



Brighton Council

MINUTES OF THE **PLANNING AUTHORITY MEETING**
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
OLD BEACH AT 5.35PM ON TUESDAY,
12TH FEBRUARY, 2019

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

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

1. APOLOGIES:

Cr Geard moved, Cr Jeffries seconded that Cr Curran be granted leave of absence.

CARRIED

VOTING RECORD

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

2. QUESTION TIME & DEPUTATIONS:

As there were no members in the gallery 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.

Cr Geard, Cr Gray and Cr Whelan declared an interest in Item 4.4.

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 2018/164 – 7 HANNAH COURT, OLD BEACH, MULTIPLE DWELLINGS (4):

Type of Report	Planning Authority – For Decision
Author	Jo Blackwell
Application No:	DA 2018/164
Address:	7 Hannah Court, Old Beach
Applicant:	Bryden Homes Pty Ltd
Proposal:	Multiple Dwelling Units (4)
Zone:	General Residential
Representations:	Three (3)
Discretions:	Access to Private Open Space (D10.4.3 A2(c))

1. Executive Summary

- 1.1. Approval is sought in relation to the use and development of the site to allow for the construction of 4 units. The site is currently vacant.
- 1.2. The application is discretionary arising from reliance on performance criteria in relation to providing direct access to the private open space for unit 2.

- 1.3. Three (3) representations were received raising concerns in relation to the increase in vehicle traffic, on-street parking, noise, privacy, safety and property values. The representors' concerns are addressed more fully in this report.
- 1.4. The proposal is recommended for approval subject to conditions relating to the above key planning issues and on servicing of the site.
- 1.5. The final decision must be made by the Planning Authority or by full Council acting as a planning authority due to the receipt of representations via the public exhibition period for the development application.

2. Legislative & Policy Content

- 2.1. The purpose of this report is to enable the Planning Authority to determine application DA 2018/164.
- 2.2. This determination must be made no later than 19th February 2018, which has been extended beyond the statutory timeframe with the consent of the applicant.
- 2.3. The relevant legislation is the Land Use Planning and Approvals Act 1993 (LUPAA). The provisions of LUPAA require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer's recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the Judicial Review Act 2000 and the Local Government (Meeting Procedures) Regulations 2005.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the State Policies and Projects Act 1993.
- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application. Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

3. Risk & Implications

- 3.1. Approval or refusal of this application will have no direct financial implications for the Planning Authority.

4. Relevant Background and Past Applications

4.1. Nil.

5. Site Detail

5.1. The subject site is situated on the northern side of Hannah Court, Old Beach. It has an area of 1487sqm, and slopes gently towards the eastern boundary of the site.

5.2. The site is vacant, with single dwellings constructed on surrounding lots.

5.3. The site is located in an area characterised by large lot sizes. The area demonstrates a mix of both single dwellings and strata title development, as shown in Figure 2.

5.4. The property is zoned General Residential. There are no Planning Scheme overlays applicable to the site (refer to figure 3).



Figure 1: 7 Hannah Court, Old Beach (Source: Google Maps 2019)



Figure 2: Locality Map (Source:Google Earth). Lots developed by strata title development indicated by red stars. Subject site circled in yellow

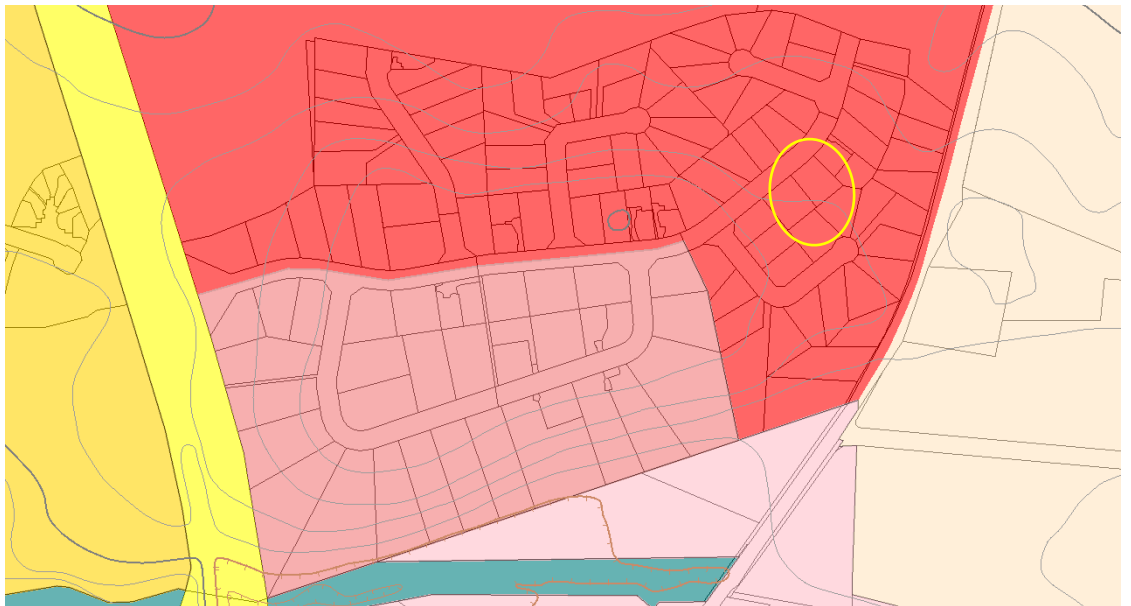


Figure 3: Zoning Map

Red = General Residential; Light Pink = Rural Living; Dark Pink = Low Density
Yellow = Particular Purpose Zone/Utilities (East Derwent Highway); Cream= Rural Resource

6. Proposal

- 6.1 The proposal is for four dwelling units. Each of the units has two bedrooms, an open plan kitchen/living/dining area and a single car garage, together with the usual amenities. The site plan shows an additional external car parking space per unit, together with a visitor car parking space located between units 1 and 2.
- 6.2 The application is supported by the attached site plan and elevations.

7 Assessment

- 7.1 The Brighton Interim Planning Scheme 2015 is a performance-based planning scheme.
- 7.2 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.
- 7.3 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.

8 Assessment against planning scheme provisions

- 8.1 The following provisions are relevant to the proposed use and development:
 - 8.1.1 Part D – Clause 10 – General Residential Zone
 - 8.1.2 Part E – Clause 5.0 – Road and Railway Assets Code
 - 8.1.3 Part E – Clause 6.0 – Parking and Access Code
 - 8.1.4 Part E – Clause 7.0 – Stormwater Management Code
- 8.2 The proposed use is for Multiple Dwelling Units in the General Residential zone. Multiple dwelling units are a Permitted Use for the site pursuant to the Use Table set out in clause 10.2 of the Scheme.

- 8.3 The proposal is considered to satisfy the acceptable solutions for Development Standards for Residential Buildings and Works in the General Residential zone as follows:

- 10.4.1 Density
- 10.4.2 Setbacks
- 10.4.3 A1 Site Coverage and Private Open Space for All Dwellings
- 10.4.4 Sunlight and Overshadowing for all Dwellings
- 10.4.5 Width of Openings
- 10.4.6 Privacy for all Dwellings
- 10.4.7 Frontage Fences for all Dwellings
- 10.4.8 Waste Storage for Multiple Dwellings
- E6.0 Parking and Access Code
- E7.0 Stormwater Management Code

- 8.4 The following discretions are invoked and are discussed in more detail below:

- 8.4.1 General Residential Zone – Clause D10.4.3 A2 – Private Open Space
- 8.4.2 Road and Railway Assets Code – E5.6.4 – Sight Distance

8.5 Private Open Space (D 10.4.3. A2)

- 8.5.1 The proposal shows access to the private open space via ramps (U1 and U4) and by stairs to a landing (U2 and U3), rather than providing direct access directly at ground level.
- 8.5.2 Accordingly, the application is required to address the performance criteria:

A dwelling must have private open space that:

- (a) includes an area that is capable of serving as an extension of the dwelling for outdoor relaxation, dining, entertaining and children's play and that is:
 - (i) conveniently located in relation to a living area of the dwelling; and

- (ii) orientated to take advantage of sunlight.

Planning Response

The proposal plans show external access from the open plan living area to the POS for each unit is provided and that each unit's POS is located to the north and north-west of each unit, and therefore orientated to take into advantage of sunlight.

The proposal satisfies the satisfies the performance criteria.

8.6 Sight Distance at access, Junctions and level crossings

- 8.6.1 The sight distance from the access is less than 80m, as per the acceptable solution set out in Table E5.1 of the Scheme.
- 8.6.2 Council's Senior Technical Officer has considered the proposal and advised as follows:

The access is located at the end of a cul de sac. Whilst the sight distance to the east is technically less than 80m, the road does a 90 deg bend and actual vehicle speeds are likely to be less than 50km/h. The access has better sight distances than other existing accesses in the cul de sac.

The access was provided as part of the original subdivision and is considered safe

- 8.6.3 The Performance Criteria can be satisfied.

9. Referrals

9.1 Technical Officer

Council's Senior Technical Officer has reviewed the application against Code E5, E6 & E7 and his comments and response to representations are incorporated into the body of the document.

9.2 TasWater

The application was referred to TasWater, who have issued a Submission to Planning Authority Notice (SPAN) dated 8th August 2018. The SPAN will form part of any permit approved.

10. Discussion

- 10.1 The Zone Purpose Statements for the General Residential Zone are:

- 10.1.1.1 To provide for residential use or development that accommodates a range of dwelling types at suburban densities,

where full infrastructure services are available or can be provided.

10.1.1.2 To provide for compatible non-residential uses that primarily serve the local community.

10.1.1.3 To provide for the efficient utilisation of services.

The proposal is considered to meets the zone purpose statements.

11. Concerns raised by representors

10.1 Three representations were received during the public notification period. The following table briefly summarises the issues raised by the representors.

Representation 1	Brief Response
<p>“... worried about the increased noise and traffic in the street with multiple dwellings. There are several young families in Hannah Court who will be anxious about several cars coming down the road when children are playing.</p>	<p>The additional traffic generated meets the acceptable solution within the Road and Railway Assets code in the scheme ie less than an additional 40 vehicle movements per day.</p> <p>The road has sufficient capacity for the additional traffic.</p> <p>Hannah Court has been provided as a public road for vehicular use, not as a shared zone for pedestrians. A path has been provided for pedestrian use.</p> <p>Residential traffic noise is not a planning consideration. Excessive noise and safety concerns should be reported to Tas Police.</p>
<p>The units may also affect the price of our current houses where we have only built 1 house on the block.</p>	<p>Property values are not a planning consideration</p>

Representation 2	Brief Response
<p>"... that due to the large number of dwellings proposed to be built on the currently vacant land at 7 Hannah court, that there will be a huge increase in vehicle traffic in a very small and quiet cul de sac.</p>	<p>The road has more than sufficient capacity for the traffic generation proposed.</p>
<p>I also hold concerns regarding availability of the parking for any visitors or multiple car owners of the tenants/ home owners of these dwellings as there is already absolutely not enough on street parking available where this dwelling plans to be built. with people parking over vacant land driveways etc on a regular basis at the bottom of Hannah court, and with the potential for another two units on the opposite side to be built I feel exceeds the areas parking capacity and will cause congestion with people getting in and out driveways.</p>	<p>Whist this concern has merit, the application meets the requirements of the scheme for the number of parking spaces provided on site.</p>
Representation 3	Brief Response
<p>The units overlook the adjoining backyards, preventing normal day to day use of the yard. This problem can be overcome by reducing the number of units to three and requiring screening by plants along the fence of the allotment</p>	<p>The proposal satisfies the acceptable solutions for privacy (D10.4.6 A2). However, following receipt of the representation, an approach was made to the Applicant, regarding the possibility of altering the window configuration to provide for an increase in privacy.</p> <p>The applicant has agreed to alter the window configuration on the south western facing walls of units 1 and 2 to</p>

	<p>provide increased privacy to adjoining lots.</p> <p>Accordingly, a condition is recommended which requires the applicant to submit amended plans for approval prior to issue of building approvals, which show the dimensions of windows W09 on units 1 and 2 altered from 1800x2400 to 400x2400</p>
<p>"The building of four two-bedroom units will cause the noise level to be greater than it has been in the area of what, up to now, has been an area of one house per allotment. In this case, the level of noise will be multiplied by four. This includes noise from multiple sources – people, cars animals to list but a few</p>	<p>The site has been zoned General Residential. Therefore, the construction of multiple dwellings in the General Residential Zone is a permitted use.</p> <p>Residential traffic noise is not planning consideration. Excessive noise and safety concerns should be reported to Tas Police</p>
<p>The four units have only one exit/entrance and we are concerned for the children who frequent (and play) in this court/culvert</p>	<p>Having a single point of access / egress to the public road minimises the potential conflict points on the road.</p> <p>The access has sufficient width for 2 vehicles to pass at the road.</p> <p>In this instance a single vehicular access is considered a safer outcome than having multiple accesses.</p> <p>Hannah Court has been provided as a public road for vehicular use, not as a shared zone for pedestrians. A path has been provided for pedestrian use.</p>
<p>We are also worried that our house and land valuation will be reduced by four units being built on the allotment. If they are rented then there is four times the chance that some of the</p>	<p>Property values are not a planning consideration.</p>

renters will be people who do not appreciate the area as much as the residence who currently live here.	
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Conclusion

- 8.6 The proposed use and development of Residential (four multiple dwellings) in the General Residential Zone at 7 Hannah Court, Old Beach, satisfies the relevant provisions of the Brighton Interim Planning Scheme 2015, and as such is recommended for approval, subject to conditions.

RECOMMENDATION:

That pursuant to the Brighton Interim Planning Scheme 2015, Council approve application DA 2018-164 for use and development of Multiple Dwellings (x4) at 7 Hannah Court, Old Beach, for the reasons outlined in the officer's report and a permit containing the following conditions be issued:

General

- 1) The use or development must be carried out substantially in accordance with the application for planning approval, the endorsed drawings and with the conditions of this permit and must not be altered or extended without the further written approval of Council.
- 2) This permit shall not take effect and must not be acted on until 15 days after the date of receipt of this letter or the date of the last letter to any representor, whichever is later, in accordance with section 53 of the *Land Use Planning and Approvals Act 1993*.

Amenity

- 3) All external metal building surfaces must be clad in non-reflective pre-coated metal sheeting or painted to the satisfaction of the Manager Development Services.

Private open space

- 4) The private open space must be formed or constructed to the satisfaction of Council's Manager Development Services before the use commences.

Privacy

- 5) Prior to issue of a Building Permit pursuant to the Building Act 2016, amended plans must be submitted to and approved by Council Manager Development Services altering Window W09 for Unit 1 and Unit 2 from 1800x2400 awning (1824AW) window to a 400x2400 Fixed (0424F) window. Once approved, the amended plans will form part of the permit.

Landscaping

- 6) The landscaping works must be completed in accordance with the endorsed landscape plan and to the satisfaction of Council's Manager Development Services within one (1) month of the first use of the development or prior to the sealing of a stratum plan. All landscaping must continue to be maintained to the satisfaction of Council.

Agreements

- 7) An agreement pursuant to Part 5 of the Land Use Planning and Approvals Act 1993 must be entered into, prior to occupancy of any of the dwelling, to the effect that:
 - a) the stormwater treatment and detention systems must be maintained to ensure quality is maintained and water is conveyed so as not to create any nuisance to adjacent properties.
 - b) The number of parking spaces required by this permit will be maintained and kept available on site.
- 8) 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

- 9) 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

- 10) Parking and access must be generally in accordance with the approved plan and to the satisfaction of Council's Municipal Engineer.
- 11) The vehicle accesses from Hannah Court must be in accordance with the following;
 - (a) Councils Standard Drawings;
 - (b) Standards Australia (2004): Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney;
 - (c) Have a minimum width of 5.5m for a distance of no less than 6.0m from the edge of the road;
 - (d) Be constructed in reinforced concrete;and to the satisfaction of Council's Municipal Engineer.
- 12) At least nine (9) parking spaces must be provided on the land at all times for the use of the occupiers including at least two (2) car parking space per dwelling and at least one (1) designated for visitor parking, in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 - Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney.
- 13) Unless approved otherwise by Council's Municipal Engineer the internal private 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 include all of the following;
 - (a) A minimum trafficable width of 3.0m
 - (b) Passing Bays 5.5m wide x 6.0m long at the road and at maximum 30m spacing
 - (c) Constructed with a durable all weather pavement.
 - (d) Surfaced with concrete.
 - (e) Drained to an approved stormwater system.
- 14) Parking and vehicle circulation roadways and pedestrian paths serving 5 or more car parking spaces, used outside daylight hours, must be provided with lighting in accordance with clause 3.1 "Basis of Design" and clause 3.6 "Car Parks" in AS/NZS 1158.3.1:2005 Lighting for roads and public spaces Part 3.1: Pedestrian area (Category P) lighting, or as otherwise approved by Council's General Manager.

15) A parking plan prepared and certified by a qualified civil engineer or other person approved by Council's Municipal Engineer must be submitted to Council prior to or in conjunction with lodgement of Building Application. The parking plan is to include:

- (i) pavement details,
- (ii) design surface levels and gradients,
- (iii) drainage,
- (iv) turning paths,
- (v) dimensions,
- (vi) line marking,
- (vii) signage,
- (viii) pedestrian access,
- (ix) lighting

and shall form part of the permit when approved.

16) The completed parking and associated turning areas and access must be certified by a practicing civil engineer to the effect that they have been constructed in accordance with the endorsed drawings and specifications approved by Council before the use commences.

17) All areas set-aside for parking and associated turning, and access must be completed before the use commences and must continue to be maintained to the satisfaction of the Council's Municipal Engineer.

Access to Public Road

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

Stormwater

- 18) rainage from the proposed development must drain to Council's piped stormwater system by gravity to the satisfaction of Council's Municipal Engineer and in accordance with a Plumbing permit issued by the Permit Authority in accordance with the Building Act 2016.
- 19) The Developer is to incorporate Water Sensitive Urban Design Principles into the development for the treatment and disposal of stormwater. These Principles will be in accordance with the Water Sensitive Urban Design Procedures for Stormwater Management in Southern Tasmania and to the satisfaction of the Council's Municipal Engineer.
- 20) The developer must provide a minor stormwater drainage system designed to comply with all of the following:
 - a) be able to accommodate a storm with an ARI of 20 years when the land serviced by the system is fully developed;
 - b) stormwater runoff will be no greater than pre-existing runoff or any increase can be accommodated within existing or upgraded public stormwater infrastructure
- 21) The developer is to provide a major stormwater drainage system designed to accommodate a storm with an ARI of 100 years.
- 22) The driveways must be drained to minimise surface runoff over the footpath or to the adjoining road in accordance with the requirements of the Municipal Engineer and a Plumbing Permit issued by the Permit Authority in accordance with the Building Act 2016.
- 23) Prior to the commencement of works or the issue of a plumbing permit, detailed plans and calculations of the stormwater drainage system, including treatment, detention and outfalls must be prepared by a suitably qualified civil engineer and be submitted to Councils Municipal Engineer for approval.
- 24) The completed stormwater treatment systems, detention and outfalls must be certified by a practicing civil engineer to the effect that they have been constructed in accordance with the endorsed drawings and specifications approved by Council before the use commences.

TasWater

- 25) The development must meet all required Conditions of approval specified by Tas Water Submission to Planning Authority Notice TWDA 2018/01277-BTN, dated 08/08/2018.

Soil and Water Management

- 26) 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.
- 27) 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

- 28) The development must only be carried out between the following hours unless otherwise approved by the Council's Manager Strategic Planning:
- 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.
- 29) 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.
- 30) 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 Strategic Planning.

- 31) 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.
- 32) 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 Geard moved, Cr Garlick seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

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

4.2 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 – SA 2018/0042 – 2 ALEC CAMPBELL DRIVE, BRIGHTON - SUBDIVISION (1 LOT PLUS BALANCE):

Type of Report	Planning Authority – For Decision
Author	Jo Blackwell
Application No:	SA 2018/0042
Address:	2 Alec Campbell Drive, Brighton
Applicant:	Michael Walsh
Proposal:	Subdivision (1 lots plus balance)
Zone:	Rural Living
Representations:	One (1)
Discretions:	<ol style="list-style-type: none">1. Subdivision2. Building Area3. Ways and Public Open Space4. Wastewater disposal5. Stormwater disposal

1. Executive Summary

- 1.1. Approval is sought in relation to the use and development of the site to allow for a one (1) lot plus balance subdivision. The site is currently vacant.
- 1.2. The application is discretionary in relation to clause 9.7.2 of the Scheme (subdivision) as well as relying on performance criteria in relation to the proposed building area shown on the proposal.
- 1.3. One (1) representation was received raising concerns in relation to the setback between the property boundary and the building area shown on the proposal. The representors concerns are addressed more fully in this report.
- 1.4. The proposal is recommended for approval subject to various standard conditions relating to the above key planning issues and on servicing of the site.
- 1.5. The final decision must be made by the Planning Authority or by full Council acting as a planning authority due to the receipt of representations via the public exhibition period for the development application.

2. Legislative & Policy Content

- 2.1. The purpose of this report is to enable the Planning Authority to determine application DA 2018/164.

- 2.2. This determination must be made no later than 19th February 2018, which has been extended beyond the statutory timeframe with the consent of the applicant.
- 2.3. The relevant legislation is the Land Use Planning and Approvals Act 1993 (LUPAA). The provisions of LUPAA require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer's recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the Judicial Review Act 2000 and the Local Government (Meeting Procedures) Regulations 2005.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the State Policies and Projects Act 1993.
- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application. Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

3. Risk & Implications

- 3.1. Approval or refusal of this application will have no direct financial implications for the Planning Authority.

4. Relevant Background and Past Applications

- 4.1. Nil.

5. Site Detail

- 5.1. The subject site is situated on the south eastern corner of the intersection of Alec Campbell Drive and Cartwright Street, Brighton. It has an area of 1.00ha and is generally level (Figure 1)
- 5.2. The site is vacant, with single dwellings constructed on lots to the north, east and west, and the Brighton Horse Racing Track (BHRT) to the south (Figure 2). A gravel bridal track runs along the Cartwright Street frontage between the boundary and the road.

- 5.3. The site is zoned Rural Living, with land on the western side of Cartwright Street being zoned Rural Resource and overlaid by the Brighton Horse Racing Code. The BHRT is zoned recreational (Figure 3). There are no overlays relative to the site.



Figure 1: Site image (source: www.maps.thelist.tas.gov.au)



Figure 2: Area Map (source: www.maps.thelist.tas.gov.au)

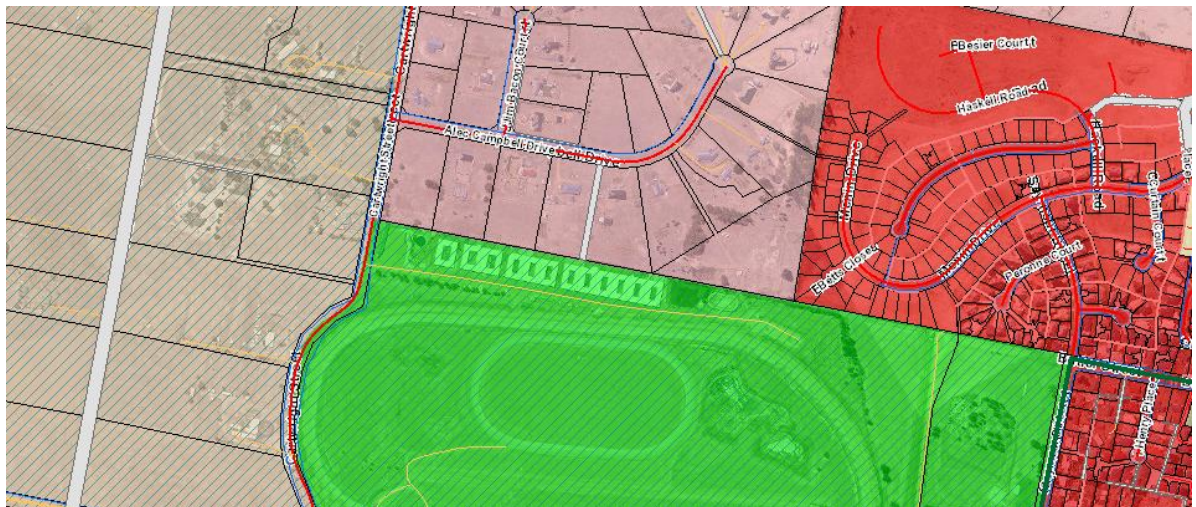


Figure 3: Zoning Map. Pink = Rural Living; Red = General Residential; Cream = Rural Resource; Green = Recreation. Blue lines = Brighton Horse Racing Overlay

6. Proposal

- 6.1. The proposal is for a one (1) lot plus balance subdivision. Each lot will be 5000sqm in area.
- 6.2. The site has access to water adjacent to the lot boundary along Cartwright Street. Stormwater and wastewater will be required to be retained on site.

6.3. Lot 1 will be serviced by the existing access off Alec Campbell Drive, whilst a new access is required to be constructed off Cartwright Street to service Lot 2.

6.4. The application is supported by the attached Plan of Subdivision.

7. Assessment

7.1. The Brighton Interim Planning Scheme 2015 is a performance-based planning scheme.

7.2. 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.

7.3. 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.

8. Assessment against planning scheme provisions

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

8.1.1. Part C – Clause 9.7 - Subdivision

8.1.2. Part D – Clause 13 – Rural Living Zone

8.1.3. Part E – Clause E5.0 – Road & Railway Assets Code

8.1.4. Part E - Clause E6.0 – Parking & Access Code

8.1.5. Part E – Clause E7.0 – Stormwater Management Code.

8.2. The proposal is considered to satisfy the acceptable solutions for Subdivision Standards for the Rural Living zone as follows:

8.2.1. 13.5.1 A1, A3, A4, A5 (Lot size, Frontage, Internal Lot, Setback)

8.2.2. 13.5.2 Roads

8.2.3. 13.5.3 Ways and Public Open Space

8.2.4. 13.5.4 A1 (Services: Connection to reticulated potable water supply)

8.2.5. E5.0 Road and Railway Assets Code

8.2.6. E6.0 Parking and Access Code

8.2.7. E7.0 Stormwater Management Code

8.3. The following discretions are invoked and are discussed in more detail below:

8.3.1. C9.7 - Subdivision

8.3.2. Rural Living Zone

- Building Area 13.5.1 A2
- Ways and Public Open Space 13.5.3 A2
- Services 13.5.4 A2 and A3

8.4. Subdivision (C9.7.2)

8.4.1. An application for subdivision is discretionary under clause 9.7.2 and must satisfy the Rural Living Zone purpose:

13.1.1 Zone Purpose Statements

13.1.1.1 To provide for residential use or development on large lots in a rural setting where services are limited.

13.1.1.2 To provide for compatible use and development that does not adversely impact on residential amenity.

13.1.1.3 To provide for agricultural uses that do not adversely impact on residential amenity.

13.1.1.4 To facilitate passive recreational uses that enhance pedestrian, cycling and horse trail linkages.

13.1.1.5 To avoid land use conflict with adjacent Rural Resource or Significant Agriculture zoned land by providing for adequate buffer areas.

8.4.2. The proposal is considered to meets the zone purpose statements.

8.5. Building Area (D13.5.1 A2)

8.5.1. The acceptable solution states:

D13.5.1 A2:

The design of each lot must provide a minimum building area that is rectangular in shape and complies with all of the following, except if for public open space, a riparian or littoral reserve or utilities;

a) clear of the frontage, side and rear boundary setbacks;

- b) *not subject to any codes in this planning scheme;*
- c) *clear of title restrictions such as easements and restrictive covenants;*
- d) *has an average slope of no more than 1 in 5;*
- e) *has a separation distance no less than:*
 - i. *100 m from land zoned Rural Resource;*
 - ii. *200 m from land zoned Significant Agriculture;*
- (f) *has a setback from land zoned Environmental Management no less than 100 m.*
- (g) *is a minimum of 30 m x 30 m in size.*

8.5.2 The proposal relies on the performance criteria due to discretions arising from:

8.5.2.1 the setback of the building area to the eastern and southern boundaries;

8.5.2.2 The separation distance between the building area and land zoned Rural Resource (RRZ);

8.5.3 The proposal shows a building area for each lot with a setback to the eastern and southern boundaries of 10m. The acceptable solution for side and rear setbacks in the development standards for the Rural Living Zone in 20m. The proposal shows a setback of 44m to the RRZ

8.5.4 Accordingly, the application is required to address the performance criteria:

D13.5.1 P2:

The design of each lot must contain a building area able to satisfy all of the following:

- a) *is reasonably capable of accommodating residential use and development;*
- b) *meets any applicable standards in codes in this planning scheme;*
- c) *enables future development to achieve reasonable solar access, given the slope and aspect of the land;*
- d) *minimises the requirement for earth works, retaining walls, and cut & fill associated with future development;*
- e) *is sufficiently separated from the land zoned Rural Resource and Significant Agriculture to prevent potential for land use conflict that would fetter non-sensitive use of that land, and the separation distance is no less than:*

- i. 40m from land zoned Rural Resource
 - ii. 80m from land zoned Significant Agriculture
- (f) is setback from land zoned Environmental Management to satisfy all of the following:
- (i) there is no significant impact from the development on environmental values;
 - (ii) the potential for the spread of weeds or soil pathogens onto the land zoned Environmental Management is minimised;
 - (iii) there is minimal potential for contaminated or sedimented water runoff impacting the land zoned Environmental Management;
 - (iv) there are no reasonable and practical alternatives to developing close to land zoned Environmental Management.

Planning Response

The proposal shows a building area for each lot of 900sqm. Each building area is not subject to any codes in the scheme, are level and are considered to have sufficient area to accommodate design for solar access, with minimum excavation required.

It is considered that any future development would be able to accommodate the 20m setback from boundaries as required by the current planning scheme, and future applications for development will be assessed against the relevant development standards at that time.

The setback between the building area and the Rural Resource Zone (RRZ) is located to provide for the minimum setback distance to the RRZ required by (e)(i) above. The RRZ commences approximately 10m west of the site boundary, providing for a total setback between the building area and the RRZ of approximately 44m.

It is considered that the performance criteria can be met.

8.6. Ways and Public Open Space

8.6.1. The Performance Criteria for clause 13.5.3 P2 requires that Public Open must be provided as land or cash in lieu, in accordance with the relevant Council policy.

8.6.2. A condition requiring payment of cash in lieu prior to issue of a sealed plan is included in the permit, in accordance with Council policy.

8.7. Services

8.7.1. The proposal is discretionary in relation to provision of wastewater and stormwater management.

- 8.7.2. Clause 13.5.4 P2 requires that each lot must be capable of accommodating an on-site wastewater treatment system adequate for the future use and development of the land
- 8.7.3. Clause 13.5.4 P3 requires that each lot must be capable of accommodating an on-site stormwater management system adequate for the likely future use and development of the land.
- 8.7.4. It is considered that the proposal can accommodate on-site stormwater and wastewater, given that each lot has an area of 5000sqm each.

9. Referrals

9.1 Council's Technical Officer

- 9.1.1 Council's Senior Technical Officer has reviewed the application against Code E5, E6 & E7 and his comments are incorporated into the body of the document.

9.2 TasWater

- 9.2.1 The proposal was referred to TasWater. That entity has provided a Submission to Planning Authority Notice (SPAN) dated 21 December 2018 with conditions. A copy of the SPAN is to be attached to any permit issued.

10. Concerns raised by representors

- 10.1 One representation was received during the public notification period. The following table briefly summarises the issues raised by the representor.

Representation 1	Brief Response
Opposes any variation of the 20m setback standard in the Rural Living Zone. The representor notes that the 30m x 30m building envelope is located only 10m from the boundary.	Refer to clause 8.5.4 for discussion. It should be noted that the building areas shown on the plan will not be required to be included as a restrictive covenant on any subdivision plan.

11. Conclusion

- 11.1. The proposed use and development of Subdivision (one (1) lot plus balance), satisfies the relevant provisions of the Brighton Interim Planning Scheme 2015, and as such is recommended for approval, subject to conditions.

RECOMMENDATION:

That Pursuant to the Brighton Interim Planning Scheme 2015, Council approve application SA 2018-42 for use and development of Subdivision (one (1) lot plus balance) at 2 Alec Campbell Drive, Brighton, for the reasons outlined in the officer's report and a permit containing the following conditions be issued:

General

- (1) The use or development must be carried out substantially in accordance with the application for planning approval, the endorsed drawings and with the conditions of this permit and must not be altered or extended without the further written approval of Council.
- (2) This permit shall not take effect and must not be acted on until 15 days after the date of receipt of this letter or the date of the last letter to any representor, whichever is later, in accordance with section 53 of the Land Use Planning and Approvals Act 1993.

Lot size

- (3) All lots must comply with the subdivision standards of the Brighton Interim Planning Scheme 2015

Public Open Space

- (4) In accordance with the provisions of Section 117 of the Local Government (Building and Miscellaneous Provisions) Act 1993, payment of a cash contribution for Public Open Space must be made to the Council prior to sealing the Final Plan of Survey. The cash contribution amount is to be equal to 5% of the value of the land being subdivided described as lot 2 in the plan of subdivision at the date of lodgement of the Final Plan of Survey.

The value is to be determined by a Land Valuer within the meaning of the Land Valuers Act 2001 at the developer's expense.

- (5) The cash-in-lieu of public open space must be in the form of a direct payment made before the sealing of the final plan of survey or, alternatively, in the form of a Bond or Bank guarantee to cover payment within ninety (90) days after demand, made after the final plan of survey has taken effect.

Easements

- (6) Easements must be created over all drains, pipelines, wayleaves and services in accordance with the requirements of the Council's Municipal Engineer. The cost of locating and creating the easements shall be at the subdivider's full cost.

Endorsements

- (7) The final plan of survey must be noted that Council cannot or will not provide a means of drainage to all lots shown on the plan of survey.

Final plan

- (8) A final approved plan of survey and schedule of easements as necessary, together with two (2) copies, must be submitted to Council for sealing for each stage. The final approved plan of survey must be substantially the same as the endorsed plan of subdivision and must be prepared in accordance with the requirements of the Recorder of Titles.
- (9) Prior to Council sealing the final plan of survey for each stage, security for an amount clearly in excess of the value of all outstanding works and maintenance required by this permit must be lodged with the Brighton Council. The security must be in accordance with section 86(3) of the Local Government (Building & Miscellaneous Provisions) Council 1993. The amount of the security shall be determined by the Council's Municipal Engineer in accordance with Council Policy 6.3 following approval of any engineering design drawings and shall not be less than \$5,000.
- (10) All conditions of this permit, including either the completion of all works and maintenance or payment of security in accordance with this permit, must be satisfied before the Council seals the final plan of survey for each stage. It is the subdivider's responsibility to notify Council in writing that the conditions of the permit have been satisfied.
- (11) The subdivider must pay any Titles Office lodgment fees direct to the Recorder of Titles.

Engineering

- (12) The subdivision must be carried out in accordance with the Tasmanian Subdivision Guidelines October 2013 (**attached**).

Water quality

- (13) Temporary run-off, erosion and sediment controls must be installed in accordance with the guidelines Soil and Water Management on Building and Construction Sites, by the Derwent Estuary Programme and NRM South, and must be maintained at full operational capacity to the satisfaction of Council's Municipal Engineer until the land is effectively rehabilitated and stabilised after completion of the development.

Property Services

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

- (15) Any existing services shared between lots are to be separated to the satisfaction of Council's Municipal Engineer.
- (16) Property services must be contained wholly within each lot served or an easement to the satisfaction of the Council's Municipal Engineer or responsible authority.

Telecommunications and electrical reticulation

- (17) Electrical and telecommunications services must be provided to each lot in accordance with the requirements of the responsible authority and to the satisfaction of Council's Municipal Engineer.
- (18) Prior to sealing the final plan of survey the developer must submit to Council:
 - (a) A "Provisioning of Telecommunications Infrastructure - Confirmation of final payment" or "Certificate of Practical Completion of Developer's Activities" from NBN Co.
 - (b) A Letter of Release from TasNetworks confirming that all conditions of the Agreement between the Owner and authority have been complied with and that future lot owners will not be liable for network extension or upgrade costs, other than individual property connections at the time each lot is further developed.

Vehicular Access

- (19) A sealed vehicle access must be provided from the road carriageway to service each lot.
- (20) Vehicular accesses must be located and constructed in accordance with the standards shown on 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 Requirements prepared by the IPWE Aust. (Tasmania Division), or as otherwise required by this permit, and to the satisfaction of Council's Municipal Engineer.
- (21) The culvert pipe for the proposed vehicular access off Cartwright Street must be a minimum size of DN600.

Access to Public Road

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

Tas Water

- (22) The development must meet all required Conditions of approval specified by Tas Water Submission to Planning Authority Notice, TWDA 2018/02025-BTN, dated 21 December 2018.

Construction Amenity

- (23) The development must only be carried out between the following hours unless otherwise approved by the Council's General Manager
- Monday to Friday 7:00 AM to 6:00 PM
 - Saturday 8:00 AM to 6:00 PM
 - Sunday and State-wide public holidays 10:00AM to 6:00 PM
- (24) All subdivision works associated with the development of the land must be carried out in such a manner so as not to unreasonably cause injury to, or unreasonably 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 from activities or equipment related to the use or development, including noise and vibration, which can be detected by a person at the boundary with another property; and/or
 - (b) transport of materials, goods or commodities to or from the land; and/or
 - (c) appearance of any building, works or materials.
- (25) Any accumulation of vegetation, building debris or other unwanted material must be disposed of by removal from the land in an approved manner. No burning of such materials on-site will be permitted unless approved in writing by the Council's General Manager.
- (26) 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 subdivision during the construction period.

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 permit does not take effect until all other approvals required for the use or development to which the permit relates have been granted.

DECISION:

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

CARRIED

VOTING RECORD

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

4.3 RZ2018/03 – SECTION 39 REPORT - AMENDMENT TO BRIGHTON INTERIM PLANNING SCHEME 2015 – REQUEST TO REZONE 13 GAGE ROAD, GAGEBROOK FROM GENERAL RESIDENTIAL ZONE TO LOCAL BUSINESS ZONE:

File Reference:	RZ 2018/03
Author:	Jo Blackwell
Applicant:	Brighton Council
Owner:	Affordable Community Housing Alliance Tasmania Limited
Location:	13 Gage Road, Gagebrook
Zoning:	<i>General Residential Zone</i>
Planning Instrument:	Brighton Interim Planning Scheme 2015
Representations:	Nil

1. Executive Summary

- 1.1. The report considers the rezoning of 13 Gage Road, Gagebrook from General Residential Zone to Local Business Zone.
- 1.2. The request to initiate the rezoning was approved by Council's Planning Authority at its meeting on 20th November 2018.
- 1.3. The draft amendment was advertised in the *Mercury* newspaper on 28th November 2018 to 9th January 2019.
- 1.4. A notice of draft amendment was forwarded to the Tasmanian Planning Commission on 3rd December 2018.
- 1.5. No representations to the draft amendment were received during the public notification period.

1.6. The proposal is a recommendation to:

- Advise the Tasmanian Planning Commission that no representations were received following exhibition of draft amendment RZ 2018/03 to the Brighton Interim Planning Scheme 2015.
- Advise the Tasmanian Planning Commission that no modification to the draft amendment RZ 2018/03 is necessary.

2. Background:

- 2.1. Council at its meeting of 20th November 2018 resolved to amend the *Brighton Interim Planning Scheme 2015* by rezoning 13 Gage Road, Gagebrook from General Residential Zone to Local Business Zone.
- 2.2. The purpose of the proposed rezoning is to provide for additional services to support increased densities in the Gagebrook/Old Beach area, due to a significant increase in housing stock.
- 2.3. The certified draft amendment was publicly exhibited. There were no representations received during the public exhibition period. The application was referred to TasWater, who does not object to the application. (See Annexure A).



Figure 1: Aerial image of the proposed lot.

3. Consultation

- 3.1. The Draft Amendment was exhibited in accordance with Section 28 of the *Land Use Planning and Approvals Act 1993 (the Act)* and Section 6 of the *Land Use Planning and Approvals Act Regulations 2004* from 28th November 2018 – 9 January 2019 inclusive.

- 3.2. No representations were received to the application. A submission was received from TasWater stating that that entity does not object to the proposal and providing advice as to the future servicing of the lot.

4. Legislation

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

5. Assessment

- 5.1. No representations were received to the draft amendment and the submission from TasWater does not warrant modification to the permit.

OPTIONS:

1. To adopt the recommendation; or
2. To adopt an alternative recommendation satisfying the provisions of section 39 of the Act, with a full statement of reasons as determined by Council.

RECOMMENDATION:

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

- A. Advise the Tasmanian Planning Commission that no representations were received following exhibition of draft amendment RZ 2018/03 to the Brighton Interim Planning Scheme 2015; and
- B. Advise the Tasmanian Planning Commission that no modification to amendment RZ 2018/03 is considered necessary to the initial s.35 report.

DECISION:

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

CARRIED

VOTING RECORD

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

Cr Geard, Cr Gray and Cr Whelan left the meet at 5.45pm.

The Deputy Chairperson, Cr Owen took the Chair.

4.4 RZ2018/04 – SECTION 39 REPORT - AMENDMENT TO BRIGHTON INTERIM PLANNING SCHEME 2015 – REMOVAL OF MAPPED ATTENUATION AREA SURROUNDING QUARRIES AT 252 ELDESLIE RD BRIGHTON & 157 WILLIAM ST BRIGHTON:

FILE REFERENCE:	RZ 2018/04
Author:	Acting Manager Development Services (D Allingham)
Applicant:	Brighton Council
Location:	157 William Street, Brighton and land within attenuation area relating to quarry at that address 252 Elderslie Rd and land within attenuation area relating to quarry at that address
Proposal:	Removal of Mapped Attenuation Area(s)
Zoning:	<i>Utilities Zone, Rural Resource Zone, Environmental Management Zone, Significant Agriculture Zone</i>
Planning Instrument:	Brighton Interim Planning Scheme 2015
Representations:	Nil

1. Executive Summary

- 1.1 The report considers an amendment of the *Brighton Interim Planning Scheme 2015* (BIPS 2015) for the purposes of removing the mapped Attenuation Areas that surround two different quarries at 157 William St and 252 Elderslie Rd, Brighton.
- 1.2 The request to initiate the rezoning was approved by Council's Planning Authority at its meeting on 20th November 2018.
- 1.3 A notice of draft amendment was forwarded to the Tasmanian Planning Commission on 3 December 2018.
- 1.4 The draft amendment was advertised in the Mercury newspaper on 28 November and 1 December 2018, and placed on public exhibition between 28 November 2018 and 9 January 2019.
- 1.5 No representations to the draft amendment were received during the public notification period.
- 1.6 The proposal is a recommendation to:

1.6.1 Advise the Tasmanian Planning Commission that no representations were received following exhibition of draft amendment RZ2018/04 to BIPS 2015

1.6.2 Advise the Tasmanian Planning Commission that no modifications to the draft amendment RZ 2018/04 is necessary.

2. Background:

- 2.1 Council at its meeting of 20th September 2018 resolved to amend the *BIPS 2015* by removing the mapped Attenuation Areas that surround two different quarries at 157 William St and 252 Elderslie Rd, Brighton
- 2.2 The purpose of the draft amendment is:
 - a) Remove the mapped Attenuation Areas so that the residential prohibition under clause E9.2.3 of BIPS 2015 no longer applies. This will provide greater consistency between BIPS 2015 and other interim planning schemes; and
 - b) To reduce the buffer around 252 Elderslie Road from approximately 900m to 300m to be consistent with the current activity (i.e. no blasting of hard rock).
- 2.3 The certified draft amendment was publicly exhibited. There were no representations received during the public exhibition period. The application was referred to TasWater, who does not object to the application. (See Attachment A).
- 2.4 Council are advised that an Environment Protection Notice (EPN) (No. 1701 P/M) was issued to the quarry owner on 6 December 2018. The EPN prohibits blasting, crushing, grinding or milling at the quarry and effectively reduces the Attenuation distance to 300m under the Attenuation Code in BIPS 2015.

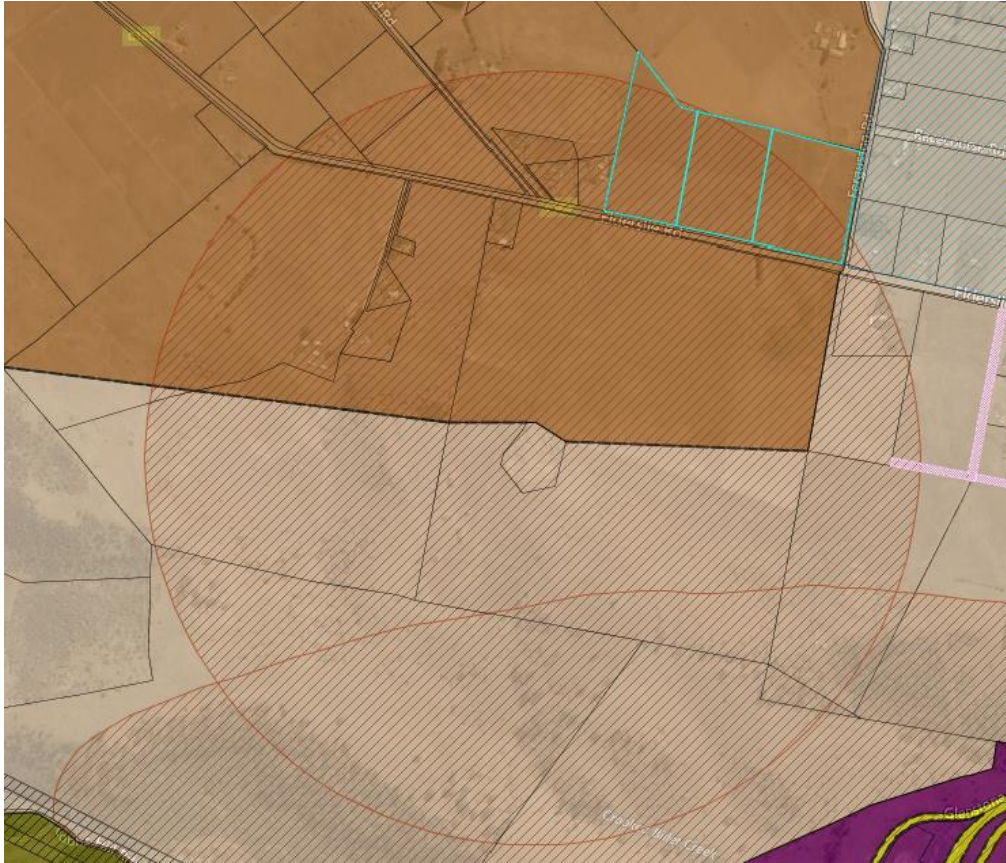


Figure 1. Zoning and aerial photography of 252 Elderslie Road and the surrounding area. Light brown denotes the Rural Resource Zone, and brown denotes Significant Agriculture Zone. The red hatched circle denotes the Attenuation Area for the quarry.

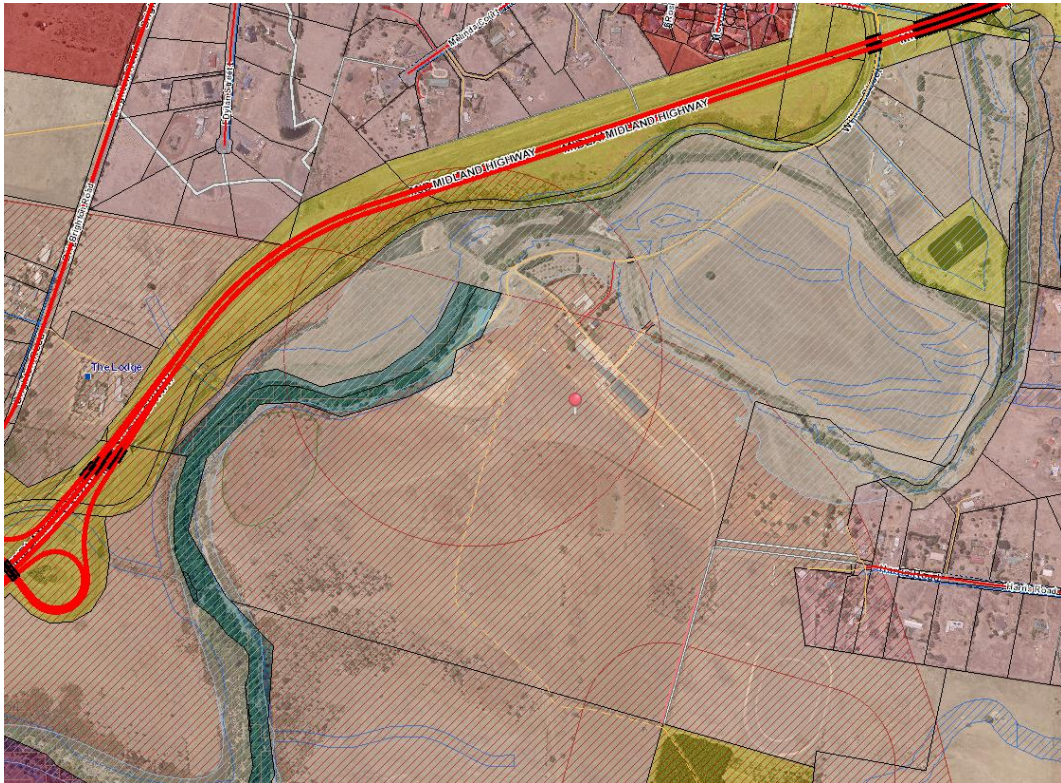


Figure 2 – Zoning and Aerial photography of 157 William St and the surrounding area. Light brown denotes the Rural Resource Zone, pink denotes Rural Living Zone and yellow denotes Utilities Zone. The red hatched circle denotes the Attenuation Area for the quarry.

3. Consultation

- 3.1 The Draft Amendment was exhibited in accordance with Section 38 of the *Land Use Planning and Approvals Act 1993* (the Act) and Section 6 of the *Land Use Planning and Approvals Act Regulations 2004* from 28 November 2018 and 9 January 2019.
- 3.2 No representations were received to the application. A submission was received from TasWater stating that that entity does not object to the proposal and does not wish to have any involvement in subsequent hearings.

4. Legislation

- 4.1 Section 39(2) of the Act provides that a Planning Authority (Council) must, within 35 days after the public notification period has closed, forward to the Tasmanian Planning Commission a report comprising:
 - (a) a copy of each representation received by the authority in relation to the draft amendment or, where it has received no such representation, a statement to that effect; and
 - (b) a statement of its opinion as to the merit of each such representation, including, in particular, its views as to–
 - (i) the need for modification of the draft amendment in the light of that representation; and

(ii) *the impact of that representation on the draft amendment as a whole; and*

(c) *such recommendations in relation to the draft amendment as the authority considers necessary.*

4.2 Subsection (b) relates specifically to any representation received.

4.3 Subsection (c) allows the Planning Authority (Council) to provide any additional information or recommendation in relation to the draft amendment as certified or recommend to the Tasmanian Planning Commission that a modification should be made regardless of any representation.

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

5. Assessment

5.1 No representations were received to the draft amendment and the submission from TasWater does not warrant modification to the permit.

OPTIONS:

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

RECOMMENDATION:

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

- A. Advise the Tasmanian Planning Commission that no representations were received following exhibition of draft amendment RZ 2018/04 to the Brighton Interim Planning Scheme 2015; and
- B. Advise the Tasmanian Planning Commission that no modification to amendment RZ 2018/04 is considered necessary to the initial s.35 report.

DECISION:

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

CARRIED

VOTING RECORD

In favour

Against

Cr Foster
Cr Garlick
Cr Jeffries
Cr Murtagh
Cr Owen

Cr Geard, Cr Gray and Cr Whelan returned to the meeting at 5.50pm.

Cr Gray resumed as Chairperson.

The meeting closed at 5.50pm.

Confirmed:

(Mayor)

Date:

19th February 2019