



Brighton Council

MINUTES OF THE **PLANNING AUTHORITY MEETING**
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
OLD BEACH AT 5.30PM ON TUESDAY,
14TH AUGUST, 2018

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

IN ATTENDANCE: Mr D Allingham (Senior Planner) and Jo Blackwell
(Planning Officer).

1. APOLOGIES:

An apology has been received from Cr T Foster (Mayor) as he is overseas.

Cr Geard moved, Cr Owen seconded that Cr Foster and Cr Jeffries be granted leave of absence.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Higgins	
Cr Owen	
Cr Williams	

2. QUESTION TIME & DEPUTATIONS:

- Cr Owen asked a question in relation to Clause 2.4 of Officer reports.

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*.

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 - SA 2017 / 00035 - 6 MUNDAY STREET, BRIGHTON - SUBDIVISION (1 LOT PLUS BALANCE):

Type of Report	Planning Authority - For Decision
Application No:	SA 2017 / 00035
Address:	6 Munday Street, Brighton
Applicant:	Syatt Corp Pty Ltd
Proposal:	Subdivision (one (1) lot plus balance)
Zone:	General Residential Zone
Representations:	One (1)
Discretions:	1. Subdivision 2. General Residential Subdivision Standards 3. Parking and Access Code
Author:	Jo Blackwell (Planning Officer)

1. Executive Summary

- 1.1. Planning approval is sought for a one lot subdivision, plus balance at 6 Munday Street, Brighton.
- 1.2. The application is discretionary due to the application being for subdivision and development standards applicable to the General Residential Zone and Parking and Access Code.
- 1.3. One (1) representation was received. It is considered that the issue raised in the representation does not warrant modification of the application.
- 1.4. The proposal is recommended for approval subject to conditions.
- 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 a representation 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 SA 2017/00035.
- 2.2. This determination must be made no later than 21 August 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 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 Nil

5. Site Detail

- 5.1. 6 Munday Street is a residential allotment developed by a single dwelling and associated outbuildings as shown in figure 1. The site has a total land area of 2350sqm, with a frontage to Munday Street of 24.38m, and slopes gently to the north east. Locality is shown in Figure 2.
- 5.2. The land and the surrounding development is zoned General Residential. The site is not affected by any easements or planning scheme overlays, as shown in Figure 3.



Figure 1. Aerial image: 6 Munday Street, Brighton (source: Listmap)

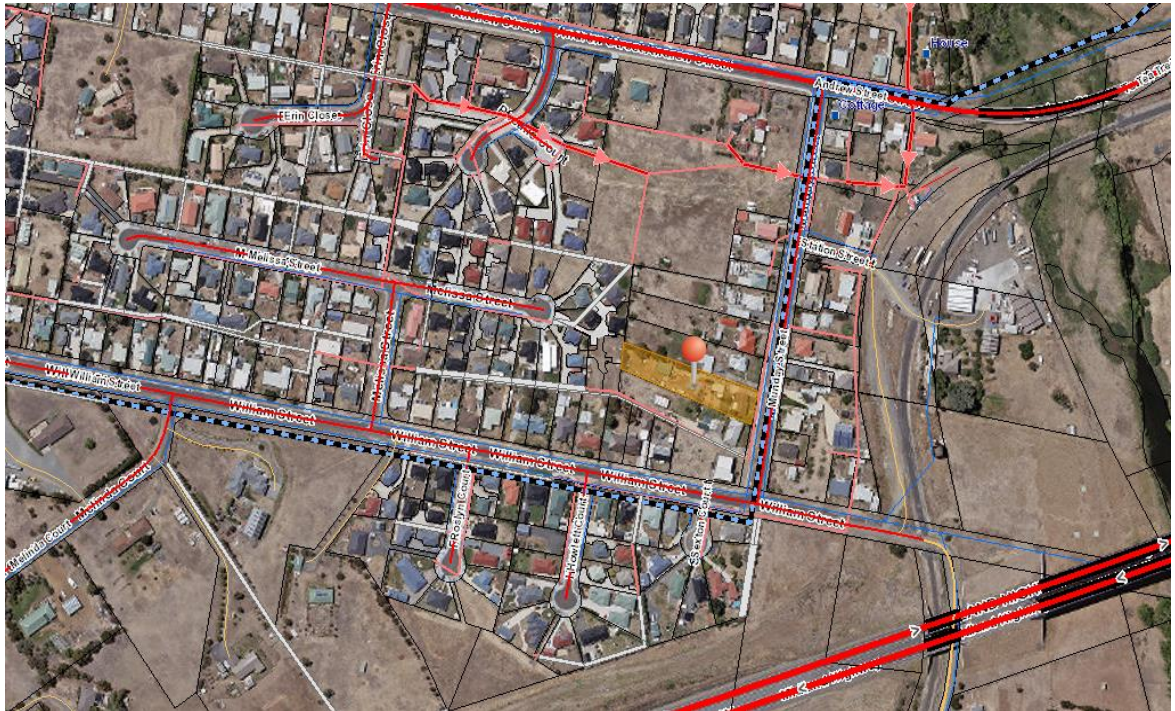


Figure 2: Locality (Source: Listmap)

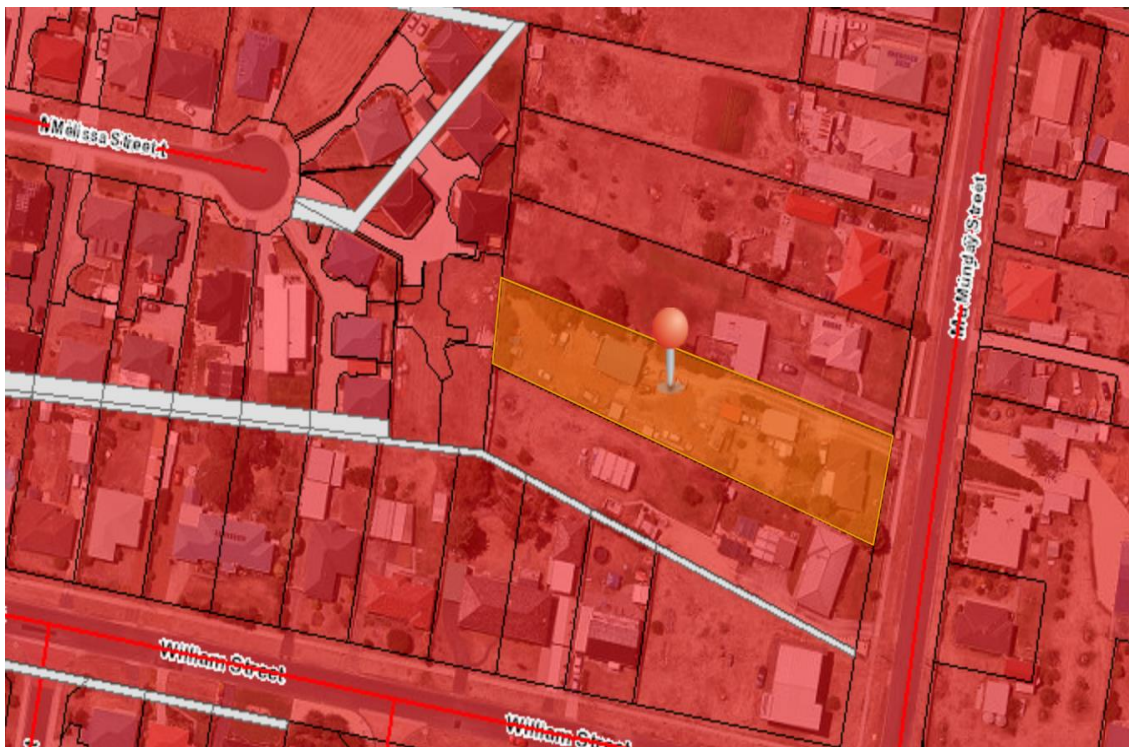


Figure 3. Zoning: General Residential (Red)

Proposal

5.3. To subdivide 6 Munday Street, Brighton into two lots:

- Lot 1 - 430sqm, with a 17.83m frontage containing the single dwelling.

- Balance lot – 1920sqm internal lot with 6.4m frontage and access strip on southern side.

6. Assessment

- 6.1. The Brighton Interim Planning Scheme 2015 is a performance-based planning scheme.
- 6.2. 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.
- 6.3. 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.

7. Assessment against planning scheme provisions

- 7.1. The following provisions are relevant to the application:
 - Special Provisions – Subdivision (C9.7)
 - General Residential Zone (D10.6)
 - Parking and Access Code (E6.0)
 - Stormwater Management Code (E7.0)
- 7.2. The application satisfies the following applicable Acceptable Solutions:
 - 7.2.1 10.6 - General Residential Zone subdivision standards:

Clause	Acceptable Solution
10.6.1 A1 Lot size	The size of each lot must comply with the minimum and maximum lot sizes specified in Table 10.1, except if for public open space, a riparian or littoral reserve or utilities.

	Extract from Table 10.1 Lot Size Requirements:		
	Lots adjoining or opposite public open space , or Lots within 400m of a public transport corridor, or Lots within 200m walking distance of a business zone, local shop or school.	400m²	600m²
10.6.1 A2	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) the long axis of the building area faces north or within 20 degrees west or 30 degrees east of north; (f) is 10m x 15m in size.		
10.6.1 A5 No. of Lots	A5 Subdivision for no more than 3 lots		
10.6.2 Roads	A1 The subdivision includes no new road.		
10.6.4 Services	A1 Each lot must be connected to a reticulated potable water supply. A2 Each lot must be connected to a reticulated sewerage system. A3 Each lot must be connected to a stormwater system able to service the building area by gravity.		

	A4 The subdivision includes no new road.
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7.3. The following discretions are invoked:

Discretion		Acceptable Solution	Proposed
1	Subdivision	None	One lot plus balance
2	Lot Frontage	12-15m	17.83m (Lot 1)
3	Internal Lot	No Internal Lot	One (1) internal lot
4	Ways and Open Space	No Acceptable Solution	No ways proposed.

7.4 Discretion 1 – Subdivision

7.4.1 The application is for excision of the existing dwelling from the balance lot, resulting in Lot 1 having an area of 430sqm and the balance lot, 1920sqm. The proposal is discretionary pursuant to clause 9.7.2 of the Planning Scheme. Under clause 8.10.2, in determining an application for discretionary use, the planning authority must have regard to the Zone Purpose.

7.4.2 The Zone Purpose for the General Residential Zone is:

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.

It is considered that the proposal does not contradict the zone purpose.

7.5 Discretion 2 – Lot Frontage

7.5.1 The acceptable solution for a frontage pertaining to a lot between 400 and 600m located on a public transport route, is between 12m and 15m. The applicant proposes a frontage of 17.83m to Lot 1. The performance criteria states:

P3. The frontage of each lot must satisfy all of the following:

(a) provides opportunity for practical and safe vehicular and pedestrian access;

- (b) provides opportunity for passive surveillance between residential development on the lot and the public road;
- (c) is no less than 6m.

Planning Response

The frontage exceeds the acceptable length, due to the orientation of the dwelling on the lot, with the long axis running north/south. The proposed frontage will allow passive surveillance to be maintained, whilst providing for practical and safe vehicular access to the balance lot.

7.6 Discretion 3 – Internal Lot

- 7.6.1 The application relies on performance criteria as the proposal seeks to create an internal lot. The performance criteria require:

P4. An internal lot must satisfy all of the following:

- (a) the lot gains access from a road existing prior to the planning scheme coming into effect, unless site constraints make an internal lot configuration the only reasonable option to efficiently utilise land;

Planning Response:

Munday Street is a well established area, which was created well before the commencement of the Brighton Interim Planning Scheme 2015

- (b) it is not reasonably possible to provide a new road to create a standard frontage lot;

Planning Response:

There is insufficient width between the existing dwelling and the boundary to create a new road.

- (c) the lot constitutes the only reasonable way to subdivide the rear of an existing lot;

Planning Response

There is no other way to subdivide the rear of the lot. The lot is bounded by residential development on three sides

- (d) the lot will contribute to the more efficient utilisation of residential land and infrastructure;

Planning Response

Subdivision of the lot will allow for infill development to occur, which provide for a more effective utilisation of services on the site.

- (e) the amenity of neighbouring land is unlikely to be unreasonably affected by subsequent development and use;

Planning Response

Any future development will be subject to development assessment and approval, in accordance with the applicable planning scheme at the time. However, it is considered that the orientation and the land area of the balance lot is sufficient to allow development to be undertaken without affecting neighbouring amenity.

- (f) the lot has access to a road via an access strip, which is part of the lot, or a right-of-way, with a width of no less than 3.6m;

Planning Proposal

The proposal includes a 3.6m wide access strip.

- (g) passing bays are provided at appropriate distances to service the likely future use of the lot;

Planning Response

A 6m long, 5.5m wide passing bay at the kerb, meets the acceptable solution in accordance with clause E6.7.3 A1 of the Parking and Access Code.

- (h) the access strip is adjacent to or combined with no more than three other internal lot access strips and it is not appropriate to provide access via a public road;

Planning Response

Only one access strip is proposed.

- (i) a sealed driveway is provided on the access strip prior to the sealing of the final plan.

Planning Response

A condition can be included in any permit to ensure that the access strip is sealed prior to sealing of the final plan.

- (j) the lot addresses and provides for passive surveillance of public open space and public rights of way if it fronts such public spaces.

Planning Response

Not applicable. The lot does not front any public spaces.

7.7 – Discretion 4 – Ways and Public Open Spaces (D10.6.3 A1)

- 7.7.1 There is not acceptable solution in relation to Ways and Public Open Space. The performance criteria require:

P1. The arrangement of ways and public open space within a subdivision must satisfy all of the following:

- (a) connections with any adjoining ways are provided through the provision of ways to the common boundary, as appropriate;
- (b) connections with any neighbouring land with subdivision potential is provided through the provision of ways to the common boundary, as appropriate;
- (c) connections with the neighbourhood road network are provided through the provision of ways to those roads, as appropriate;
- (d) convenient access to local shops, community facilities, public open space and public transport routes is provided;
- (e) new ways are designed so that adequate passive surveillance will be provided from development on neighbouring land and public roads as appropriate;
- (f) provides for a legible movement network;
- (g) the route of new ways has regard to any pedestrian & cycle way or public open space plan adopted by the Planning Authority;
- (h) Public Open Space must be provided as land or cash in lieu, in accordance with the relevant Council policy.
- (i) new ways or extensions to existing ways must be designed to minimise opportunities for entrapment or other criminal behaviour including, but not limited to, having regard to the following:
 - (i) the width of the way;
 - (ii) the length of the way;
 - (iii) landscaping within the way;
 - (iv) lighting;
 - (v) provision of opportunities for 'loitering';
 - (vi) the shape of the way (avoiding bends, corners or other opportunities for concealment).

Planning Response

There are no ways proposed as part of the application. Accordingly, sub-clauses (a) – (g) and (i) do not apply. With respect to (h), a condition is required, pursuant to Council policy, with regard to provision of Public Open Space as cash in lieu.

8. Concerns raised by representors

8.1. The following table summarises the issues raised by the representors.

Issue	Response
The owner of 6 Munday Street has not agreed to repair an existing boundary fence.	Erection and maintenance of boundary fences are governed by the Boundary Fences Act 1908. Any dispute between property owners is a civil matter between property owners, and not a matter for Council.

9. Discussion

9.1. Referrals

TasWater

TasWater's *Submission to Planning Authority Notice*, Reference: TWDA 2017/01859-BTN, dated 1st December 2017, includes conditions on the proposed development.

Council's Technical Officer

Separate accesses have been proposed to each of the 2 lots. The existing single width access to lot 1 will need to be upgraded and sealed to meet the relevant urban access standard. A new access is required for the new internal lot and is to be sealed for the full length of the access strip. The new lot is likely to have multiple dwellings and is to have a passing bay at the kerb.

Lot 1 has an existing stormwater connection. There is an existing 225mm council stormwater pipe inside the new internal lot. A new stormwater connection will be made to this pipe. Any services under the new driveway will need to have trafficable lids fitted.

10. Conclusion

- 10.1. The proposal is to excise the existing house from the balance of the lot, allowing future residential development to be undertaken in the future.
- 10.2. The concern raised by the representor is not a planning consideration, and does not cause the proposal to be varied in any manner.
- 10.3. The proposed use and development of a one (1) lot plus balance subdivision satisfies the relevant provisions of the Brighton Interim Planning Scheme 2015, and as such is recommended for conditional approval.

RECOMMENDATION:

That Pursuant to the Brighton Interim Planning Scheme 2015, Council approve application SA 2017 / 00035 for one lot plus balance subdivision in the General Residential Zone at 6 Munday Street, Brighton, for the reasons outlined in the officer's report, and a permit containing the following conditions be issued:

General

1. The subdivision layout 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 permit 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.

Public open space

3. 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 the Balance Lot in the plan of subdivision at the date of lodgement of the Final Plan of Survey.
4. 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.

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.

Final plan

7. Prior to sealing of the Final Plan, the outbuilding located adjacent to the proposed new boundary is to be demolished.
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. 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, 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 to 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. 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**).
13. Engineering design drawings, to the satisfaction of the Council's Municipal Engineer, must be submitted to and approved by Council before any works associated with development of the land commence.
14. Engineering design drawings are to be prepared by a qualified and experienced civil engineer, or other person approved by Council's Municipal Engineer, in accordance with the Tasmanian Subdivision Guidelines October 2013, and must show –
 - a) all existing and proposed services required by this permit;
 - b) all existing and proposed roadwork required by this permit;
 - c) measures to be taken to provide sight distance in accordance with the relevant standards of the planning scheme;
 - d) measures to be taken to limit or control erosion and sedimentation;
 - e) any other work required by this permit.
15. Approved engineering design drawings will remain valid for a period of 2 years from the date of approval of the engineering drawings.

Water quality

16. A soil and water management plan (here referred to as a '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 Municipal Engineer before development of the land commences.

17. Temporary run-off, erosion and sediment controls must be installed in accordance with the approved SWMP 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.
18. The topsoil on any areas required to be disturbed must be stripped and stockpiled in an approved location shown on the detailed soil and water management plan for reuse in the rehabilitation of the site. Topsoil must not be removed from the site until the completion of all works unless approved otherwise by the Council's Municipal Engineer.
19. All disturbed surfaces on the land, except those set aside for roadways, footways and driveways, must be covered with top soil and, where appropriate, re-vegetated and stabilised to the satisfaction of the Council's Municipal Engineer.

Property Services

20. The subdivider must pay the cost of any alterations and/or reinstatement to existing services, Council infrastructure or private property incurred because of the proposed subdivision works. Any work required is to be specified or undertaken by the authority concerned.
21. Any existing services shared between lots are to be separated to the satisfaction of Council's Municipal Engineer.
22. 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.

Stormwater

23. The developer must provide a new stormwater property connection to service the Balance lot to the satisfaction of Council's Municipal Engineer.
24. Any existing redundant stormwater connection is to be capped and sealed to the satisfaction of Council's Municipal Engineer.

Telecommunications and electrical reticulation

25. 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.
- (a) Prior to sealing the final plan of survey the developer must submit to Council: A "Provisioning of Telecommunications Infrastructure – Confirmation of final payment" or "Certificate of Practical Completion of Developer's Activities" from NBN Co. Go to, <https://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/applications.html>

- (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

- 26. A sealed vehicle access must be provided from the road carriageway to service each lot.
- 27. Vehicular accesses must be constructed in accordance with the standards shown on standard drawing TSD-R09-v1 Urban Roads Driveways prepared by the IPWE Aust. (Tasmania Division), or as otherwise required by this permit, and the satisfaction of Council's Municipal Engineer.
- 28. The vehicular access to the internal lot must be constructed for the entire length of the access strip and, unless approved otherwise by Council's Municipal Engineer, be:
 - (a) Constructed with a durable all weather pavement
 - (b) Drained to an approved stormwater system
 - (c) Surfaced with spray seal, asphalt or concrete.
 - (d) A min trafficable width of 4.0m with a minimum sealed width of 3.0m

Demolition

- 29. Prior to commencement of works, a Demolition Management Plan in accordance with the "Demolition Work - Code of Practice" (Safe Work Australia, 2016) must be submitted for approval by the Manager Development Services. Once approved, the Demolition Management Plan will form part of this permit.
- 30. All demolition works must be undertaken in accordance with the Demolition Management Plan.
- 31. The developer must pay the cost of any damage to council infrastructure incurred as a result of the development, at the discretion of Council's Municipal Engineer.

TasWater

- 32. The development must meet all required Conditions of approval specified by TasWater Submission to Planning Authority Notice, TWDA 2018/00443-BTN, dated 26/04/2018.

Construction Amenity

- 33. 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 10:00 AM to 6:00 PM

34. 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.

35. 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.

36. 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.
- C. The owner is advised that an engineering plan assessment and inspection fee of 1% of the value of the approved engineering works, or a minimum of \$286.00, must be paid to Council in accordance with Council's fee schedule.
- D. This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.

DECISION:

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

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Higgins	
Cr Owen	
Cr Williams	

4.2 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 – DA 2017/298 – 13 JYE COURT, OLD BEACH - MULTIPLE DWELLINGS (ONE (1) ADDITIONAL UNIT):

Type of Report	Planning Authority – For Decision
Author	Jo Blackwell
Application No:	DA 2018/108
Address:	13 Jye Court, Old Beach
Applicant:	Bryden Homes Pty Ltd
Proposal:	Multiple Dwelling Units (1 additional unit)
Zone:	General Residential
Representations:	One (1)
	Discretions:
	1. Setback (Building Envelope)
	2. Parking and Access Code (Surfacing)

1. Executive Summary

- 1.1. Approval is sought in relation to the use and development of the site to allow for the construction of one additional unit. The site is currently used for a single dwelling.
- 1.2. The application is discretionary arising from reliance on performance criteria in relation to setback (building envelope) and the Parking and Access Code.
- 1.3. Two (2) representations were received raising concerns in relation to privacy, property values, density; overshadowing; setback; parking and access; and stormwater management. 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. Conditions are also recommended in relation to residential use of the site, and demolition of the temporary carport.
- 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 2018/108.
- 2.2. This determination must be made no later than 21st August 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 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. An application for a single dwelling was approved in 2014 (DA2014/76) as “no permit required”, with building completed in early 2015.

5. Site Detail

- 5.1. The subject site is an internal lot on the northern side of Jye Court, Old Beach. It has an area of 1507sqm, and slopes down to the north western corner of the site, with a gradient of approximately 1:10.
- 5.2. A single dwelling has been constructed in the western half of the site. There is no significant vegetation established on the site (refer figure 1).
- 5.3. The property 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: 13 Jye Court, Old Beach (Source: Listmap)



Figure 2: Locality Map (Source:Google Earth). Lots developed by strata title development indicated by Blue and Red Star. Subject site circled in yellow

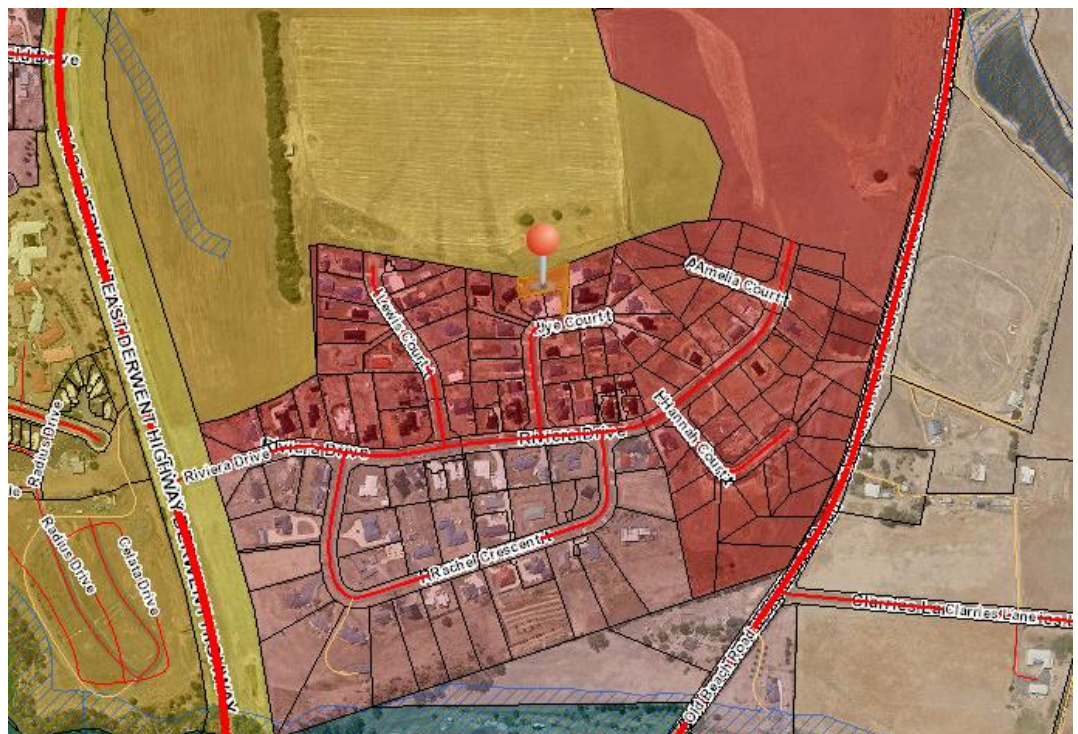


Figure 3: Zoning Map

Red = General Residential; Pink = Rural Living; Yellow = Particular Purpose Zone/Utilities (East Derwent Highway)

6. Proposal

- 6.1 The proposal is for an additional dwelling, therefore changing the residential use from one of a single dwelling to multiple dwellings.
- 6.2 The additional dwelling is a single storey three bedroom dwelling located to the east of the existing dwelling. Two dedicated parking spaces are provided to each of the dwellings and one visitor parking space.
- 6.3 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 proposal is considered to satisfy the acceptable solutions for Development Standards for Residential Buildings and Works in the General Residential zone as follows:

Clause	Acceptable Solution
10.4.1 Density	A1 Multiple dwellings must have a site area per dwelling of not less than: (a) 325m ² ; or

	(b) if within a density area specified in Table 10.4.1 below and shown on the planning scheme maps, that specified for the density area.
10.4.2 Setbacks	A1
A1 Front Setback	<p>Unless within a building area, a dwelling, excluding protrusions (such as eaves, steps, porches, and awnings) that extend not more than 0.6 m into the frontage setback, must have a setback from a frontage that is:</p> <ul style="list-style-type: none"> (a) if the frontage is a primary frontage, at least 4.5 m, or, if the setback from the primary frontage is less than 4.5 m, not less than the setback, from the primary frontage, of any existing dwelling on the site; or (b) if the frontage is not a primary frontage, at least 3 m, or, if the setback from the frontage is less than 3 m, not less than the setback, from a frontage that is not a primary frontage, of any existing dwelling on the site; or (c) if for a vacant site with existing dwellings on adjoining sites on the same street, not more than the greater, or less than the lesser, setback for the equivalent frontage of the dwellings on the adjoining sites on the same street; or (d) if the development is on land that abuts a road specified in Table 10.4.2, at least that specified for the road. <p>A garage or carport must have a setback from a primary frontage of at least:</p> <ul style="list-style-type: none"> (a) 5.5 m, or alternatively 1 m behind the façade of the dwelling; or (b) the same as the dwelling façade, if a portion of the dwelling gross floor
A2 Garage or Carport	

	<p>area is located above the garage or carport; or</p> <p>(c) 1 m, if the natural ground level slopes up or down at a gradient steeper than 1 in 5 for a distance of 10 m from the frontage.</p>
<p>10.4.3 Site Coverage and Private Open Space for all Dwellings</p>	<p>A1 Dwellings must have:</p> <p>(a) a site coverage of not more than 50% (excluding eaves up to 0.6m); and</p> <p>(b) for multiple dwellings, a total area of private open space of not less than 60m² associated with each dwelling, unless the dwelling has a finished floor level that is entirely more than 1.8m above the finished ground level (excluding a garage, carport or entry foyer); and</p> <p>(c) a site area of which at least 25% of the site area is free from impervious surfaces.</p> <p>A2 A dwelling must have an area of private open space that:</p> <p>(a) is in one location and is at least:</p> <p>(i) 24 m²; or</p> <p>(ii) 12 m², if the dwelling is a multiple dwelling with a finished floor level that is entirely more than 1.8 m above the finished ground level (excluding a garage, carport or entry foyer); and</p> <p>(b) has a minimum horizontal dimension of:</p> <p>(i) 4 m; or</p> <p>(ii) 2 m, if the dwelling is a multiple dwelling with a finished floor level that is entirely more than 1.8 m above the</p>

	<p>finished ground level (excluding a garage, carport or entry foyer); and</p> <p>(c) is directly accessible from, and adjacent to, a habitable room (other than a bedroom); and</p> <p>(d) is not located to the south, south-east or south-west of the dwelling, unless the area receives at least 3 hours of sunlight to 50% of the area between 9.00am and 3.00pm on the 21st June; and</p> <p>(e) is located between the dwelling and the frontage, only if the frontage is orientated between 30 degrees west of north and 30 degrees east of north, excluding any dwelling located behind another on the same site; and</p> <p>(f) has a gradient not steeper than 1 in 10; and</p> <p>(g) is not used for vehicle access or parking.</p>
<p>10.4.4</p> <p>Sunlight and Overshadowing for all Dwellings</p>	<p>A1 A dwelling must have at least one habitable room (other than a bedroom) in which there is a window that faces between 30 degrees west of north and 30 degrees east of north (see Diagram 10.4.4A).</p> <p>A2 A multiple dwelling that is to the north of a window of a habitable room (other than a bedroom) of another dwelling on the same site, which window faces between 30 degrees west of north and 30 degrees east of north (see Diagram 10.4.4A), must be in accordance with (a) or (b), unless excluded by (c):</p> <p>(a) The multiple dwelling is contained within a line projecting (see Diagram 10.4.4B):</p> <p>(i) at a distance of 3 m from the window; and</p>

- (ii) vertically to a height of 3 m above natural ground level and then at an angle of 45 degrees from the horizontal.

- (b) The multiple dwelling does not cause the habitable room to receive less than 3 hours of sunlight between 9.00 am and 3.00 pm on 21st June.

- (c) That part, of a multiple dwelling, consisting of:

- (i) an outbuilding with a building height no more than 2.4 m; or

- (ii) protrusions (such as eaves, steps, and awnings) that extend no more than 0.6 m horizontally from the multiple dwelling.

A3 A multiple dwelling, that is to the north of the private open space, of another dwelling on the same site, required in accordance with A2 or P2 of subclause 10.4.3, must be in accordance with (a) or (b), unless excluded by (c):

- (a) The multiple dwelling is contained within a line projecting (see Diagram 10.4.4C):

- (i) at a distance of 3 m from the northern edge of the private open space; and

- (ii) vertically to a height of 3 m above natural ground level and then at an angle of 45 degrees from the horizontal.

- (b) The multiple dwelling does not cause 50% of the private open space to receive less than 3 hours of sunlight between 9.00 am and 3.00 pm on 21st June.

	<p>(c) That part, of a multiple dwelling, consisting of:</p> <p>(i) an outbuilding with a building height no more than 2.4 m; or</p> <p>(ii) protrusions (such as eaves, steps, and awnings) that extend no more than 0.6 m horizontally from the multiple dwelling.</p>
10.4.5 Width of openings for garages and carports	<p>A1 A garage or carport within 12 m of a primary frontage (whether the garage or carport is free-standing or part of the dwelling) must have a total width of openings facing the primary frontage of not more than 6 m or half the width of the frontage (whichever is the lesser).</p>
10.4.6 Privacy for all dwellings	<p>A1 A balcony, deck, roof terrace, parking space, or carport (whether freestanding or part of the dwelling), that has a finished surface or floor level more than 1 m above natural ground level must have a permanently fixed screen to a height of at least 1.7 m above the finished surface or floor level, with a uniform transparency of no more than 25%, along the sides facing a:</p> <p>(a) side boundary, unless the balcony, deck, roof terrace, parking space, or carport has a setback of at least 3 m from the side boundary; and</p> <p>(b) rear boundary, unless the balcony, deck, roof terrace, parking space, or carport has a setback of at least 4 m from the rear boundary; and</p> <p>(c) dwelling on the same site, unless the balcony, deck, roof terrace, parking space, or carport is at least 6 m:</p> <p>(i) from a window or glazed door, to a habitable room of the other dwelling on the same site; or</p>

- (ii) from a balcony, deck, roof terrace or the private open space, of the other dwelling on the same site.

A2 A window or glazed door, to a habitable room, of a dwelling, that has a floor level more than 1 m above the natural ground level, must be in accordance with (a), unless it is in accordance with (b):

(a) The window or glazed door:

- (i) is to have a setback of at least 3 m from a side boundary; and
- (ii) is to have a setback of at least 4 m from a rear boundary; and
- (iii) if the dwelling is a multiple dwelling, is to be at least 6 m from a window or glazed door, to a habitable room, of another dwelling on the same site; and
- (iv) if the dwelling is a multiple dwelling, is to be at least 6 m from the private open space of another dwelling on the same site.

(b) The window or glazed door:

- (i) is to be offset, in the horizontal plane, at least 1.5 m from the edge of a window or glazed door, to a habitable room of another dwelling; or
- (ii) is to have a sill height of at least 1.7 m above the floor level or has fixed obscure glazing extending to a height of at least 1.7 m above the floor level; or
- (iii) is to have a permanently fixed external screen for the full length of the window or glazed door, to a height of at least 1.7 m above floor level, with a uniform transparency of not more than 25%.

	<p>A3 A shared driveway or parking space (excluding a parking space allocated to that dwelling) must be separated from a window, or glazed door, to a habitable room of a multiple dwelling by a horizontal distance of at least:</p> <p>(a) 2.5 m; or</p> <p>(b) 1 m if:</p> <p>(i) it is separated by a screen of at least 1.7 m in height; or</p> <p>(ii) the window, or glazed door, to a habitable room has a sill height of at least 1.7 m above the shared driveway or parking space or has fixed obscure glazing extending to a height of at least 1.7 m above the floor level.</p>
10.4.7 Frontage Fences for All Dwellings	<p>A1 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:</p> <p>(a) 1.2 m if the fence is solid; or</p> <p>(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).</p>
10.4.8 Waste Storage for Multiple Dwellings	<p>A1 A multiple dwelling must have a storage area, for waste and recycling bins, that is an area of at least 1.5 m² per dwelling and is within one of the following locations:</p> <p>(a) in an area for the exclusive use of each dwelling, excluding the area in front of the dwelling; or</p>

<p>(b) in a communal storage area with an impervious surface that:</p> <p>(i) has a setback of at least 4.5 m from a frontage; and</p> <p>(ii) is at least 5.5 m from any dwelling; and</p> <p>(iii) is screened from the frontage and any dwelling by a wall to a height of at least 1.2 m above the finished surface level of the storage area.</p>

8.2 The following provisions of the Planning Scheme are relevant to the proposed use and development;

- General Residential Zone – Clause D10.4.2 A3 Building Envelope
- Parking and Access Code – E6.0
- Stormwater Management Code – E7.0

8.3 The following discretions are invoked:

		BIPS 2015 requirement	Proposed
1	Setback Building Envelope (D10.4.2 A3)	<p>A dwelling, excluding outbuildings with a building height of not more than 2.4 m and protrusions (such as eaves, steps, porches, and awnings) that extend not more than 0.6 m horizontally beyond the building envelope, must:</p> <p>(a) be contained within a building envelope (refer to Diagrams 10.4.2A, 10.4.2B, 10.4.2C and 10.4.2D) determined by:</p> <p>(i) a distance equal to the frontage setback or, for</p>	<p>Front setback: approx. 29m</p> <p>Side setback: Min 6.5m (south eastern corner of dwelling)</p> <p>Rear Setback: min 2.622m (north western corner of dwelling)</p> <p>Building Height above NGL: 4.6m</p>

		<p>an internal lot, a distance of 4.5 m from the rear boundary of a lot with an adjoining frontage; and</p> <p>(ii) projecting a line at an angle of 45 degrees from the horizontal at a height of 3 m above natural ground level at the side boundaries and a distance of 4 m from the rear boundary to a building height of not more than 8.5 m above natural ground level; and</p> <p>(b) only have a setback within 1.5 m of a side boundary if the dwelling;</p> <p>(i) does not extend beyond an existing building built on or within 0.2 m of the boundary of the adjoining lot; or</p> <p>(ii) does not exceed a total length of 9 m or one-third the length of the side boundary (whichever is the lesser).</p>	
Parking and Access Code (E6.0)			
2.	E6.7.6 Surface Treatment of Parking Areas	<p>A1</p> <p>Parking spaces and vehicle circulation roadways must be in accordance with all of the following;</p> <p>(a) paved or treated with a durable all-weather</p>	Gravel

		<p>pavement where within 75m of a property boundary or a sealed roadway;</p> <p>(b) drained to an approved stormwater system,</p> <p>unless the road from which access is provided to the property is unsealed.</p>	
Stormwater Management Code (E7.0)			
3.	E7.7.1 Stormwater Drainage and Disposal	A1 Stormwater from new impervious surfaces must be disposed of by gravity to public stormwater infrastructure.	Disposed of stormwater on site, with overflow to public stormwater infrastructure.

8.4 Setback – Building Envelope (D 10.4.2. A3)

8.4.1 The acceptable solution states:

D10.4.2 A3:

A dwelling, excluding outbuildings with a building height of not more than 2.4m and protrusions (such as eaves, steps, porches, and awnings) that extend not more than 0.6 m horizontally beyond the building envelope, must:

- (a) be contained within a building envelope (refer to Diagrams 10.4.2A, 10.4.2B, 10.4.2C and 10.4.2D) determined by:
 - (i) a distance equal to the frontage setback or, for an internal lot, a distance of 4.5 m from the rear boundary of a lot with an adjoining frontage; and
 - (ii) projecting a line at an angle of 45 degrees from the horizontal at a height of 3 m above natural ground level at the side boundaries and a distance of 4 m from the rear boundary to a building height of not more than 8.5 m above natural ground level; and
- (b) only have a setback within 1.5 m of a side boundary if the dwelling:

- (i) does not extend beyond an existing building built on or within 0.2 m of the boundary of the adjoining lot; or
- (ii) does not exceed a total length of 9 m or one-third the length of the side boundary (whichever is the lesser).

8.4.2 The proposal is for an additional dwelling. The request to vary the rear setback of 2.622m invokes the performance criteria.

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

P3 The siting and scale of a dwelling must:

- (a) not cause unreasonable loss of amenity by:
 - (i) reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining lot; or

Planning Response

The proposed dwelling is set back a minimum of 6.5m from the eastern boundary of the site. The dwelling on the adjoining lot to the east is setback 15m from the dividing boundary, creating a total setback of approximately 21.5m between dwellings. The setback from the proposed dwelling to the southern boundary is 13m, with the adjoining dwelling a further 7.5m. The dwelling/s to the south have been situated further higher on the hill, reducing the opportunity for overshadowing.

- (ii) overshadowing the private open space of a dwelling on an adjoining lot; or

Planning Response

Refer to (i) above. The private open space for the adjoining properties are located such that the proposed dwelling will not cause an unreasonable loss of amenity

- (iii) overshadowing of an adjoining vacant lot; or

Planning Response

The proposed dwelling is located to the south of vacant land. Accordingly, overshadowing will not occur.

- (iv) visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining lot; and

Planning Response

The proposed dwelling is single storey, with a maximum building height above natural ground level of 4.6m. The floor area is not considered excessive, measuring approximately 100sqm including landing and steps. Visual bulk is reduced with windows facing adjoining lots breaking up the façade. It is therefore concluded that the proposed dwelling does not cause an unreasonable loss of amenity.

- (b) provide separation between dwellings on adjoining lots that is compatible with that prevailing in the surrounding area.

Planning Response

The area is characterised by single and multiple dwellings. Satellite imagery shows that setbacks between buildings vary between approximately 7m and 20m. The setback proposed for the dwelling is approximately 21.5m.

Accordingly, it is considered that the proposal can satisfy the performance criteria in relation to the building envelope.

8.5 Parking and Access Code (E6.0)

- 8.5.1 The site plan shows 4 car parking spaces on site. However, the landscaping plan and stormwater management plan, shows 5 car parking spaces, as required by the Parking and Access Code. Accordingly, the proposal satisfies the acceptable solution in relation to number of car parking spaces. However, for clarification, a condition is recommended stating that 5 car parking spaces are required on the site.
- 8.5.2 The proposal seeks to rely on performance criteria in relation to surfacing materials.
- 8.5.2 The applicant proposes to surface the driveway with gravel, rather than a durable all-weather pavement required by the acceptable solution.

- 8.5.3 The application was referred to Council's Technical Officer who recommends that given the increased urban density, internal lot/driveway and representation regarding noise/dust that a sealed all weather driveway is provided.

8.6 Stormwater Management Code

- 8.6.1 The acceptable solution for the Stormwater Management Code requires that

E7.7.71 A1

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

- 8.6.2 As there is no gravity fed, public stormwater infrastructure supplied specifically for drainage of the site, the applicant must rely on performance criteria, which 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.

- 8.6.3 The applicant proposes to dispose of stormwater on-site into soakage trenches with overflow being directed to the drainage pipe located along the western boundary of the site.

- 8.6.4 The application was referred to Council Technical Officer who considers that the proposed provision of on site stormwater detention in conjunction with a piped overflow to council's stormwater main satisfactorily addresses the relevant performance criteria.

9. Discussion

- 9.1 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.

10. Concerns raised by representors

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

Representation 1	Brief Response
Decrease in privacy	The proposal satisfies the acceptable solution in relation to privacy. See clause 8.1 above.
Negative effect on property valuation	Property values are not a planning consideration.
Development not appropriate for the area or consistent with the Low Density Residential Zone	The site is zoned general residential. Minimum density requirements are 325sqm per dwelling. The site is 1507sqm; equating to 753sqm per dwelling.
Potential for overshadowing	Refer to clause 8.4 above
Location of turning bay increases the risk of accident and damage to joint boundary fences.	The turning bay and manoeuvring area behind it will be required to comply with the relevant standard – Australian/New Zealand Standard 2890.1: Parking Facilities Part 1: Off Street car parking.
No passing bay along the access strip, which may cause	The access strip provides for a passing bay at the street, 7.5m long and 5.5m wide.

<p>further damage to a joint boundary fence.</p>	<p>Erection and maintenance of boundary fences is a civil matter between property owners, pursuant to the Boundary Fences Act 1908. Further, damage and destruction of boundary fences is governed by s24 of that Act</p>
<p>Increase in traffic, resulting in increase in noise and light pollution from headlights, fine particle dust, posing a significant health risk</p>	<p>An existing fence between the site and No. 11 Jye Court may reduce any impact of vehicle headlights.</p> <p>The proposed development conditions include a sealed all weather driveway which will reduce any dust/noise impacts.</p>
<p>Representation 2</p>	<p>Brief Response</p>
<p>Concerns regarding overshadowing or loss of privacy</p>	<p>Refer to clauses 8.1 and 8.4 above</p>
<p>Is the dwelling located an appropriate distance from boundaries?</p>	<p>The application is discretionary due to a reduction in the rear setback.</p> <p>Refer to clauses 8.1 and 8.4 above.</p>
<p>Parking and access concerns including:</p> <p>Inconsistency relating to number of car parking spaces shown on plan;</p> <p>Increase in vehicle numbers, and noise.</p> <p>On-street parking</p> <p>Adequate car and bicycle parking for delivery vehicles</p>	<p>The development will be conditioned for 5 parking spaces (4 x resident spaces and 1 x visitor space) which meets the acceptable solution and can be accommodated on site.</p> <p>The site plan demonstrates 2 x vehicles can fit between the proposed dwelling and fence and meet the relevant standard.</p> <p>No part of No. 15 will be used as a passing bay.</p>
<p>Scale and appropriateness for area, including parking numbers</p>	<p>The site is zoned general residential. Minimum density requirements for the zone for multiple dwellings are 325sqm</p>

	<p>per dwelling. The site is 1507sqm; equating to 753sqm per dwelling.</p> <p>The Planning Scheme requires that a minimum of 5 car parking spaces are provided on the site.</p> <p>It is considered that there is sufficient area on the site to provide the required number of parking spaces.</p> <p>Refer to the Technical Officer's report</p>
Stormwater Drainage	<p>A piped overflow from the on-site detention system is proposed. If the capacity of the on-site stormwater detention is exceeded this will discharge to an existing piped council stormwater main.</p> <p>No runoff from impervious surfaces will be directed to No. 15.</p>
Impact on future development of an outbuilding on the [adjoining] site	<p>The success or otherwise of any future development application will be assessed against the planning scheme standards, if or when same is submitted for assessment.</p>

Conclusion

The proposed use and development of Residential (One additional multiple dwelling) in the General Residential Zone at 13 Jye 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 2018-108 for use and development of (One additional multiple dwelling) at 13 Jye 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, which ever is later, in accordance with section 53 of the Land Use Planning and Approvals Act 1993.

Amenity

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

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.

Landscaping

- (5) Before any work commences, an amended landscape plan prepared by a landscape architect or other person approved by Council's Manager Development Services must be submitted to and approved by Council's Manager Development Services. The landscape plan must show plant species and sizes at maturity and at time of planting. The landscaping plan shall form part of the permit when approved.
- (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 six (6) months of the first use of the development or prior to the sealing of a stratum plan. Mature plants must be planted. All landscaping must continue to be maintained to the satisfaction of Council.

Services

- (7) 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

- (8) At least five (5) car parking spaces must be provided on the land at all times for the use of the development, with one space being a dedicated visitor parking space, in accordance with Standards Australia (2004) Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney.
- (9) The 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) Surfaced with a material to resist abrasion from traffic and to minimise the entry of water. The surfacing material must be spray seal, asphalt, concrete or other approved material.
 - (c) Drained to an approved stormwater system.
 - (d) Line-marking or some other means to show the parking spaces to the satisfaction of Council.
 - (e) Signs not exceeding 0.3 square metres to direct drivers to the area set aside for visitor parking.

Stormwater

- (10) 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.
- (11) Before any work commences install temporary run-off, erosion and sediment controls and maintain these at full operational capacity until the land is effectively rehabilitated and stabilised after completion of the development in accordance with the guidelines Soil and Water Management on Building and Construction Sites, by the Derwent Estuary Programme and NRM South and to the satisfaction of Council's General Manager.

Water Sensitive Urban Design

- (12) Rainwater from the roof must discharge to a minimum 5 kl water storage tank (or other capacity approved by the General Manager) connected to the reticulated water supply using a suitable bypass device. The water storage tank must supply re-cycled water to the dwelling's toilet cistern(s) and laundry in accordance with a Plumbing Permit issued by the Permit Authority in accordance with the Building Act 2016.

TasWater

- (13) The use and/or development must comply with the requirements of TasWater, as detailed in the form Submission to Planning Authority Notice, Reference No TWDA 2018/00675-BTN dated 8/5/2018, as attached to this permit.

Construction amenity

- (14) 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.
- (15) 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.
- (16) 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.

- (17) 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.
- (18) 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. A separate permit is required for any signs unless otherwise exempt under Council's planning scheme.
- C. The storage tank and plumbing installation will be required to comply with the attached guidelines for water sensitive urban design for Tivoli Green (**attached**).
- D. Water storage tanks are required to have an adequate overflow discharge provisions, e.g. to a legal point of discharge or to an absorption drain with an area of 5% – 10% of the roof area drained. Storage tanks intended to provide a potable water source and supplied by rainwater from a roof should be fitted with an approved first-flush device.
- E. **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 Higgins moved, Cr Owen seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

In favour

Against

Cr Curran
Cr Garlick
Cr Geard
Cr Gray
Cr Higgins
Cr Owen
Cr Williams

4.3 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 – DA2018/00116– 20 MAGNOLIA CT & 141 BRIGHTON RD, BRIGHTON - 13 MULTIPLE DWELLING UNITS:

Type of Report	Planning Authority – For Decision
Application No:	DA2018/00116
Address:	20 Magnolia Ct, Brighton 141 Brighton Rd, Brighton
Applicant:	Tas Building Design Pty Ltd
Proposal:	13 multiple dwelling units
Zone:	General Residential
Representations:	Two
Discretion:	1. Building envelope (10.4.2 P3) 2. Intensifying existing access (E5.5.1 P3) 3. Sight distances (E5.6.4 P1)
Author:	Senior Planner (David Allingham)

1. Executive Summary

- 1.1. Planning approval is sought for 13 Multiple Dwelling Units in the General Residential Zone at 20 Magnolia Ct, Brighton
- 1.2. The application is a permitted use, but discretionary due to reliance on performance criteria.
- 1.3. Two representations were received. It is considered that the issues raised in the representations do not warrant refusal or modification of the application.
- 1.4. The key issues relate to the traffic, parking & access and a private covenant prohibiting units on the site.
- 1.5. The proposal is recommended for approval subject to various conditions relating to the above key planning issues and on servicing of the site.
- 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 DA2018/00116.

- 2.2. This determination must be made no later than 21 August 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 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. Relevant Background and Past Applications

- 4.1. Under the Brighton Planning Scheme 2000, the land was split zoned as shown in Figure 2 below. However, the entirety of 141 Brighton Rd was zoned General Business when the Brighton Interim Planning Scheme 2015 (BIPS 2015) was declared. The owner of the land recently approached Council to apply for an Urgent Amendment (UA) to restore the previous zoning. The UA was approved by the Tasmanian Planning Commission (TPC).

- 4.2. An application for a boundary adjustment to relocate the lot boundary separating 20 Magnolia Court and 141 Brighton Road to align with the zone boundaries, as mentioned above, was approved by Council in June 2018 (Subdivision Permit SA2018/00011).

5. Site Detail

- 5.1. The boundary adjustment approved by SA2018/00011 mentioned in section 4.2 has not yet been completed. The applicant has requested that if this application is approved that a condition of the permit be that the boundary adjustment must be completed prior to occupancy.
- 5.2. 20 Magnolia Court is an undeveloped 1223m² lot with 16.06m frontage to Magnolia Court. The land is zoned General Residential and a drainage easement runs within the rear boundary.
- 5.3. A relevant private covenant exists on 20 Magnolia CT (Sealed Plan 110994) between the owner of each lot on the plan and the Vendor as follows:
 - (a) Not to erect or cause to be erected on any lot more than one private dwelling and outbuildings usually appurtenant thereto.

The covenant is discussed in more detail below in section 8.2.

- 5.4. 141 Brighton Road is a 2.368ha lot with an established hotel operation and significant frontage to Brighton Road. The portion of the land associated with the Hotel (including vehicle parking and access) is zoned General Business, whilst the undeveloped portion to the west is zoned General Residential (see Figure 2 below).
- 5.5. The land subject to this proposal is the land within the General Residential Zone on both lots which has an area of 7,029m².
- 5.6. The land on both sites slopes gently to the east, except the front portion of Magnolia Ct which is slightly steeper (see Fig. 3)
- 5.7. The surrounding land is a mix of commercial, industrial and residential. Magnolia Ct is primarily residential land with some multiple unit developments amongst predominantly lots with single dwellings. The land is within close proximity to the Brighton commercial precinct.



Figure 1. Aerial image: 20 Magnolia Court (small lot to the west) & 141 Brighton Road (large lot to the east)

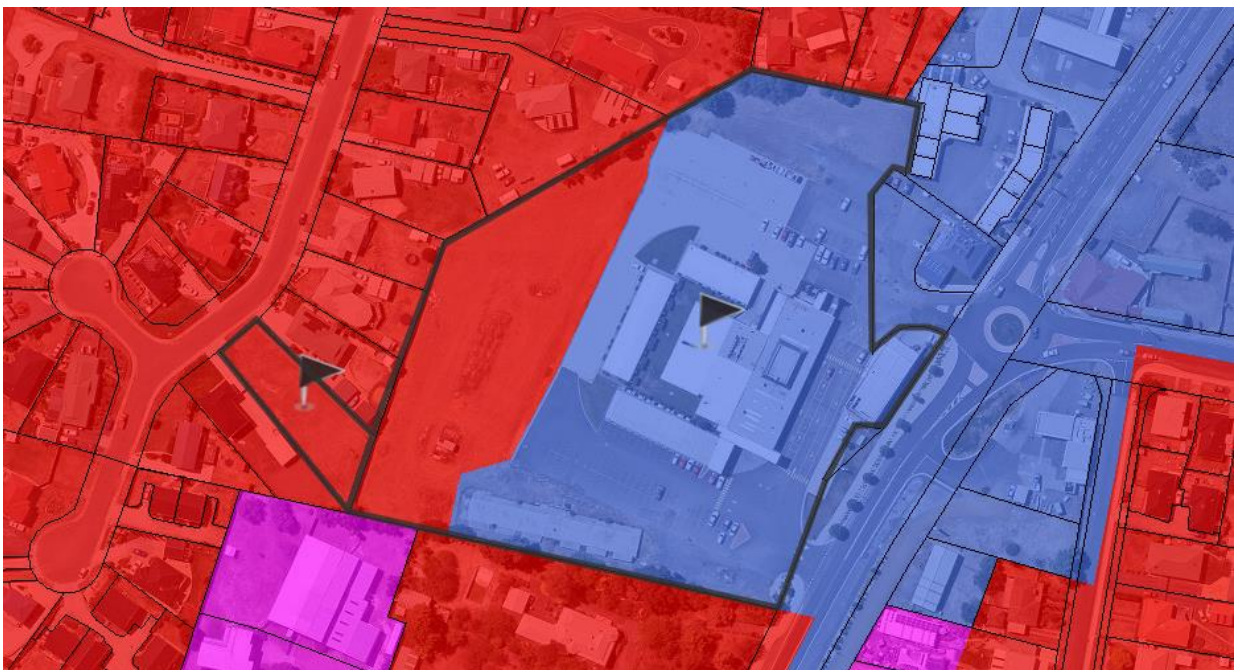


Figure 2. Zoning: General Residential (Red), General Business (Blue) and Light Industrial (Purple)



Figure 3. 20 Magnolia Ct frontage.

6. Proposal

- 6.1. The proposal is for 13 multiple dwelling units. The proposal provides a central 5.75m wide access road allowing two-way traffic.
- 6.2. A diversity of dwellings is provided with six different styles. Five of the dwellings have two bedrooms, seven have three bedrooms and one has four bedrooms.
- 6.3. All the dwellings face the central access with the design intent for the development to feel like a suburban street. The internal access terminates at a turning head with dedicated turning bays.
- 6.4. Parking consists of 10 lockable garages and 21 uncovered parking spaces which are dedicated to each unit or to visitor parking.

- 6.5. Vehicle access is proposed to be solely from Magnolia Ct. A boundary fence will be provided along the boundary to separate the General Business Zone to the south from the development. A pedestrian footpath will be provided between dwellings 7 & 8 to provide access to the Brighton Hotel land and the greater Brighton commercial area.
- 6.6. The new access will be designed to accommodate a garbage truck as waste collection will be from within the development, not the public street frontage. The access has been designed such that a Medium Rigid Vehicle can make a 3 point turn at the turning area between units 10 and 11. The bins for units 7 – 10 are proposed to be collected from in front of unit 7.
- 6.7. Councils Stormwater system in the area has limited capacity. It is proposed to provide a second connection to the site via an easement through the Brighton Hotel site to Brighton Road to split the flows into 2 separate systems. On site detention by means of water tanks is proposed to further reduce flows to Council's stormwater system.

The applicant proposes to use proprietary treatment devices.

Preliminary calculations were provided to demonstrate the proposed methods were feasible. Detailed calculations and design will be required prior to issuing a plumbing permit.

- 6.8. The applicant proposes to develop the driveway in stages as follows:
 - Stage 1 – Dwellings 1 -3 and associated infrastructure.
 - Stage 2 – Dwellings 4-6 and 11-13 and associated infrastructure.
 - Stage 3 – Dwellings 7-10 and associated infrastructure.
- 6.9. The application is supported by the attached building design plans, a traffic impact assessment and a planning submission from the applicant.

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;

- Part D – Clause 10 - General Residential Zone
- Part E – Clause E5.0 – Road & Railway Assets Code
- Part E - Clause E6.0 – Parking & Access Code
- Part E – Clause E7.0 – Stormwater Management Code.

- 8.2. The application satisfies the following Acceptable Solutions:

- 10.4.1 A1 – Residential density for multiple dwellings = 540.69m² site area per dwelling
- 10.4.2 A1 & A2– Front setback
- 10.4.3 A1 & A2 – Site coverage and private open space
- 10.4.4 A1, A2 & A3 – Sunlight and overshadowing
- 10.4.5 A1 - Width of openings for garages and carports for all dwellings
- 10.4.6 A1 & A2 – Privacy for all dwellings
- 10.4.7 A1 – Front fences
- 10.4.8 A1 – Waste storage for multiple dwellings
- E6.6.1 A1 – Number of parking spaces
- E6.7.1 A1 - Number of Vehicular Accesses
- E6.7.2 A1 - Design of Vehicular Accesses
- E6.7.3 A1 - Vehicular Passing Areas Along an Access

- E6.7.4 A1 - On-Site Turning
- E6.7.5 A1 - Layout of Parking Areas
- E6.7.6 A1 - Surface Treatment of Parking Areas
- E6.7.7 A1 - Lighting of Parking Areas
- E6.7.8 A1 - Landscaping of Parking Areas
- E6.7.13 Facilities for Commercial Vehicles
- E6.7.14 A1 - Access to a Road
- E7.7.1 A1 & A2- Stormwater Drainage and Disposal

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

- Building envelope (10.4.2 P3)
- Intensifying existing access (E5.5.1 P3)
- Sight distances (E5.6.4 P1)

8.4. **Discretion 1 - Rear setback (clause 10.4.2 P3)**

- Proposed dwellings 4-6 do not meet the Acceptable Solution (AS) for a 4m setback. Dwelling 4 has a minimum rear setback of 3.55m, dwelling 5 is 2.99m and dwelling 6 is 3.67m
- The three dwellings must be assessed against the following Performance Criteria;

The siting and scale of a dwelling must:

- (a) not cause unreasonable loss of amenity by:
 - (i) reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining lot; or
 - (ii) overshadowing the private open space of a dwelling on an adjoining lot; or
 - (iii) overshadowing of an adjoining vacant lot; or
 - (iv) visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining lot; and

- (b) provide separation between dwellings on adjoining lots that is compatible with that prevailing in the surrounding area
- The Brighton Hotel car park is to the rear of dwellings 4-6. The 3 dwellings are all single storey and create no overshadowing to dwellings on adjoining lots. The scale of the dwellings will not cause any visual impacts from the Hotel.
- The application is considered to satisfy the Performance Criteria.

8.5 Discretion 2 - Intensification of existing access (E5.5.1 P3)

8.5.1 The annual average daily traffic (AADT) will increase from 8-10 for a single dwelling lot to 80 AADT and does not comply with the AS which requires that AADT must not increase by more than 20% or 40 vehicle movements per day, whichever is the greater.

8.5.2 The application must be assessed against the following PC:

Any increase in vehicle traffic at an existing access or junction in an area subject to a speed limit of 60km/h or less, must be safe and not unreasonably impact on the efficiency of the road, having regard to:

- (a) the increase in traffic caused by the use;
- (b) the nature of the traffic generated by the use;
- (c) the nature and efficiency of the access or the junction;
- (d) the nature and category of the road;
- (e) the speed limit and traffic flow of the road;
- (f) any alternative access to a road;
- (g) the need for the use;
- (h) any traffic impact assessment; and
- (i) any written advice received from the road authority.

8.5.3 The application is supported by a Traffic Impact Statement (TIS) prepared by traffic engineer Milan Prodanovic.

The TIS submitted with the application concluded that:

The proposed development will not have a significant effect on the operational efficiency or safety of the surrounding road network or along Magnolia Court; it will continue to operate efficiently well into the future without adversely impacting on the local amenity.

The TIS and conclusion is accepted by Council's Technical Officer and is considered to satisfy the PC.

8.6 Discretion 3 – Sight distances (Clause E5.6.4 P1)

8.6.1 For a 50km/h speed limit the AS requires a minimum sight distance of 80m. The sight distances are over 100m to the north and around 75m to the south.

8.6.2 The proposal must be assessed against the following PC:

The design, layout and location of an access, junction or rail level crossing must provide adequate sight distances to ensure the safe movement of vehicles, having regard to:

- (a) the nature and frequency of the traffic generated by the use;
- (b) the frequency of use of the road or rail network;
- (c) any alternative access;
- (d) the need for the access, junction or level crossing;
- (e) any traffic impact assessment;
- (f) any measures to improve or maintain sight distance; and
- (g) any written advice received from the road or rail authority.

8.6.3 Council's Technical Officer supports the following statement from the TIS:

The current Brighton Interim Planning Scheme has provisions in Code E6.0 for compliant sight distances in the design of private vehicle accesses, which are those outlined in AS 2890.1.

The desirable sight distance for a 50km/h speed environment is 69m which is less than is available to and from the proposed driveway. However, the approach vehicles speed in this case are significantly less than the speed limit.

Therefore, the available sight lines to/from motorists turning at the driveway are more than required for the driveway.

The proposal satisfies the PC.

9 Discussion

9.1 Referrals

9.1.1 TasWater

TasWater have imposed the attached conditions that must be included in any permit granted.

9.1.2 Council's Technical Officer

Council's Technical Officer has reviewed the application against Code E5, E6 & E7 and their comments and response to representations are incorporated into the body of the document. The Technical Officer has also provided conditions below.

9.2 Covenant

9.2.1 As noted in section 5.3, a covenant exists on the title for 20 Magnolia Ct restricting development to one dwelling per lot. The covenant is between the owner and vendor and not Brighton Council. Council sought legal advice as to whether it has any role in enforcing a covenant for which it is not a party.

9.2.2 The legal advice concluded that restrictive covenants do not form part of the statutory land use planning and development system and is not a matter to be taken into account when assessing a development application.

9.2.3 However, advice should be included on the permit that the covenant exists on the title and that the developer may be committing an offence under s.94(5) of the Local Government (Buildings and Miscellaneous Provisions) Act 1993 by contravening the covenant. The appropriate venue for the enforcement of a covenant is the Supreme Court of Tasmania.

10 Concerns raised by representors

10.1 The following table outlines the issues raised by the two representors.

Concern	Response
<p>What action is Council taking to enforce the covenant restricting the development of multiple dwellings under s.94(5) of LOGBMP</p>	<p>See section 8.2. Enforcement under LOGBMP falls outside the planning system.</p>
<p>The TIA states that Magnolia Ct is only 6.9m wide and that road rules require a 3m minimum to be left clear of another car when parking to allow another vehicle to pass. What measure is being made to ensure parking is only on one side of the street.</p>	<p>The developer's Traffic Engineer, Milan Prodanovic, provided the following in response to the representation which is supported by Council's Technical Officer:</p> <p>The turning traffic movement survey was carried out at what would normally be the busiest afternoon time of day for traffic activity. The aim of this was to have peak hour data for both Racecourse Road and Magnolia Court to comment on levels of traffic conflict at the junction (capacity considerations).</p> <p>A check has been made of parking activity along the street at the time of the above survey as well as on a Sunday afternoon. There were 4-5 parked cars along the street at these times and no issues with the parking were identified.</p> <p>While the addition of 80 vehicles per day may seem a lot to some, in reality it adds to the street around one vehicle every 8 minutes in peak traffic periods and one around every 10 minute or so at other times of the day. This additional traffic would barely be noticed by residents and certainly not require any traffic interventions for safety or capacity.</p> <p>The installation of parking restrictions along one side of Magnolia Court is absolutely not supported in this local residential street. All it would do is give priority of movement to cars on the side of the street where the restriction are, rather than have drivers sort out who gives way on the few occasions each day this may be required but it would slightly increase vehicles speeds in the street to what they would otherwise.</p>

<p>It is proposed to allow garbage trucks in the development to collect bins. Does the proposal satisfy clause E6.7.13 Facilities for Commercial Vehicles?</p>	<p>The design provides for garbage trucks to entry the development site and turnaround at the end of the internal access road. Garbage trucks are medium rigid trucks and hence the design also allows for all other such medium rigid service and delivery trucks to enter and exit the site in the same way. Therefore the design would comply with Australian Standard requirements.</p>
<p>Magnolia Ct is already a very congested narrow street with cars parked both sides of the road making access to driveways difficult. The proposed development will further exacerbate this problem.</p> <p>Safety and access for emergency vehicles is also a concern.</p>	<p>See above.</p>

11 Conclusion

- 11.1 The proposed use and development of Residential (13 multiple dwelling units) in the General Residential Zone at 20 Magnolia Ct and 141 Brighton Road, Brighton generally satisfies the majority of the AS as set out in section 7.2 and generally provides for a spacious unit dwelling with good residential amenity.
- 11.2 The key issue relates to the traffic impact on Magnolia Ct. A TIA, prepared by a suitably qualified traffic engineer, demonstrates that the traffic generation and impact on Magnolia Ct is reasonable. Council's Technical Officer supports the conclusions of the TIA.
- 11.3 The proposal satisfies the relevant provisions of the Brighton Interim Planning Scheme 2015, and as such is recommended for approval.

RECOMMENDATION:

That pursuant to the Brighton Planning Scheme 2000, Council approve application DA2018/00116 for use and development of Residential (13 multiple dwelling units) in General Residential Zone at 20 Magnolia Ct and 141 Brighton Road, 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*.
- (3) Prior to occupancy certificates being issued, the boundary adjustment approved by subdivision permit SA2018/00011 must be sealed and titles issued.

Amenity

- (4) 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.
- (5) Before any work commences a schedule specifying the finish and colours of all external surfaces and samples must be submitted to and approved by the Council's Manager Development Services. The schedule shall form part of this permit when approved and must be completed within three (3) months or otherwise approved by Council's Manager Development Services.

Private open space

- (6) Within one (1) months of an occupancy certificate being issued prior to the sealing of a stratum plan, all area(s) of private open space must be:
 - a. formed with a gradient of no more than 1 in 10;
 - b. enclosed by a minimum 1.7m high fence;
 - c. grassed and / or landscaped, and
 - d. provided with steps or other means of access to the adjoining habitable room if required,to the satisfaction of Council's Manager Development Services.

Landscaping

- (7) Prior to or in conjunction with a Building Application, a comprehensive landscape plan to the satisfaction of Council's Manager Development Services must be submitted and approved. The plans must be drawn to scale with written dimensions. The landscaping plan must be generally in accordance with the landscape concept plan dated 08/05/2018 prepared by Tas Building Design Pty Ltd (Drawing No.: sk04), except the plan must show:
- a. A survey of all existing vegetation to be retained and/or removed.
 - b. Details of surface finishes of paths and driveways.
 - c. A planting schedule of all proposed trees, shrubs and ground covers including botanical names, common names, pot sizes, sizes at maturity and quantities of each plant.
 - d. Landscaping and planting within all open area of the site.

If considered satisfactory, the landscape plan will be endorsed and will form part of this permit.

- (8) The landscaping works must be completed in accordance with the endorsed landscape plan and to the satisfaction of Council's Manager Development Services prior to the building(s) being occupied. All landscaping must continue to be maintained to the satisfaction of Council.

Agreements

- (9) 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.
- (10) 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.

Waste Collection

- (11) Prior to the use commencing the owner/body corporate must provide written agreement allowing Councils waste collection contractor to enter the site and indemnify Council and said contractor from any damage arising from the collection of waste from the site.

Services

- (12) 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

- (13) Parking and access must be generally in accordance with:

- a. Site Plan sk01 Rev.A, prepared by Tas Building Design Pty Ltd;
- b. Site Turning Plan sk05 Rev.A, prepared by Tas Building Design Pty Ltd;

and to the satisfaction of Council's Municipal Engineer.

- (14) A new vehicle accesses must be provided from Magnolia Court in accordance with;

- 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. Standards Australia (2002): Australia Standard AS 2890.2 - 2002, Parking facilities - Part 2: Off-Street, Commercial vehicle facilities, Sydney;

and to the satisfaction of Council's Municipal Engineer.

- (15) The redundant vehicle crossover and apron is to be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of Council's municipal Engineer.

- (16) At least thirty one (31) 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 six (6) 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.

- (17) 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 5.5m.
 - b. Constructed with a durable all weather pavement.
 - c. Drained to an approved stormwater system.
 - d. Surfaced with concrete, asphalt or pavers.
 - e. Provision for two way traffic.
 - f. Line-marking or some other means to show the parking spaces to the satisfaction of Council.
 - g. Signs not exceeding 0.3 square metres to direct drivers to the area set aside for visitor parking.
- (18) 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.
- (19) 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:
 - a. pavement details,
 - b. design surface levels and gradients,
 - c. drainage,
 - d. turning paths,
 - e. dimensions,
 - f. line marking,
 - g. signage,
 - h. pedestrian access,

i. lighting

and shall form part of the permit when approved.

- (20) 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.
- (21) 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

- (22) Drainage from the proposed development must drain to a legal discharge point to the satisfaction of Council's Municipal Engineer and in accordance with a Plumbing permit issued by the Permit Authority in accordance with the *Building Act 2016*.
- (23) 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.
- (24) 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
- (25) The developer is to provide a major stormwater drainage system designed to accommodate a storm with an ARI of 100 years.

- (26) 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.
- (27) 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.
- (28) 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.

Tas Water

- (29) The development must meet all required Conditions of approval specified by TasWater Submission to Planning Authority Notice TWDA 2018/00743-BTN, dated 15/06/2018.

Soil and Water Management

- (30) 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.
- (31) 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

- (32) 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.

- (33) 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.

- (34) 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.

- (35) 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.

- (36) 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.

Engineering

- (37) All works associated with Council Assets or within Council's Road Reservation must be carried out in accordance with the *Tasmanian Subdivision Guidelines October 2013* (attached).

- (38) Engineering design drawings for all Council Assets or Works within Council's Road Reservation must be submitted to and approved by Council's Municipal Engineer before any works associated with development of the land commence.
- (39) Engineering design drawings are to be prepared by a qualified and experienced civil engineer, or other person approved by Council's Municipal Engineer, in accordance with the *Tasmanian Subdivision Guidelines October 2013*.
- (40) Approved engineering design drawings will remain valid for a period of 2 years from the date of approval of the engineering drawings.
- (41) The developer shall appoint a qualified and experienced Supervising Engineer (or company registered to provide civil engineering consultancy services) who will be required to certify completion of construction works relating to Council assets or works within Council's Road Reservation.

Public works

- (42) Public roadworks and drainage must be constructed in accordance with the standard drawings prepared by the IPWE Aust. (Tasmania Division) and to the requirements of Council's Municipal Engineer.

Maintenance and Defects Liability Period

- (43) All works to be adopted by Council or within a Council Road Reservation must be placed onto a 12 month maintenance and defects liability period following the completion of the works in accordance with the approved engineering plans, permit conditions and Council Policy.

'As constructed' drawings

- (44) Prior to the works being placed on the maintenance and defects liability period "as constructed" drawings and data for all engineering works provided as part of this approval must be provided to Council to the satisfaction of the Council's Municipal Engineer. These drawings and data sheets must be prepared by a qualified and experienced civil engineer or other person approved by the Municipal Engineer in accordance with Council's Guidelines for As Constructed Data.

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. 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.

- C. The owner is advised that an engineering plan assessment and inspection fee of 1% of the value of the approved engineering works, or a minimum of \$286.00, must be paid to Council in accordance with Council's fee schedule.
- D. A restrictive covenant applicable to this land is listed on the property title. Council is not a party to the covenant and the granting of this permit takes no account of the covenant. The developer should make their own enquiries as to whether the proposed development is restricted or prohibited by any such covenant and what consequences may apply.
- E. A separate strata plan must be submitted to Council for the land to be divided by strata plan in accordance with the Strata Titles Act 1998. A Staged Development Scheme must be applied for to for strata titles to be issued in stages.
- F. **This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.**

DECISION:

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

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Higgins	
Cr Owen	
Cr Williams	

**4.4 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015
- DA 2017/295 - 2 ELDERSLIE ROAD, BRIGHTON -
TELECOMMUNICATIONS TOWER:**

Type of Report	Planning Authority – For Decision
Author	Jo Blackwell
Application No:	DA 2017/295
Address:	2 Elderslie Road
Applicant:	CPS Global
Proposal:	Telecommunication Tower
Zone:	Light Industrial
Representations:	One (1) Representation One (1) Petition attached to representation (60 signatures) Discretions: 3. Light Industrial Zone – Use Standards 4. Telecommunications Code (E19) – Development Standards

1. Executive Summary

- 1.1. Planning approval is sought for the construction of a telecommunications tower at 2 Elderslie Road, Brighton.
- 1.2. The application is discretionary arising from reliance on performance criteria in relation to Light Industrial Zone Use standards; and development standards related to the Telecommunications Code, namely Co-Location; Location and Tower Height.
- 1.3. One (1) representation was received raising concerns in relation health impacts, visual amenity and proposing that alternative locations be considered.
- 1.4. A petition was attached to the representation, which contained 60 signatures.
- 1.5. The application was readvertised as the entirety of the visual impact assessment had not been included in the advertised documents.
- 1.6. An addendum to the original representation was submitted during the second public exhibition period, including photographs.
- 1.7. The proposal is recommended for approval subject to various non-standard conditions relating to the above key planning issues and on servicing of the site.

- 1.8. The final decision must be made by the Planning Authority or by full Council acting as a planning authority due to the receipt of representations via the public exhibition period for the development application.

2. Legislative & Policy Content

- 2.1. The purpose of this report is to enable the Planning Authority to determine application DA 2017/295.
- 2.2. This determination must be made no later than 17th July 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 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. The application is for approval of a telecommunications tower at 2 Elderslie Road, Brighton.

- 4.2. An existing monopole was constructed on the site in 2010 for the benefit of Telstra. In 2016, Optus installed additional antennas on the existing monopole in accordance with the Telecommunications (Low-Impact Facilities) Determination 1997. It is important to note that the existing tower was approved under the Brighton Planning Scheme 2000 and was subject to different standards.
- 4.3. The site continues to be used for the purpose of workshop/s and offices, pursuant to its light industrial zoning.

5. Site Detail

- 5.1. The subject site is situated on the corner northern corner of Elderslie and Brighton Roads, Brighton and has an area of approximately 2.2ha. It has a gentle slope which falls towards the south-eastern corner, as shown in Figure 1. Figure 2 identifies the locality of the site.
- 5.2. The immediate area comprises low hills located to the south west of the site, with the west, north and east being generally level.
- 5.3. The property is zoned Light Industrial. There are no overlays affecting the site, which has been developed in accordance within the permitted uses for the zone.
- 5.4. The site is located in the Light Industrial zone and is located on the southern end of the Brighton township. Zoning in the area is mixed. The subject site is zoned Light Industrial and bounded by residential zoning on all sides. Approximately 100m to the north east are commercial enterprises operating in the General Business zone. Land located on the south-eastern side of Brighton Road and further east is Rural Living and General Residential zoned land.
- 5.5. The site boundary adjoins “Wakefield”, an historic residence listed on the Tasmanian Heritage Register. That site is visually protected by the established gardens on the site, which effectively screen the dwelling from both the Light Industrial land, and Brighton Road.
- 5.6. 33 Elderslie Road is located on the southern side of Elderslie Road. It is rural in appearance but zoned General Residential. Accordingly, the site is likely to be developed for residential use in the future.
- 5.7. The site and surrounding area, other than 33 Elderslie Road, has been considerably altered by man-made elements such as houses, buildings electricity and light poles, due to the development of light industrial, residential and commercial uses in the vicinity.



Figure 1: 2 Elderslie Road, Brighton (Source: Listmap). =Location of existing telecommunications facility
= Location of proposed telecommunications facility ▲



Figure 2: Locality Map (Source: Listmap)

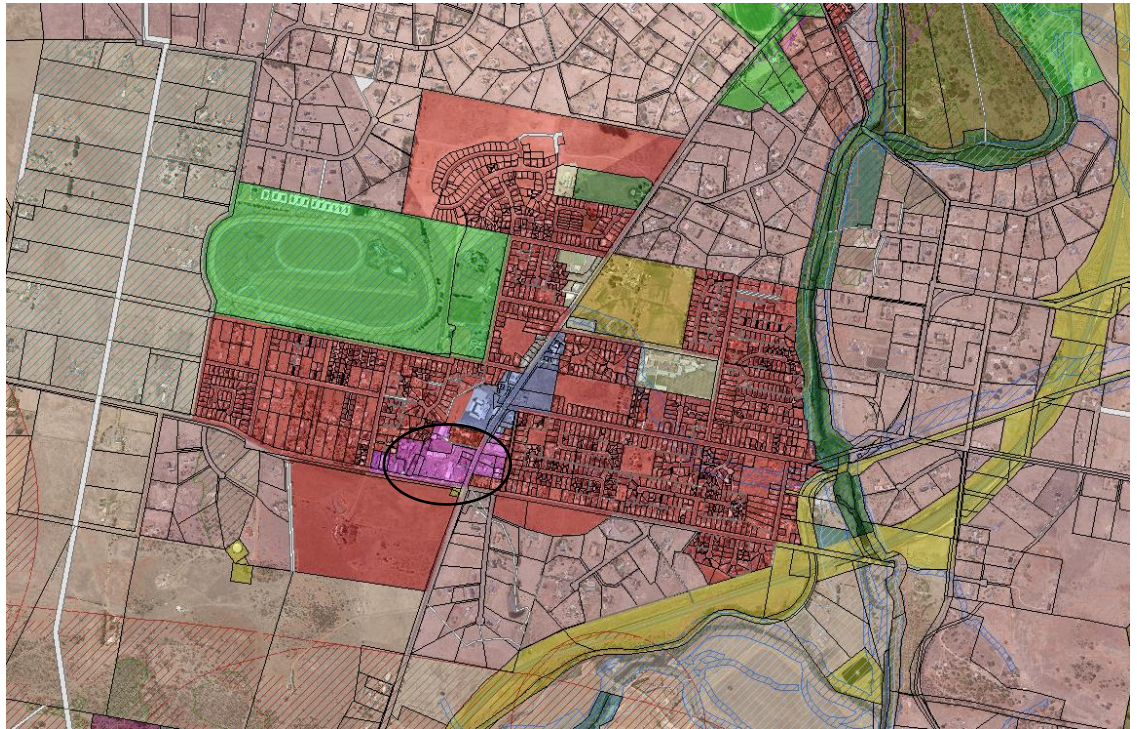


Figure 3: Zoning Map

Pink = Light Industrial; Dark Green = Open Space; Light Green = Recreation; Red = General Residential; Light Pink = Rural Living; Yellow = Utilities.

5. Proposal

- 5.1 The proposal is for a telecommunication facility (30m high monopole) mounted with three (3) panel antennas on a spoke headframe, one (1) 600mm parabolic antenna and ancillary equipment mounted onto the monopole, an equipment cabin and associated works fenced into a 104.16sqm lease area.
- 5.2 The application is supported by the attached plan, elevations, planning response and visual impact statement.
- 5.3 The erection of a telecommunications tower requires assessment pursuant to the Telecommunications Code (E19 of the Scheme). The Code is assessed later in this report.

6 Assessment

- 6.1 The Brighton Interim Planning Scheme 2015 is a performance-based planning scheme.
- 6.2 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.

- 6.3 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.

7 **Assessment against planning scheme provisions**

- 7.1 The following provisions of the Planning Scheme are relevant to the proposed use and development;

- D24.0 - Light Industrial Zone – Use Standards
- E19.0 – Telecommunications Code

Clause 7.3.4 of the Planning Scheme requires that where there is a conflict between a provision in a code and a provision in a zone, the code provision prevails.

- 7.2 The proposal meets the following Acceptable Solutions:

7.2.1 Use Standards

- 7.2.1.1 Noise (24.3.2)
- 7.2.1.2 External lighting (24.3.3)
- 7.2.1.3 Commercial Vehicle Movements (24.3.4)
- 7.2.1.4 Outdoor work areas (24.3.5)

7.2.2 Development Standards

- 7.2.2.1 Building Height (Assessed under Telecommunications Code) (24.4.1)
- 7.2.2.2 Setback (24.4.2)
- 7.2.2.3 Design (24.4.3)
- 7.2.2.4 Passive Surveillance (24.4.4)
- 7.2.2.5 Landscaping (24.4.5)

7.2.2.6 Outdoor Storage Areas (24.4.6)

7.2.2.7 Fencing (24.4.7)

7.2.3 Telecommunications Code

7.2.3.1 Environmental Values (E19.7.3)

7.2.3.2 Access (E19.7.4)

7.2.3.3 Significant Agricultural Land (E19.7.5)

7.3 The application relies on performance criteria in relation to the following standards:

		BIPS 2015 requirement	Proposed
1	D24.3.1 A1 Hours of Operation	Hours of operation of a use within 100 m of a residential zone must be within: (a) 7.00 am to 7.00 pm Mondays to Fridays inclusive; (b) 9.00 am to 5.00 pm Saturdays; (c) nil Sundays and Public Holidays. except for office and administrative tasks.	Independent operation of the site, with no regular vehicle movements as most maintenance is undertaken off-site. Any proposed site visits are to occur during normal business hours.
2	E19.7.1 A1 Co-Location	A new antenna must be located on an existing tower.	New Tower proposed
3.	E19.7.2 A1 Visual Amenity	The location of telecommunications infrastructure must comply with all of the following: (a) be within existing utility corridors and sites and use existing infrastructure;	New monopole within the Light Industrial zone, Standard grey colouring; Proposed tower is located at the base of a hill, and on a

		<p>(b) be externally finished and maintained in a neutral colour that minimises visual intrusiveness;</p> <p>(c) not:</p> <p>(i) be located on skylines that can be seen in silhouette;</p> <p>(ii) be aligned diagonally to the principal slope of a hill;</p> <p>(iii) cross at a low point of a saddle between hills;</p> <p>(iv) be located around the base of a hill;</p> <p>(v) be along the edge of an existing clearing;</p> <p>(vi) be artificially lit unless required for air navigation safety;</p> <p>(vii) be used for signage purposes, other than necessary warning and equipment information,</p> <p>(d) aerial telecommunication lines or additional supporting structures are erected and operated in residential and commercial areas only where overhead cables exist;</p> <p>(e) equipment housing and other visually intrusive infrastructure is screened from public view.</p>	skyline, that can be seen in silhouette.
4.	E19.7.2 A2 Height	20m	30m

7.4 Light Industrial Zone : Hours of Operation (D24.3.1 A1)

7.4.1 The acceptable solution requires:

D23.3.1 A12:

A1 Hours of operation of a use within 100 m of a residential zone must be within:

(a) 7.00 am to 7.00 pm Mondays to Fridays inclusive;

(b) 9.00 am to 5.00 pm Saturdays;

(c) nil Sundays and Public Holidays.

except for office and administrative tasks.*

7.4.2 The proposed telecommunications facility is located 50m from a residential zone and will operate 24 hours per day.

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

Hours of operation of a use within 100 m of a residential zone must not have an unreasonable impact upon the residential amenity of land in a residential zone through commercial vehicle movements, noise or other emissions that are unreasonable in their timing, duration or extent.

Planning Response

The construction and operation of the telecommunications tower is not considered to have an unreasonable impact on residential amenity in relation to commercial vehicle movements, noise or other emissions. The applicant notes that the majority of maintenance to the system will occur off-site, with any on-site maintenance occurring during business hours. Any noise is to be below the acceptable level. Should approval be granted to the proposal, it is considered reasonable to include a condition requiring that the proposed development meets the acceptable solutions in relation to noise emissions.

7.4.4 It is considered that the performance criteria in relation to operating hours can be satisfied, subject to a condition in relation to noise.

7.5 Telecommunications Code : Shared Use and Co-Location (E19.7.1 A1)

7.5.1 The acceptable solution states:

E19.7.1 A1:

A new antenna must be located on an existing tower.

7.5.2 The proposal includes a new 30m high tower.

7.5.3 The performance criteria must be addressed, which states:

A new antenna may be located on a new tower if it is impracticable to co-locate on an existing tower, having regard to the following:

- (a) *no existing tower is located within the telecommunications network area with technical capacity to meet the requirements for the antenna;*

Planning Response

The applicant, in its planning submission advises that initial enquiries were undertaken with Telstra in relation to co-location. However, it was determined that whilst an “elevation of twenty-two metres (22m) is achievable on their pole, co-location would only partially satisfy the target coverage objectives.”

- (b) *no existing tower is located within the telecommunications network area with sufficient height to meet the requirements of the antenna;*

Planning Response

The existing facility on the site is the only tower within the area (web.acma.gov.au). The nearest towers are 203 Briggs Road, Gagebrook, and Cobbs Hill Road, Bridgewater.

- (c) *no existing tower is located within the telecommunications network area with sufficient structural strength to support the proposed antenna and related equipment;*

Planning Response

A structural engineering certificate obtained from Telstra has been submitted as part of the application, which shows that the existing Telstra monopole is at 70% of its maximum percentage loading, includes the existing Optus co-located antennae. Verbal clarification was sought from the applicant, who advised that additional Vodafone equipment will exceed the balance 30% capacity of the pole, thereby making any proposal to co-locate on the existing monopole unachievable.

- (d) *there is risk of electromagnetic interference between the antenna and an existing antenna on an existing tower;*

Planning Response

There has been no comment as to risk of electromagnetic interference.

- (e) there are other limiting factors that render existing towers unsuitable.

Planning Response

The applicant considered a total of 5 sites as part of the selection process (see Table 1 of clause 2.2 (p7) of the planning submission). One site was identified as not being able to meet the target service area; three locations were not feasible due to an inability to reach consent with the property owner, or the property owner not responding to a proposal to establish a telecommunication facility on their land; leaving the subject site as the preferred location.

- 7.5.6 The applicant has demonstrated that no co-location opportunities exist in the area that can provide the services required to the specified area.
- 7.5.7 A condition is recommended, should approval be granted, requiring that any additional monopole be structurally and technically designed to accommodate comparable additional users, including by the rearrangement of existing antenna and the mounting of antenna at different heights.

7.6 Visual Amenity (E19.7.2 A1)

- 7.6.1** The acceptable solution states:

E19.7.2 A1

The location of telecommunications infrastructure must comply with all of the following:

- (a) be within existing utility corridors and sites and use existing infrastructure;
- (b) be externally finished and maintained in a neutral colour that minimises visual intrusiveness;
- (c) not:
 - (i) be located on skylines that can be seen in silhouette;

- (ii) be aligned diagonally to the principal slope of a hill;
 - (iii) cross at a low point of a saddle between hills;
 - (iv) be located around the base of a hill;
 - (v) be along the edge of an existing clearing;
 - (vi) be artificially lit unless required for air navigation safety;
 - (vii) be used for signage purposes, other than necessary warning and equipment information,
- (d) aerial telecommunication lines or additional supporting structures are erected and operated in residential and commercial areas only where overhead cables exist;
- (e) equipment housing and other visually intrusive infrastructure is screened from public view.

7.6.2 The proposed telecommunications facility does not satisfy (a), (b), c(i) or c(iv) above.

7.6.3 Therefore, the performance criterion is required to be addressed which states:

The location of telecommunications infrastructure not complying with A1 must ensure any detrimental impact upon visual amenity is minimised by reducing the prominence of telecommunications infrastructure, and important public views such as vistas to significant public buildings, streetscapes and heritage areas are protected.

7.6.4 In understanding the performance criterion, the significant point is “visual amenity is minimised”. This does not mean that there is no impact. Of note is the decision of the Resource Management and Appeals Tribunal (the Tribunal) in *Native Point Pty Ltd v. Northern Midlands Council and Town and Country Planning Pty Ltd obo Onewire* (2008) TASRMPAT 59, which stated at paragraph 18:

“evidence made the point that as far as the objectives are concerned they are to minimise any detrimental impact. In the Tribunal’s view there is significant merit in this point. The Telecommunications Schedule is found in most other planning schemes in the State. Its purpose is to attempt to strike a balance between the need for the community to have available telecommunications infrastructure without paying an unacceptable price in terms of amenity. It seeks to minimise, not prevent, detrimental impact”

Further distinctions have been made between minimising, rather than eliminating the obstruction (see *Blake Dawson Waldron obo Telstra Corporation v. West Tamar Council* (2004) RMPAT 201, para. 56, which cited paragraph 14 of *Cable and Wireless Optus Pty Ltd v. Mornington Peninsula SC* (2001) VCAT 872, “It is not the intention of the Planning Scheme to screen towers so that they are completely invisible but rather to break down the impact on both the travelling public and residents around it”).

The interpretation of minimising impact was also reiterated in the VCAT decision in *Hutchinson 3G Australian and Ors v Casey CC and Ors* (2002) VCT 247 where Presiding Member Peter O’Leary and Member Margaret Baird state that:

“We preface our findings by commenting that minimising an adverse impact on visual amenity does not mean that a telecommunications pole must be sited so that it cannot be seen by most or many people. Visibility cannot be equated to adverse visual impact. Although works may be visible and result in change, it should not be presumed that change is negative. It is that extent to which a development is compatible with the particular location and how policies seek to guide change, that are the most relevant.”

As such, the Planning Scheme does not require that telecommunications towers are not to be seen, instead it recognises that a tower by its nature needs to be higher than the surrounding vegetation and located at a site that is prominent in order to function appropriately.

The site at 2 Elderslie Road has been identified by the Applicant as providing the best coverage, whilst minimising the impact on the broader landscape surrounding Brighton. The site is located in a lower position with Mount Dromedary to the south west; Cove Hill, Jews Hill and the Meehan Ranges to the south east; and Butlers Hill and adjoining ranges to the north, resulting in the hills being silhouetted behind the tower.

Visual Assessment

- 7.6.5 As demonstrated by the photographs submitted by the representor, the existing and proposed towers will be highly visible from the residential development surrounding Morrison Street and Magnolia Court, with the additional tower increasing the visual effect. However, the Code does not appear to allow specifically for residential amenity to be maintained, rather

focusing on a proposal to “minimise adverse visual impact of towers and antennae” (refer to Code Purpose in E19.1 (e)).

- 7.6.6 The performance criteria (E19.7.2 P1) breaksdown the Code purpose further, to require that visual impact ensures *“any detrimental impact upon visual amenity is minimised by reducing the prominence of telecommunications infrastructure, and important public views such as vistas to significant public buildings, streetscapes and heritage areas are protected.”*
- 7.6.7 The approach into Brighton from the south is identified as the gateway to the township. In the context of assessing visual amenity, however, it must be acknowledged that the viewpoint is interrupted by electricity transmission lines and poles. The existing tower on the site does not become prevalent until approximately 150m from the Elderslie/Brighton Road intersection.
- 7.6.8 Similarly, the northern approach has a similar character, with views again interrupted by electricity transmission lines, signage and commercial buildings. The existing tower becomes more prominent at the Andrew Street intersection as the road elevation rises slightly. However, the visual impact is minimised with the hills behind providing the viewshed.
- 7.6.9 Approach from the east along William Street again provides a similar viewpoint with electricity transmission corridors and domestic connections interrupting views to Mount Dromedary in the far west .
- 7.6.10 The western approach provides a slightly different viewpoint. Whilst the electricity transmission corridor extends along Elderslie road, the topography is such that the approach is visually protected until travellers begin the slight descent towards Brighton Road. The viewshed will be of telecommunication towers in the foreground, with Jews Hill and the Meehan Ranges providing silhouette behind the towers.

Cumulative Impact

- 7.6.11 The proposal is unusual in its proposal to construct a second monopole of a site. The cumulative effects of a second monopole on the site must be considered.
- 7.6.12 Scottish Natural Heritage define cumulative effects as “the additional changes caused by a proposed development in conjunction with other similar developments, or as the combined effect of a set of developments, taken together”. It then defines

cumulative visual effects as being “effects that can be caused by combined visibility, which occurs where the observance is able to see two or more developments from one view-point’ ...”¹

- 7.6.13 The Planning Scheme does not include cumulative effects as to be considered as part of an assessment against visual amenity, however Guidelines for Landscape and Visual Impact Assessment (GLVIA3)² note that “higher levels of significance may arise from cumulative visual effects related to developments that are in close proximity to the main project and are clearly visible in views.”
- 7.6.14 It is conceded that nearby residential properties will indeed experience a higher level of cumulative visual effect related to the proposed development. However, in the overall assessment of the surrounding region, and consideration of the proposed effect on “important public views such as vistas to significant public buildings, streetscapes and heritage areas”, the proposal is able to satisfy the performance criteria.

7.7 Height (E19.7.2 A2)

- 7.7.1 The acceptable solution requires:

E19.7.2 A2

Height above natural ground level must be no more than:

- (a) ...
 - (b) ...
 - (c) ...
 - (d) 20 metres in the Community Purpose, General Residential, Inner Residential, Light Industrial, Local Business, Low Density Residential, Recreation, Urban Mixed Use and Village Zones.
- 7.7.2 The applicants propose the construction of a 30m tower in the Light Industrial Zone. By virtue of clause 7.3 of the Planning Scheme, the Code standards prevail over that of the zone, allowing an increase in height from 9m to 20m. Accordingly, the proposal exceeds the acceptable solution.

¹ Guidance for Assessing Cumulative Landscape and Visual Effects (retrieved 7/8/2018)
http://www.snowdonia.gov.wales/_data/assets/pdf_file/0010/794332/Part-5-.pdf

² Guidelines for Landscape and Visual Impact Assessment (GLVIA 3) (retrieved 7/8/2018)
<https://www.landscapeinstitute.org/technical/glvia3-panel/>

7.7.3 The performance criteria require:

Height above natural ground level not complying with A2 must satisfy all of the following:

- (a) *the predominant height of existing infrastructure or vegetation in the immediate vicinity is above the specified height limit;*

Planning Response

To assess the proposal against this clause it is important to first consider the definition of predominant:

“more noticeable or important, or larger in number, than others” (Cambridge Online Dictionary)

“Present as the strongest or main element” (Oxford online dictionary).

Arguably the existing 30m monopole is the predominant structure in the vicinity as it is the “most noticeable” and presents “as the strongest element” and therefore the criteria is considered to be satisfied.

It may be possible to mount an argument that low scale industrial and residential buildings are “larger in number”, however this is not considered to be the stronger argument.

It is interesting to note however, that the existing monopole could not have been approved if it was subject to this clause instead of the standards in the Brighton Planning Scheme 2000.

- (b) there is no adverse impact on heritage or ecological values, or visual amenity of the locality;

As set out above, the proposed tower will not adversely impact heritage values. There are no significant ecological values on the site, nor within close proximity, given past development of surrounding land.

Visual amenity has been discussed above. Cumulative visual impacts for nearby residents is high, given proximity to the proposed tower. However, across the locality, detrimental impact on visual amenity is minimised given the siting, topography of the site and existing infrastructure.

The proposed monopole is to be grey in colour. Given the built up nature of surrounding development, it is considered that a darker colour would reduce visual impact. It is recommended that a condition be included in any approval requiring the tower to be dark grey or black, to minimise visual impact. It is also recommended that the colour is “matt” to reduce reflectivity.

- (b) *it is critical for the role of the facility within the telecommunications network.*

Planning Response

The new telecommunications facility is proposed such that the community, business, emergency services and visitors within Brighton and surrounding areas will experience enhanced indoor and outdoor coverage and accelerated delivery of services. Digital services have become increasingly necessary with businesses, specialist sectors such as tourism and personal use all reliant on enhanced communication technology.

- 7.7.4 The proposal is considered to satisfy the performance criteria.

7.8 Other Matters

- 7.8.1 The representor raises concerns about the health effects of electromagnetic energy generated from the proposed telecommunications tower, as well as the cumulative effects.
- 7.8.2 The Planning Authority is required to apply the relevant regulatory standards. The Authority has no jurisdiction in creating new regulatory standards. The Australian Standard is based on scientific research that shows the levels at which harmful effects occur and it sets its limits, based on international guidelines. The Radiation Protection Standard is set by the Australian Radiation Protecting and Nuclear Safety Agency (ARPANSA) pursuant to s376 of the Telecommunications Act, which specifies the continuous exposure limits and is based on strict World Health Organisation guidelines.
- 7.8.3 The Australian Communications and Media Authority (ACMA), pursuant to s162 of the Radiocommunications Act 1962 regulates tele and radio communications and enforces mandated exposure limits in relation to EME.
- 7.8.4 A summary of estimated maximum cumulative radiofrequency (RF) electromagnetic energy (EME) Levels around the proposed wireless base station at 2 Elderslie Road, Brighton was submitted with the original application, as 71% of the maximum public

exposure limit. That summary was revised (post public exhibition), upon notification that Optus is to upgrade its facilities on the existing Telstra monopole. However, as shown in Figure 5, the report shows that predicted cumulative EME levels, of the towers are well within the requirements of the Australian Communications and Media Authority (ACMA), being a total of 1.58% put of the public exposure limited.

- 7.8.5 The Planning Authority may be aware that there are various findings from the Victorian Civil and Administrative Tribunal (VCAT) and the Tasmanian Resource Planning & Appeals Tribunal (RMPAT) that stated that the validity of the Australian Standard must be upheld and that refusing telecommunications towers or facilities on the basis of health effects were insufficient grounds for refusal when the associated EME Levels are demonstrated to comply with the Australian Standards. (See, for example, Connell Wagner PL v City Port Phillip [1998] VCAT 606, Optus Pty Ltd v Cardinia SC [2004] VCAT 581, Heland Pty Ltd v Kingston CC [2005] VCAT 2927, Telstra Corporation Ltd v Whitehorse CC [2005] VCAT 909, Hutchison 3G Australia Pty Ltd v Hobsons Bay CC [2005] VCAT 1470, Telstra Corporation Ltd v Mildura RCC [2009] VCAT 1928, Optus Mobile Pty Ltd v Ballarat CC [2010] VCAT 661, Telstra Corporation Ltd v Yarra Ranges SC [2011] VCAT 895, Vodafone Hutchinson Australia Pty Ltd v Corangamite SC [2012] VCAT 1155).

Environmental EME Report

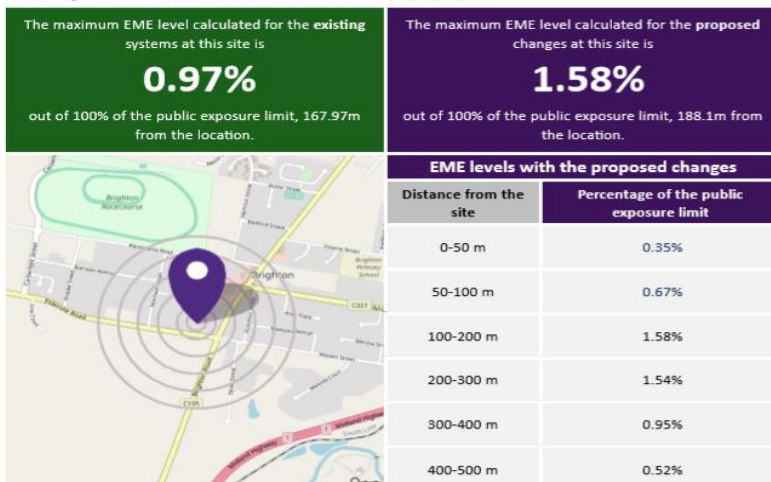
Location	2 Elderslie Road, BRIGHTON TAS 7030 (Vodafone Pole)		
Date	25/07/2018	RFNSA No.	7030046

How does this report work?

This report provides a summary of levels of radiofrequency (RF) electromagnetic energy (EME) around the wireless base station at 2 Elderslie Road, BRIGHTON TAS 7030. These levels have been calculated by Radhaz Consulting using methodology developed by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). A document describing how to interpret this report is available at ARPANSA's website:

[A Guide to the Environmental Report.](#)

A snapshot of calculated EME levels at this site



For additional information please refer to the EME ARPANSA Report annexure for this site which can be found at <http://www.rfnsa.com.au/7030046>.

Figure 5: Copy of independent Environmental EME Report prepared by Radhaz Consulting, NAD (v1.0.89518.29385) provided by applicant.

- 7.8.6 Whilst there have been fewer Telecommunication Tower applications that have proceed to an appeal in Tasmania, the experience by the RMPAT has been similar to VCAT, where a refusal by Council to grant a permit or a third party appeal on the grounds of impact on health when it has been demonstrated that the EME Levels comply with the relevant standards have also been overturned (Blake Dawson Waldron obo Telstra Corporation v West Tamar Council [2004] TASRMPAT 201).
- 7.8.7 More recently (July 2018), consent agreement was reached at the Tribunal in the matter of Optus Mobile Pty Ltd and Devonport City Council [2018] TASRMPAT 43B, with the Tribunal upholding Optus' appeal against Devonport City Council. The Council, in that instant, refused a 25m high telecommunications tower, based on possible adverse health effects.
- 7.8.8 The EME Levels generated from the proposed tower are well below the Australian Standard. The Planning Authority cannot reject the proposal on health grounds where the application complies with the relevant Australian Standard in relation to electromagnetic radiation. The Australian Standard must be upheld in regards to radiation emissions. The Brighton Interim Planning Scheme, does not provide the power to support refusal of a permit if the emissions comply with the Australian Standard and the levels determined by the ACMA.

8. Discussion

- 8.1 The Zone Purpose Statements for the Light Industrial Zone are:

- 24.1.1.1 To provide for manufacturing, processing, repair, storage and distribution of goods and materials where off-site impacts are minimal or can be managed to minimise conflict or impact on the amenity of any other uses.
- 24.1.1.2 To promote efficient use of existing industrial land stock.
- 24.1.1.3 To minimise land use conflict in order to protect industrial viability and the safety and amenity of sensitive land uses in adjacent zones.
- 24.1.1.4 To provide industrial activity with good access to strategic transport networks.

It is considered that the proposal does not contradict the Zone Purpose Statements in relation to 24.1.1.1, 24.1.1.2, and 24.1.14. 24.1.13 is addressed in the assessment under the Telecommunications Code, pursuant to clause 7.3 of the Planning Scheme.

8.2 The purpose of the Telecommunications Code is to:

E19.1.1 The purpose of this provision is to:

- (a) facilitate equitable provision and access to high-speed broadband and telecommunication networks as services essential for the prosperity, security and welfare of the community;
- (b) encourage new telecommunication and digital facilities to form part of a local or regional telecommunications network for all carriers;
- (c) encourage shared use and co-location of facilities to minimise the number of towers within the municipal area;
- (d) minimise likely adverse impact of communication systems on community health and safety;
- (e) minimise adverse visual impact of towers and antennae.

8.2.1 The purpose of the proposal is to provide increased services provided by Vodafone to the Brighton township and surrounds, which will aid businesses and residents alike in undertaking their day to day transactions.

The applicant has demonstrated that co-location on the existing Telstra monopole is not an option and has chosen to co-locate on the same industrial site in Brighton.

The siting of the proposed tower seeks to minimise the visual impact arising from its construction (19.1.1(e)). Effect on community health and safety have been demonstrated to be well below the acceptable national standard required by ARPANSA.

8.2.3 Accordingly, it is considered that the proposal does not contradict the purpose of the Telecommunications Code.

8 Concerns raised by representors/petitioners

8.6 The following table outlines the issues raised by representor.

Representation	Brief Response
<p>Firstly I would like to express that I am not opposed to the towers in principal, as we do need them. I am alarmed that the council would allow another tower to be erected at the above address, Telstra have a tower with Optus sharing at the same location.</p>	<p>See discussion above in relation to shared use and co-location – clause 7.5</p>
<p>No one was notified about the Telstra tower nor have residents been notified about this application. When I was talking to people, the majority said they don't get the newspaper and they don't walk past 2 Elderslie Road to see the notice. So the first thing they know about the towers are when they are erected.</p>	<p>Public notification regarding the original Telstra tower is not a consideration in this assessment. However, for completeness, Council records indicate that notification was undertaken in accordance with the requirements of the Land Use Planning and Approvals Act 1993</p> <p>Public Notification in relation to the current proposal has been undertaken in relation to the requirements of ss57(3) and 57(4) of the Land Use Planning and Approvals Act 1993 and the s9 of the Land Use Planning and Approvals Regulations 2014.</p>
<p>My major concern with the current Tower being so close is the exposure to EMF radiation and then with 2 Towers being proposed in the same location, this would double the EMF emissions to which no one knows how this can affect the health of the community.</p> <p>(the representor also discusses scientific research in relation to EMF radiation and findings)</p>	<p>The Use and development standard for the Telecommunications Code does not specifically address community health and safety.</p> <p>Refer to clause 7.8 for discussion of EME radiation.</p>
<p>I believe that the Kingston and Hobart councils in the past had changed locations of proposed towers due to residents being concerned for similar reasons</p>	<p>This is not a matter for consideration. Council is obliged to assess the proposal before them.</p>

<p>We have other areas around the hills where Towers can go and would probably be more effect for users... so the other concern is the effectiveness of another Tower in the same location</p>	<p>The applicant attempted to find alternative locations, but failed to reach agreement with landowners. Council is now obliged to assess the proposal before them.</p>
<p>Under the planning scheme - Zone E19.1.1 (sic)</p> <p>D- minimise likely adverse impact of communication systems on community health and safety</p> <p>E - minimise adverse visual impact of towers and antennae</p> <p>I believe both of the above should be taken into account with this proposal as no one can be sure on the long term community health and safety to the community with 2 Towers being in the same location, the visual impact, and the effects on other systems causes issues because of these two towers.</p>	<p>See clauses 7.6-7.8 inclusive.</p>
<p>Another site proposed by Vodafone was No.14 Elderslie Road... In the report, Vodafone have stated that the Landlord of No.14 has plans to redevelop the site into a mixed use residential development. With the potential of the impact of this proposed development the landlord and Vodafone did not enter into a commercial agreement.</p> <p>This is completely incorrect and the land at No. 14 is zoned light industrial. I and others would like to have this investigated and</p>	<p>The representor is correct in that the site in question cannot be developed for mixed residential use, given its Light Industrial Zoning. However, the future use of the site is not pertinent to the current application.</p> <p>Whether Vodafone and the property owner is able to enter into a commercial agreement, is a matter for those parties.</p>

<p>a response to the untruthful information above, this now puts the report in doubt of its credibility.</p>	
<p>The representor recommends:</p> <ul style="list-style-type: none"> • Move the proposed tower to another location in the hills for better communication, health and safety • Move the proposed Tower to another location in the hills to reduce the visual impact on the local area • Move the proposed Tower to another location for better coverage for the community as a whole. 	<p>Council is required to assess the application as submitted. Council cannot provide a condition to locate the tower elsewhere. Rather, if the location id deemed inappropriate the application would need to be refused.</p>
<p>The representor lodged an addendum to the original representation (as set out above) on 17th July 2018 which raised additional concerns:</p>	
<p>The table shows the predicted levels of EME from the antennas is 0.71% and that is 1.5m from ground level. Our house and many others are 15-20m above ground level because of the hill, therefore EME levels will be higher and with two towers there the EME will be double</p>	<p>Refer to clause 7.8</p>
<p>Visual Impact.</p> <p>Vodafone has no consideration to the ratepayers in close proximity. With one tower there it is bad enough and to put another one it would impede on our vision. Photos have been taken from my front</p>	<p>Refer to clauses 7.6 and 7.7</p>

<p>door/balcony and also Morrison Street. No photos had been taken by Vodafone from Morrison Street. Please also consider that the corner of Elderslie and Brighton Road have been identified for future Residential sub-division.</p>	
<p>The representor recommends (further to the original representation)</p> <ul style="list-style-type: none"> • Take another look at locating the tower to 63A Elderslie Road, Brighton. 	<p>The Applicant was originally requested to consider the site at 63A Elderslie Road, which is Zoned utilities.</p> <p>The applicant reports “Although locating at 63A Elderslie Road would partially satisfy the target coverage objectives, it has further been determined the desired quality of service to the locations above would be compromised.” (CPS Global, correspondence dated 23rd May 2018, p16)</p>

8.7 A petition containing 60 signatures was received on 19th June 2018, during the first public exhibition period, which states:

All names on this petition agree that we don’t want another telecommunication tower at 2 Elderslie Road, Brighton.

8.8 The petition does not present any planning concerns in relation to the proposal. Accordingly, the petition does not invoke any planning considerations.

8.9 It is submitted that the assessment contained within this report satisfactorily addresses issues that may be of concern to the petitioners.

9. Conclusion

9.1 The proposed use and development of Telecommunications Facility in the Light Industrial Zone at 2 Elderslie Road, Brighton, 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-2017/295 for use and development of **Telecommunications Facility** at 2 Elderslie Road, Brighton in Tasmania, 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.

Noise

- (3) Noise emissions measured at the boundary of a residential zone must not exceed the following:
 - (a) 55dB(A) (LAeq) between the hours of 7.00 am to 7.00 pm;
 - (b) 5dB(A) above the background (LA90) level or 40dB(A) (LAeq), whichever is the lower, between the hours of 7.00 pm to 7.00 am;
 - (c) 65dB(A) (LAmax) at any time.

Measurement of noise levels must be in accordance with the methods in the Tasmanian Noise Measurement Procedures Manual, issued by the Director of Environmental Management, including adjustment of noise levels for tonality and impulsiveness.

Co-Location

- (4) The monopole must be structurally and technically designed to accommodate comparable additional users, including by the rearrangement of existing antenna and the mounting of antenna at different heights. Certification from a suitably qualified engineer demonstrating compliance with this condition must be provided prior to works commencing.

Amenity

- (5) Prior to the issue of building consent, a schedule specifying the finish and colours of all external surfaces and samples must be submitted to and approved by the Council's Manager Development Services. The schedule must provide for finished colours that minimise visual intrusion, with a light reflectance value not exceeding forty percent (40%).
- (6) All external metal building surfaces must be clad in non-reflective pre-coated metal sheeting or painted to the satisfaction of the Manager Development Services

Services

- (7) 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.
- (8) The approved structure(s) must be sited clear of any easement and located at least 1.00 metre measured horizontally from any Council service mains.

TasWater

- (9) The use and/or development must comply with the requirements of TasWater, as detailed in the form Submission to Planning Authority Notice, Reference No TWDA 2017/01929-BTN dated 6/12/2017 as attached to this permit.

Protection of water quality

- (10) 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 Manager Development Services before development of the land commences (refer to advice below). The SWMP shall form part of this permit when approved.

Construction amenity

- (11) 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.

- (12) 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.
- (13) 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.
- (14) 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.
- (15) 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. A separate permit is required for any signs unless otherwise exempt under Council's planning scheme.
- C. This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.

DECISION:

Cr Higgins moved, Cr Curran seconded that the application be refused.

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Higgins	
Cr Owen	
Cr Williams	

Cr Higgins moved, Cr Curran seconded that the application be refused based on Clause E19. 7.2. P2(a) – predominant height of existing infrastructure and vegetation in the immediate vicinity is below specified height limit of 20m in the Light Industrial Zone..

CARRIED

VOTING RECORD

In favour	Against
Cr Curran	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Higgins	
Cr Owen	
Cr Williams	

The meeting closed at 6.15 pm

Confirmed: _____
(Mayor)

Date: _____
21st August 2018