



Brighton Council

MINUTES OF THE **PLANNING AUTHORITY MEETING**
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
OLD BEACH AT 5.30 P.M. ON TUESDAY,
10TH DECEMBER, 2019

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

IN ATTENDANCE: Mrs J Banks (Governance Manager) and Mr D Allingham (Manager Development Services).

1. APOLOGIES:

Cr Owen moved, Cr Murtagh seconded that Cr Geard be granted leave of absence.

CARRIED

VOTING RECORD

In favour Against

Cr Curran
Cr Foster
Cr Garlick
Cr Gray
Cr Jeffries
Cr Murtagh
Cr Owen
Cr Whelan

2. QUESTION TIME & DEPUTATIONS:

There was no requirement for question time.

3. DECLARATION OF INTEREST:

In accordance with Part 5, Section 48 of the *Local Government Act 1993*, the Chairman of a meeting is to request Councillors to indicate whether they have, or are likely to have an interest in any item on the agenda; and

Part 2 Regulation 8 (7) of the *Local Government (Meeting Procedures) Regulations 2015*, the Chairman of a meeting is to request Councillors to indicate whether they have, or are likely to have, a pecuniary interest in any item on the agenda.

Accordingly, Councillors are requested to advise of any interest they may have in respect to any matter appearing on the agenda, or any supplementary item to the agenda, which the Council has resolved to deal with, in accordance with Part 2 Regulation 8 (6) of the *Local Government (Meeting Procedures) Regulations 2015*.

There were no declarations of interest.

4. COUNCIL ACTING AS PLANNING AUTHORITY:

In accordance with the provisions of Part 2 Regulation 25 of the *Local Government (Meeting Procedures) Regulations 2015*, the intention of the Council to act as a planning authority pursuant to the *Land Use Planning and Approvals Act 1993* is to be noted. In accordance with Regulation 25, the Council will act as a planning authority in respect to those matters appearing under Item 4. on this agenda, inclusive of any supplementary items.

4.1 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 - DA 2019/212 - 51 MENIN DRIVE, BRIGHTON- FRONTAGE FENCE:

Type of Report	Planning Authority - For Decision
Application No:	DA 2019 / 212
Address:	51 Menin Drive, Brighton
Applicant:	Sandra Czyzowicz
Proposal:	Frontage Fence
Zone:	General Residential
Representations:	Two (2)
Discretion:	1. Frontage Fence
Author:	Jo Blackwell (Planning Officer)

1. Executive Summary

- 1.1. Planning approval is sought for a Frontage Fence in the General Residential Zone at 51 Menin Drive, Brighton.
- 1.2. The application is discretionary due to reliance on performance criteria.
- 1.3. Two (2) representations were received. One representation was in support of the application. The second raised issues with regard to sight distances, safety and visual impact
- 1.4. The key planning issues relate to the security and privacy, safety, compatibility with the streetscape and passive surveillance.
- 1.5. The proposal is recommended for conditional approval
- 1.6. The final decision must be made by the Planning Authority or by full Council acting as a planning authority due to the receipt of representations via the public exhibition period for the development application.

2. Legislative & Policy Content

- 2.1. The purpose of this report is to enable the Planning Authority to determine application DA 2019/212.
- 2.2. This determination must be made no later than 17 December 2019, which has been extended 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.

4. Relevant Background and Past Applications

4.1. DA 2019/021 – Dwelling – No Permit Required

5. Site Detail

5.1. The subject site is located on the south western corner of the junction where Seymour Street intersects Menin Drive. The site is approximately 760m². A single dwelling has recently been constructed on the site.

5.2. The lot and its surrounds are zoned General Residential, as depicted in Figure 1:



Figure 1. Zoning and Location Plan (source: www.thelist.tas.gov.au)

6. Proposal

- 6.1. The proposal is for a solid 1.8m high timber paling fence along the northern frontage of the site (Menin Drive).
- 6.2. 'Frontage' is defined in Section 4.1 of the Interim Scheme as:

A boundary of a lot which abuts a road.
- 6.3. 'Primary frontage' is also defined in Section 4.1 as:

Where there are 2 or more frontages, the frontage with the shortest dimensions measured parallel to the road irrespective of minor deviations and corner truncations.
- 6.4. As the Seymour Street frontage is shorter in length than the Menin Drive frontage, Seymour Street is considered to be the primary frontage. The Menin Drive frontage is the non-primary or secondary frontage of the site.
- 6.5. The application is supported by the attached site plan and correspondence addressing the performance criteria.

7. Assessment against planning scheme provisions

- 7.1. The following provisions are relevant to the proposed use and development:
 - General Residential Zone
 - Road and Railway Assets Code
 - Parking and Access Code
- 7.2. Section 10.3 of the Interim Scheme (Non-Residential Uses) is not applicable to the application, nor are the Development Standards found in Section 10.4.1 to Section 10.4.6, inclusive.
- 7.3. The application satisfies the following Acceptable Solutions:
 - Section E5.6.4 A1 - Sight distance at accesses, junctions and level crossings
 - Section E6.7.2 A1 - Design of Accesses
- 7.4. The following discretions are invoked:
 - Section 10.4.7 - Frontage Fences for All Dwellings

7.5. Discretion 1: Frontage Fences for All Dwellings

7.5.1 The Acceptable Solution contained in Section 10.4.7 A1 states:

A fence (including a free-standing wall) within 4.5 m of a frontage must have a height above natural ground level of not more than:

- (a) 1.2 m if the fence is solid; or*
- (b) 1.8 m, if any part of the fence that is within 4.5 m of a primary frontage has openings above a height of 1.2 m which provide a uniform transparency of not less than 30% (excluding any posts or uprights).*

7.5.2 The applicant proposes a solid timber paling fence 1.8m high to be constructed along the northern boundary of the lot (i.e. the Menin Drive frontage), which is the property's secondary frontage. As the proposed fence is on a secondary frontage, and is taller than 1.2m, the proposed fence does not comply with the Acceptable Solution. As such, the application is discretionary and must be assessed against the relevant Performance Criteria and Objective.

7.5.3 Section 10.4.7 P1 states:

A fence (including a free-standing wall) within 4.5 m of a frontage must:

- (a) provide for the security and privacy of residents, while allowing for mutual passive surveillance between the road and the dwelling; and*
- (b) be compatible with the height and transparency of fences in the street, taking into account the:
 - (i) topography of the site; and*
 - (ii) traffic volumes on the adjoining road.**

7.5.4 The Objective of Development Standard 10.4.7 states:

To control the height and transparency of frontage fences to:

- (a) provide adequate privacy and security for residents; and*
- (b) allow the potential for mutual passive surveillance between the road and the dwelling; and*
- (c) provide reasonably consistent height and transparency.*

7.5.5 In relation to security, privacy and mutual passive surveillance (Section 10.4.7 P1(a)), the proposed fence provides for the internal security and privacy of the resident by enclosing the property, limiting access to the site.

7.5.6 However, the proposed fence reduces mutual passive surveillance as the fence is a tall, solid timber structure. There is no degree of transparency proposed, thereby limiting view to the street from the dwelling and the yard. Additionally, the topography of the site is flat which further limits potential for casual observation over the fence in either direction.

- 7.5.7 The entirety of the habitable area of the house (excluding bedrooms) will be enclosed by the proposed fence, which significantly reduces the opportunity for passive surveillance.
- 7.5.8 Passive surveillance is a method to achieving a balance between privacy and security for dwellings, whilst maintaining potential for viewing to the street. Crime Prevention NSW (2014) notes that:
- Passive surveillance is about providing the opportunity for occasional sightlines and views to the street and local neighbourhood from within the home.*
- 7.5.9 In regards to traffic volumes (Section 10.4.7 P1(b)(ii)), the balance of Menin Drive to the west ends in a cul-de-sac, which is located approximately 500m to the north west and services approximately 70 dwellings. The speed limit of Menin Drive is 50km/h, and Menin Drive is classed as a low order access road under the Urban Road Classification hierarchy.
- 7.5.10 The average number of vehicle movements along Menin Drive in a 24-hour period is approximately 700, which Council's Technical Officer advises is considered low.
- 7.5.11 It is considered that the low levels of traffic in the area will not significantly impact the subject site.
- 7.5.12 Regarding the compatibility of the proposed fence with the height and transparency of other fences in the street, the Performance Criteria require that frontage fences are to be compatible with the height and transparency of fences in the street (emphasis added), and therefore the streetscape of Menin Drive (including the presence of fences) must be evaluated.
- 7.5.13 It is noted that in a submission in support of their application, the applicant has identified a number of examples of dwellings along Menin Drive and the surrounding streets which have fenced secondary boundaries to a height exceeding the Acceptable Solution contained in Section 10.4.7 A1.
- 7.5.14 A review of these sites is being undertaken as a result of the correspondence to Council. It is believed that the frontage fences on Menin Drive do not have the requisite planning approval. As a result, the impacted owners will be contacted, and will be required to either alter or remove the fence or will be subject to a similar development application and assessment process.

- 7.5.15 The performance criterion uses the word 'must' in the first sentence. Therefore, to obtain approval, it is vital that the applicant demonstrates that the application satisfies all components of the relevant performance criteria for approval.
- 7.5.16 It is considered that restricting surveillance to and from the dwelling through the construction of the proposed 1.8m high solid timber fence will remove the opportunity for mutual passive surveillance, and consequently the performance criteria cannot be satisfied.
- 7.5.17 Further, there are no other examples of frontage fences on Menin Drive that have been approved with a similar height and transparency to that of the fence proposed. By extension, the proposed 1.8m high solid frontage fence cannot be compatible with frontage fences in the street.
- 7.5.18 As set out above, the proposal does not satisfy the performance criteria contained in Section 10.4.7 P1, with the key issues being mutual passive surveillance and compatibility with the streetscape. However, both of these issues could be resolved if the fence were partially transparent above 1.2m.
- 7.5.19 It is considered that the proposal could satisfy the Performance Criteria subject to a condition being imposed on a permit requiring the proposed fence to have openings above a height of 1.2 m which provide a uniform transparency of not less than 30% (excluding any posts or uprights).
- 7.5.20 By imposing such a condition, the fence will provide for both security and privacy of the residents of 51 Menin Drive, while allowing for mutual passive surveillance between the road and the dwelling. Further, by requiring a level of uniform transparency above the height of 1.2m (as stipulated in the condition), the fence would be more in keeping with other frontage fences along Menin Drive.

8. Referrals

8.1. Technical Officer

- The proposal was assessed by Council's Technical Officer who has determined that the proposal can satisfy the acceptable solutions in relation to sight lines as required by the Road and Railway Assets Code and the Parking and Access Code.

9. Concerns raised by representors

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

Representation 1	Response
The height of the fence conflicts with council regulations	The application relies on performance criteria for assessment. Refer to Section 7.5 of this report for assessment.
View will be obscured when leaving driveway, causing a safety concern for traffic and pedestrians	<p>Sight lines have been assessed by Council’s Technical Officer, who has provided the following comment:</p> <p>Due to the boundary of No. 51 being 5m+ from Menin Drive the sight distance for a vehicle exiting adjoining properties or from a vehicle on Menin Drive observing a vehicle leaving adjoining properties meets the relevant sight distance standards. The western end of Menin Drive is also a cul-de-sac and there will be low traffic volumes.</p> <p>Given the front boundary is against the footpath a high solid front fence (rather than a 1.2m fence or transparent fence) will potentially reduce sight distance to/for a pedestrian. There are however instances where a high front fence abuts a footpath with openings for driveways – particularly in more established suburbs.</p> <p>This is less of an issue for the resident of the adjoining properties as their driveway is 10m from the potential high front (& side?) fence proposed by No. 51.</p>
No signature on the application	The application form was completed in full, however was redacted for privacy reasons. A copy can be made available for viewing if required.
Aesthetically, the fence will look out of place in the streetscape. A “see through fence also provides better security”, i.e. picket fence.	Assessment of the streetscape is addressed in Section 7.5 of this report.

<p>Representor suggests that if a 1.8mH fence is required, it should be setback 2.5m from the footpath.</p>	<p>Please refer to the assessment in Section 7.5 of this report.</p>
<p>Representation 2</p>	
<p>Representation 2 is in support of the proposal. The property owner confirms that there are no issues with sight lines from his property in Seymour Street and that the fencing the subject property will reduce the number of people cutting through the subject site.</p>	<p>Please refer to the comments of Council’s Technical Officer, above.</p>

10. Conclusion

- 10.1. The proposal is for a 1.8m high timber paling fence to be constructed along the Menin Drive frontage of the subject site, which is considered to be the secondary frontage. The fence is proposed to be solid.
- 10.2. The key issues are whether the fence provides for security, privacy, safety, compatibility with the streetscape and passive surveillance.
- 10.3. It is the Officer’s opinion that the proposed fence does not provide for mutual passive surveillance and is not compatible with the existing streetscape, as required by the Performance Criteria contained in Section 10.4.7 P1 of the Interim Scheme.
- 10.4. In order to satisfy the Performance Criteria, it is the officer’s opinion that a level of transparency in the fence must be provided. By requiring a level of uniform transparency, the fence will provide for the security and privacy of residents, while allowing for mutual passive surveillance between the road and the dwelling. Further, the proposed fence will be more in keeping with the height and transparency of other frontage fences in the street.
- 10.5. As such, it is recommended that conditional approval be provided for the frontage fence which requires the fence to be partially transparent above 1.2m.

RECOMMENDATION:

That pursuant to the Brighton Interim Planning Scheme 2015, Council approve application DA2019/212 for the development of a Frontage Fence in General Residential Zone at 51 Menin Drive, Brighton, for the reasons outlined in the officer’s report and a permit containing the following conditions be issued:

- (1) The use or development must be carried out substantially in accordance with the application for planning approval, the endorsed drawings and with the conditions of this permit and must not be altered or extended without the further written approval of Council.
- (2) This permit shall not take effect and must not be acted on until 15 days after the date of receipt of this letter or the date of the last letter to any representor, whichever is later, in accordance with section 53 of the *Land Use Planning and Approvals Act 1993*.
- (3) The proposed fence must have openings above a height of 1.2 m which provide a uniform transparency of not less than 30% (excluding any posts or uprights).

References:

Department of Infrastructure Energy and Resources (DIER (2007), Traffic Impact Assessments (TIA) Guidelines, retrieved from https://www.transport.tas.gov.au/_data/assets/pdf_file/0005/108491/TIA_Framework_Edition_1_09-2007_Final.pdf

Department of Justice(2014) Safe Design Home Brochure, retrieved from http://www.crimeprevention.nsw.gov.au/Documents/safe_design_home_brochure_nov2014.pdf

DECISION:

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

MOTION LOST

VOTING RECORD

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

Cr Owen moved, Cr Whelan seconded that the recommendation be adopted excluding Condition 3.

CARRIED

VOTING RECORD

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

The meeting closed at 5.50 pm.

Confirmed:

(Mayor)

Date:

17th December 2019