the large number of complaints received but still enable a fair and practical means of caravan occupation and regulation, after much deliberation caravan occupation would be approved and licenses issued on the following conditions that have been in effect since the inception of the By-law (approx. 2007).

Occupation of a caravan will not be approved in a residential area

Almost every complaint received was about a caravan being occupied in a residential area so occupation in this zoning was forbidden. The incorrect disposal of wastewater (black/grey) onsite created a serious health risk to nearby neighbours by direct contact or cross-contamination risks from vermin/vectors.

Many complaints were also about odour issues and a common complaint was that a neighbour living in a caravan in the backyard of a nearby property was seen 'urinating on the fence line in plain view from our property', as Council is unable to regulate that persons use of the toilet facilities in the dwelling many people were simply 'going against the fence' or 'behind a tree'.

Some of these vans were used as a teenage retreat which lead to young people engaged in loud behaviour (Music etc.) that may not be heard in the primary residence but could clearly be heard from neighbouring properties.

The electrical connections to these vans were generally poor with indoor extension cords being used out in the elements creating a safety issue.

Many vans occupied in a residential area were unsightly resulting in many complaints to Council.

Looking at the type of complaints received and the unrealistic nature of regulating caravan occupation in a residential area it was concluded that this could not be done and caravan occupation in this zoning would be prohibited.

For a caravan license to be granted the applicant must have Planning and Building approval from Council on the property where the caravan is to be located

The majority of requests for caravan occupation come from persons who were building in non-sewered areas and wanted to live in vans while their dwelling was being built and they required immediate accommodation because their existing property had sold earlier than expected, or they did not have the money to pay for temporary accommodation for the duration of the building time. The requirement for Planning and Building approvals was therefore easy for the client to provide and demonstrated the persons were only going to occupy the van for a relative short period of time.

The wastewater system for the proposed dwelling is installed and the caravan connected to it

As a wastewater system would be required for the dwelling in non-residential zoned areas, Council requires the system to be fully installed prior to caravan occupation being granted so all wastewater can be plumbed into it and therefore ensuring its appropriate disposal thus eliminating any health/nuisance risks.

The maximum time permissible to occupy a caravan is 6 months

There are time limits for building and plumbing works to be commenced once a permit has been issued a maximum period of six months is permitted for a caravan to be occupied, this ensured that occupation of the van would be regulated to a reasonable time period and any unsightly and/or other issues associated with the occupation of the caravan would be of a temporary nature.

The current By-Law is fair and practical for caravan occupation that allows as much flexibility as possible to permit the activity whilst enabling the practical enforcement of any health/nuisance issues. Allowing an amendment to allow caravans in a residential area is fraught with potential on-going issues and monitoring.

Options:

1. As per the recommendation.
2. That Council amend the By-Law to allow temporary accommodation in residential zones.

RECOMMENDATION:

That the report be noted and the By-Law not amended.

DECISION:

Cr Geard moved, Cr Curran that the recommendation be adopted.

MOTION LOST

VOTING RECORD

In favour	Against
Cr Curran	Cr Garlick
Cr Foster	Cr Jeffries
Cr Geard	Cr Murtagh
Cr Gray	Cr Owen
	Cr Whelan

Cr Owen moved, Cr Whelan seconded that Officers report to Council with conditions to amend the By-Law to allow caravans in a residential zone. Report to be submitted to the August Council meeting.

CARRIED

VOTING RECORD

In favour	Against
Cr Garlick	Cr Curran
Cr Geard	Cr Foster
Cr Jeffries	Cr Gray
Cr Murtagh	
Cr Owen	
Cr Whelan	

Cr Jeffries moved, Cr Curran seconded that Council resolve into Closed Council.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	

Cr Garlick
Cr Geard
Cr Gray
Cr Jeffries
Cr Murtagh
Cr Owen
Cr Whelan

12. CLOSED MEETING:

Regulation 15 of the Local Government (Meeting Procedures) Regulations 2015 provides that Council may consider certain sensitive matters in Closed Meeting.

The following matters are listed in the Closed Meeting section of the Council Agenda in accordance with Regulation 15 of the Local Government (Meeting Procedures) Regulations 2015.

This matter is to be considered in a Closed Meeting of Council by authority of the Local Government (Meeting Procedures) Regulations 2015, Section 15(2)(g)

12.1 CONFIRMATION OF MINUTES OF THE CLOSED PORTION OF THE ORDINARY COUNCIL MEETING OF 18th JUNE 2019.

Cr Gray moved, Cr Curran seconded that the closed portion of the Ordinary Council meeting of 18th June 2019 be confirmed.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Murtagh	
Cr Owen	
Cr Whelan	

Cr Garlick moved, Cr Jeffries seconded that Council resolve out of closed Council and that the decision made while in Closed council be ratified.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Murtagh	
Cr Owen	
Cr Whelan	

13. QUESTION ON NOTICE:

There were no questions on notice.

The meeting closed 6.15pm

Confirmed:

(Mayor)

Date:

20th August 2019