



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,
8TH OCTOBER, 2019

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

IN ATTENDANCE: Mrs J Banks (Governance Manager); Mr H Macpherson (Municipal Engineer) and Mr P Carroll (Planning Officer)

1. APOLOGIES:

Cr Owen moved, Cr Murtagh seconded that Cr Garlick and Cr Jeffries be granted leave of absence due to illness.

CARRIED

VOTING RECORD

In favour Against

Cr Curran
Cr Foster
Cr Geard
Cr Gray
Cr Murtagh
Cr Owen
Cr Whelan

2. QUESTION TIME & DEPUTATIONS:

As there were no members in the gallery there was no requirement for question time.

3. DECLARATION OF INTEREST:

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

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

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

There were no declarations of interest.

4. COUNCIL ACTING AS PLANNING AUTHORITY:

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

4.1 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 DA 2019 / 0143 – 31 LAMPRILL CIRCLE, HERDSMANS COVE – DWELLING:

Type of Report	Planning Authority – For Decision
Application No:	DA 2019/143
Address:	31 Lamprill Circle, Herdsmans Cove
Applicant:	Systembuilt Homes
Proposal:	Dwelling
Zone:	General Residential
Representations:	One (1)
Discretion:	1. Building Envelope 2. Private Open Space 3. Privacy
Author:	Jo Blackwell (Planning Officer)

1. Executive Summary

- 1.1. Planning approval is sought for a dwelling in the General Residential Zone at 31 Lamprill Circle, Herdsmans Cove.
- 1.2. The application is discretionary due to reliance on performance criteria.

- 1.3. One (1) representation was received. It is considered that the issues raised in the representations warrant modification of the proposal to include amended plans including privacy screening for the deck.
- 1.4. The proposal is recommended for approval subject to conditions relating to the above key planning issues.
- 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 2019/143.
- 2.2. This determination must be made no later than 15th October 2019, which has been extended beyond the statutory timeframe with the consent of the applicant.
- 2.3. The relevant legislation is the Land Use Planning and Approvals Act 1993 (LUPAA). The provisions of LUPAA require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the Judicial Review Act 2000 and the Local Government (Meeting Procedures) Regulations 2015.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the State Policies and Projects Act 1993.
- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these.

Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application. Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

3. Risk & Implications

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

4. Relevant Background and Past Applications

- 4.1. None relevant.

5. Site Detail

- 5.1. The subject site has a total land area of 686m², and is generally rectangular in shape, albeit narrower at the road frontage than the rear boundary. The site is separated from the Derwent River by a State-owned reserve and has a fall of approximately 1:6.3.
- 5.2. The land adjoining the side boundaries of the site is zoned General Residential, whilst the reserve is zoned Open Space (refer figure 1).
- 5.3. The subject site is located approximately 300m south of the Herdsmans Cove Primary School and has easy access to public transport (refer figure 2).



Figure 1. Zoning of the subject site and its surrounds. Red denotes the General Residential Zone; green denotes the Open Space Zone. (Source: LISTmap)



Figure 2. Aerial image of the site and its surrounds (Source: LISTmap).

6. Proposal

- 6.1. The application is for a single-storey dwelling. The floor plan shows four bedrooms, a study and an open plan kitchen/family area, as well as a separate living/ dining area. Two car parking spaces are proposed in front of the building line, with access to the dwelling via stairs and deck at the northern corner of the proposed dwelling. The dwelling is to be clad in Colorbond custom orb wall cladding and sheet roofing, Deep Ocean and Basalt in colour.
- 6.2. The application is supported by the attached building design plans, which have been amended subsequent to being advertised, in response to the representation received. The plans have not been readvertised, as the discretion in relation to privacy has now been satisfied and no other changes have been shown. The initial privacy discretion, and subsequent amendment is addressed in more detail in clause 8.3 of this report.

7. Assessment against planning scheme provisions

- 7.1. The following provisions are relevant to the proposed use and development;
 - General Residential Zone
 - Road and Railway Assets Code
 - Parking and Access Code
 - Stormwater Management Code
- 7.2. The application satisfies the following Acceptable Solutions:
 - 10.4.1 A1

- 10.4.2 A1 and A2
- 10.4.3 A1
- 10.4.4. A1, A2 and A3
- 10.4.5 A1
- 10.4.6 A2 & A3
- 10.4.7 A1
- Code E5.0
- Code E6.0
- Code E7.0

7.3. The following discretions are invoked:

- 10.4.2 A3 - Building Envelope
- 10.4.3 A2 - Private Open Space
- 10.4.6 A1 - Privacy

8. Discretions

8.1. Discretion 1: Building Envelope – 10.4.2 A3

- The south eastern corner of the dwelling exceeds the building envelope on the south western elevation (refer sheet 06 of the attached plans). Accordingly, the performance criteria needs to be addressed.

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.
- As shown by the shadow diagrams provided (Sheet 03), the proposed dwelling will not reduce sunlight to a habitable room of a dwelling on the adjoining lot located to the north, nor overshadow the private open space of that dwelling.
- Sheet 03 does show that the proposed dwelling will overshadow the adjoining vacant block. However, the overshadowing is not considered to cause an unreasonable loss of amenity, given the small percentage of the site affected (approximately 10%). Opportunity also exists for any owner of the site to locate any future dwelling to ensure such that overshadowing can be minimised.
- The dwelling is single storey, with a floor area of approximately 197sqm (including decks). Finished floor level (FFL) will range between 0.7m at the south eastern corner of the dwelling, to 3.615m at the north western corner of the dwelling. The sub-floor area under the dwelling is to be left open, which will reduce the visual bulk of the dwelling. The exterior façade is broken up by returns, screening and glazing, further reducing visual impact.
- Landscaping would also help to reduce visual impact, and it is recommended that a condition be included on the permit, requiring the submission of a landscaping plan for approval by council's Manager Development Services, and implementation of that plan as part of the development.
- Setback to side boundaries in the area are generally quite limited, ranging between 1.5 – 3m for many dwellings, which is similar to that proposed by the applicant.
- It is considered that, with conditions, the Performance Criteria can be satisfied.

8.2. Discretion 2 – Private Open Space 10.4.3 A2

8.2.1 The proposed dwelling is not able to satisfy the Acceptable Solution in relation to private open space (POS), particularly in relation to Section 10.4.3 A2(b)(i). The floor plan shows a deck of 28.8sqm which satisfies the area requirement in Section 10.4.3 A2(a)(i).

However, the minimum horizontal dimension is 2m, contrary to the 4m width required in the Acceptable Solution.

8.2.2 Accordingly, the Performance Criteria needs to be addressed, which requires:

A dwelling must have private open space that:

(a) includes an area that is capable of serving as an extension of the dwelling for outdoor relaxation, dining, entertaining and children's play and that is:

(i) conveniently located in relation to a living area of the dwelling; and

(ii) orientated to take advantage of sunlight.

8.2.3 The deck is accessed directly from the open plan family/kitchen area through a sliding door located on the western side of the dwelling, allowing for the internal rooms to be extended through to the deck. The deck is orientated such that it will have access to afternoon sunlight, whilst encompassing the views over the Derwent River.

8.2.4 It is considered that the ability to utilise the private open space, in conjunction with the open plan family/kitchen area, can satisfy the requirements of the Performance Criteria.

8.3 Discretion 3 - Privacy - 10.4.6 A1 The proposal does not satisfy the AS in relation to privacy relating to decks, carports etc, in that the area of the deck with a FFL greater than 1m above NGL is not screened.

8.3.2 A representation was received citing concerns regarding overlooking in relation to this aspect of the proposal.

8.3.3 Negotiations with the applicant have resulted in amended plans being submitted (as per the attached plans) which show screening along the deck on the north west and south east elevations.

8.3.4 The amended plans satisfy the acceptable solution.

8.3.5 The representor has confirmed verbally that she is content with the amended proposal.

8.3.6 Accordingly, it is considered that the proposal can be amended to satisfy the AS through the inclusion of the amended plans which show screening to a minimum 1.7mH above FFL. A condition is recommended, requiring that the screening to remain in situ for the life of the deck.

9. Referrals

9.1 Technical Officer

9.1.1 The application was referred to Council's Technical Officer who has advised that the proposal satisfies the Acceptable Solutions for the Road and Railway Assets Code, the Parking and Access Code, and the Stormwater Management Code.

9.1.2 Standard conditions have been recommended for approval in the permit.

10. Concerns raised by representors

10.1. The following table outlines the issues raised by the representor.

<p>The new dwelling will be so far back directly viewing our backyard. This privacy issues needs to be closer look at. We have two children at my resident.</p>	<p>Refer to Section 8.3 of this report for discussion.</p> <p>All windows of the dwelling satisfy the Acceptable Solution of the privacy standards set out in the scheme. Further, any loss of amenity through overlooking will be further minimised through the installation of the screening along the deck.</p>
<p>There are windows fixed directly over our backyard. And the house seems to be terrible tall. We also have concerns with the view we are also losing. Which will affect my re selling value of my dwelling...</p>	<p>The proposed development therefore satisfies all relevant privacy standards.</p>

11. Discussion

11.1. The application is for a Single Dwelling in the General Residential Zone. The applicant seeks to rely on performance criteria in relation to the building envelope, private open space and privacy.

11.2. Amended plans submitted subsequent to the advertising period removes the discretion in relation to privacy by including screening to 1.7m above the finished floor level along the north western and south eastern decks. It is recommended that the amended plans be included as part of the permit.

11.3. The proposal is considered to satisfy the Performance Criteria in relation to the building envelope and private open space, as discussed above.

12. Conclusion

12.1. The proposed use and development of Dwelling in General Residential Zone at Lamprill Circle, Herdsmans Cove satisfies the relevant provisions of the Brighton Interim Planning Scheme 2015, and as such is recommended for approval.

RECOMMENDATION:

That pursuant to the Brighton Interim Planning Scheme 2015, Council approve application DA 2019/143 for use and development of Dwelling in General Residential Zone at 31 Lamprill Circle, Herdsmans Cove for the reasons outlined in the officer's report and a permit containing the following conditions be issued, subject to the following conditions and advice:

General

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

Amenity

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

Private open space

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

Landscaping

- (5) Before any work commences submit a landscape plan prepared by a suitably qualified person for approval by Council's Manager Development Services. The landscape plan must include:
 - (a) The areas to be landscaped,
 - (b) Details of surface finishes of paths and driveways.
 - (c) Details of fencing.
 - (d) 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.
 - (e) Landscaping and planting within all open areas of the site.

The landscaping plan should include vegetation along the south western (rear) boundary that will grow to a height a minimum height of 5m and be planted 5m apart.

- (6) Planting must bear a suitable relationship to the proposed height of the buildings and must not use species listed as noxious weeds within Tasmania, displaying invasive characteristics or unsuitable for fire prone areas. If considered satisfactory, the landscape plan will be endorsed and will form part of this permit.
- (7) Prior to issue of a Certificate of Completion under the *Building Act* 2016, all trees and landscaping must be planted and installed in accordance with the approved Landscaping Plan to the satisfaction of the Council's Manager Development Services. Evidence showing compliance with this condition must be submitted to and approved by the Manager Development Services within 30 days of planting.
- (8) Replacement trees and landscaping in accordance with the approved Landscaping Plan must be planted if any is lost. All landscaping must continue to be maintained to the satisfaction of Council.

Privacy

- (9) The privacy screening is to be:
 - (a) At least 1.7 metres in height above the finished floor level;
 - (b) be no more than 25% transparent; and
 - (c) must extend the full length of:
 - i. north western facing deck, and
 - ii. south eastern facing deck.
- (10) The privacy screening must be installed prior to the first use of the deck, and is to remain in place for the life of the deck.

Services

- (11) 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

- (12) A 3.6m wide vehicle access must be provided from Lamprill Circle 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;and to the satisfaction of Council's Municipal Engineer.

- (13) At least two (2) parking spaces must be provided on the land at all times for the use of the occupiers in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney.
- (14) The internal private driveway and areas set-aside for parking and associated access and turning must be provided in accordance the endorsed drawings, 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 3m;
 - (b) Drained to an approved stormwater system;
 - (c) Surfaced with concrete, asphalt or pavers; and
 - (d) Include wheel stops to restrain vehicles or use a trafficable embankment slope.

Stormwater

- (15) 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.
- (16) The developer must provide a minor stormwater drainage system designed to be able to accommodate a storm with an ARI of 20 years when the land serviced by the system is fully developed.

Soil and Water Management

- (17) 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

- (18) 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.
- (19) 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.
- (20) 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.
- (21) 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.
- (22) The developer must make good and/or clean any footpath, road surface or other element damaged or soiled by the development to the satisfaction of the Council's Municipal Engineer.

THE FOLLOWING ADVICE APPLIES TO THIS PERMIT:

- A. This permit does not imply that any other approval required under any other legislation or by-law has been granted.
- B. This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.

DECISION:

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

CARRIED**VOTING RECORD****In favour Against**

Cr Curran
Cr Foster
Cr Geard
Cr Gray
Cr Murtagh
Cr Owen
Cr Whelan

4.2 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 DA 2019/00142 – 919 BACK TEA TREE ROAD, TEA TREE- DWELLING & OUTBUILDING:

Type of Report	Planning Authority – For Decision
Application No:	DA 2019/00142
Address:	919 Back Tea Tree Road, Tea Tree
Proposal:	Dwelling & Outbuilding
Zone:	Rural Resource Zone
Representations:	Two (2)
Discretions:	1. Use table (26.2) 2. Sensitive use (26.3.1 A1) 3. Discretionary use (26.3.3 A1) 4. Building setback from side and rear boundaries (26.4.2 A2) 5. Vehicular passing areas along an access (E6.7.3 A1) 6. Surface treatment of parking areas (E6.7.6 A1) 7. Stormwater drainage and disposal (E7.7.1 A1)
Author:	Patrick Carroll (Acting Senior Planner)

1. Executive Summary

- 1.1. Planning approval is sought for a Dwelling and Outbuilding at 919 Back Tea Tree Road, Tea Tree (the 'site'). The site is within the Rural Resource Zone of the Brighton Interim Planning Scheme 2015 (the 'Interim Scheme').

- 1.2. The application has a Use Table discretion (with qualification) and is discretionary due to reliance on performance criteria.
- 1.3. Two (2) representations were received within the statutory public advertising period.
- 1.4. The application is recommended for approval, subject to conditions.
- 1.5. The final decision is delegated to the Planning Authority or by full Council acting as a planning authority.

2. Legislative & Policy Content

- 2.1. The purpose of this report is to enable the Planning Authority to determine application DA 2019/00142.
- 2.2. This determination must be made no later than 15 October 2019, which has been extended by agreement with the applicant.
- 2.3. The relevant legislation is the Land Use Planning and Approvals Act 1993 (the 'Act'). The provisions of the Act 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, unless the decision is appealed.
- 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

4.1. None relevant.

5. Site Detail

5.1. The subject site is a vacant 9.227 hectare (ha) lot with frontage to Back Tea Tree Road. The site is intersected by a reserved road, which is owned and managed by the Crown.

5.2. The site is within the Rural Resource Zone. The site is impacted by the Waterways and Coastal Protection Overlay, however no works are proposed within this overlay area.

5.3. The surrounding land is also zoned Rural Resource.



Figure 1. Aerial photography of the subject site. The reserved road can be seen intersecting the site.

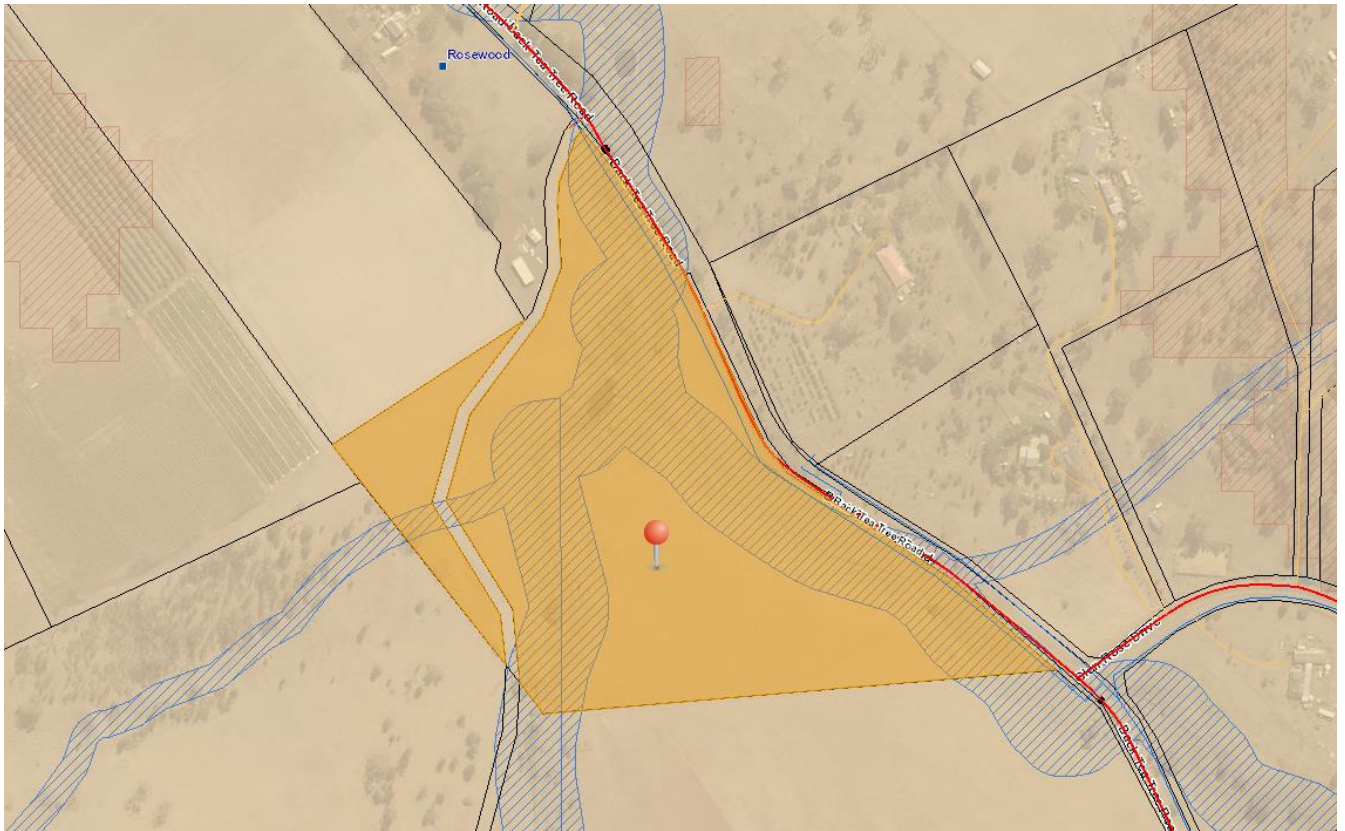


Figure 2. Zoning of the subject site and surrounds. Sandy brown denotes the Rural Resource Zone. The blue hatching denotes the Waterways and Coastal Protection Overlay.

6. Proposal

- 6.1. The applicant has proposed the development of a Single Dwelling and Outbuilding.
- 6.2. The proposed dwelling measures 21.00 metres by 25.00 metres, and will be constructed to a maximum height of 4.50 metres above natural ground level.
- 6.3. The proposed dwelling will be sited 20.00 metres from the south-western (or rear) boundary and 26.00 metres from the north-western (or side) boundary.
- 6.4. The proposed outbuilding measures 15.00 metres by 8.00 metres, and will be constructed to a maximum height of 4.32 metres above natural ground level.
- 6.5. The proposed outbuilding will be sited 10.00 metres from the south-western (or rear) boundary and approximately 100-110 metres from the north-western (or side) boundary.

- 6.6. The applicant has also proposed landscaping to be established along the north-western and south-western sides of the dwelling. This is for the purposes of a vegetation buffer from adjoining agricultural uses.

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.

8. Assessment against planning scheme provisions

- 8.1. The following provisions are relevant to the assessment of the proposed use and development:
- Part D – Section 26.0 – Rural Resource Zone
 - Part E – Section E5.0 – Road and Railway Assets Code
 - Part E – Section E6.0 – Parking & Access Code
 - Part E – Section E7.0 – Stormwater Management Code
- 8.2. The application satisfies the following relevant Acceptable Solutions of the applicable provisions:
- Section 26.4.1 A1 – Building Height
 - Section 26.4.2 A1 – Setback from a Frontage
 - Section 26.4.2 A3 – Setback for Sensitive Uses
 - Section 26.4.2 A4 – Setback from Environmental Management Zone
 - Section 26.4.3 A1 – Location of Buildings and Works
 - Section 26.4.3 A2 – Exterior Building Surfaces
 - Section 26.4.3 A3 – Cut and Fill
 - Section E5.5.1 A1 – Existing Road Accesses and Junctions
 - Section E5.6.2 A1 – Road Accesses and Junctions

- Section E5.6.4 A1 – Sight Distance at Accesses, Junctions and Level Crossings
- Section E6.6.1 A1 – Number of Car Parking Spaces
- Section E6.7.1 A1 – Number of Vehicular Accesses
- Section E6.7.2 A1 – Design of Vehicular Accesses
- Section E6.7.5 A1 – Layout of Parking Areas
- Section E6.7.14 A1 – Access to a Road

8.3. The following discretions are invoked by the proposal:

- Section 26.2 - Use Table
- Section 26.3.1 A1 – Sensitive Use
- Section 26.3.3 A1 – Discretionary Use
- Section 26.4.2 A2 – Setback from a Boundary
- Section E6.7.3 A1 – Vehicular Passing Areas Along an Access
- Section E6.7.6 A1 – Surface Treatment of Parking Areas
- Section E7.7.1 A1 – Stormwater Drainage and Disposal

8.4. **Discretion 1 - Table 26.2 - Use Table**

8.4.1 The applicant has proposed a 'Residential' use at the site.

8.4.2 'Residential' use is defined in Table 8.2 of the Interim Scheme as:

Use of land for self contained or shared living accommodation. Examples include an ancillary dwelling, boarding house, communal residence, home-based business, hostel, residential aged care home, residential college, respite centre, retirement village and single or multiple dwellings.

8.4.3 Under Table 26.2 of the Interim Scheme, 'Residential' is a Discretionary use within the Rural Resource Zone, with the qualification 'only if single dwelling'.

8.4.4 'Single dwelling' is defined within the Interim Scheme as:

A dwelling on a lot on which no other dwelling is situated, or a dwelling and an ancillary dwelling on a lot on which no other dwelling is situated.

- 8.4.5 Section 8.8.1 of the Interim Scheme relates to Discretionary Use and Development. It states:

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

- a) the use is within a use class specified in the applicable Use Table as being a use which is discretionary;
- b) the use or development complies with each applicable standard but relies upon a performance criterion to do so; or
- c) it is discretionary under any other provision of the planning scheme,
- d) and the use or development is not prohibited under any other provision of the planning scheme.

- 8.4.6 Section 8.10.2 of the Interim Scheme continues:

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

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

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

- 8.4.7 Section 26.1.1 of the Interim Scheme provides for the Zone Purpose Statements for the Rural Resource Zone. It states:

26.1.1.1 To provide for the sustainable use or development of resources for agriculture, aquaculture, forestry, mining and other primary industries, including opportunities for resource processing.

26.1.1.2 To provide for other use or development that does not constrain or conflict with resource development uses.

26.1.1.3 To provide for non-agricultural use or development, such as recreation, conservation, tourism and retailing, where it supports existing agriculture, aquaculture, forestry, mining and other primary industries.

26.1.1.4 To allow for residential and other uses not necessary to support agriculture, aquaculture and other primary industries provided that such uses do not:

- (a) fetter existing or potential rural resource use and development on other land;
- (b) add to the need to provide services or infrastructure or to upgrade existing infrastructure;
- (c) contribute to the incremental loss of productive rural resources.

26.1.1.5 To provide for protection of rural land so future resource development opportunities are not lost.

8.4.8 It is considered that the proposed use does not conflict with the Zone Purpose Statements for the Rural Resource Zone.

8.4.9 There are no Local Area Objectives or Desired Future Character Statements for land zoned Rural Resource within the Interim Scheme.

8.4.10 It is considered that the proposed use is satisfactory for the Rural Resource Zone.

8.5 Discretion 2 – 26.3.1 A1 - Sensitive Use

8.5.1 The applicant has proposed a sensitive use, being residential development. The Acceptable Solution contained in Section 26.3.1 A1 states:

A sensitive use is for a home based business or an extension or replacement of an existing dwelling or existing ancillary dwelling, or for home-based child care in accordance with a licence under the Child Care Act 2001.

8.5.2 The development does not comply with the Acceptable Solution. As such, the application must be assessed against the relevant Performance Criteria.

8.5.3 Section 26.3.1 P1 states:

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

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

8.5.4 It is considered that the proposed dwelling does not convert the agricultural potential of the site, as the dwelling is located in the corner of the 9.227 ha lot, and provides for an adequate area for agricultural uses on the remainder of the land, including paddocks for alpaca and horses.

8.5.5 The site adjoins agricultural uses, including a vineyard and grazing land.

8.5.6 The dwelling is proposed to be setback 26m and 20m respectively from the side and rear boundaries of the site.

8.5.7 The nearest agricultural use that is most likely to conflict with the dwelling is the existing vineyard on 37 Rosewood Lane. The closest vines of this vineyard are planted approximately 10m from the property boundary shared with 919 Back Tea Tree Road. This results in a separation between the vines and the proposed dwelling of approximately 40 – 45m.

8.5.8 The applicant is aware of the agricultural uses occurring on the adjoining land, and has proposed landscaping, which will be located between the dwelling and the side and rear boundaries of the site. This landscaping will serve as a vegetation buffer, shielding the dwelling from adjoining agricultural uses.

8.5.9 Naturally, there could be some concern that vineyard operations could impact upon the proposed sensitive use, through noise, odour or particulate emissions.

- 8.5.10 However, it is expected that the proposed landscaping, combined with the separation between the two uses, will provide a buffer, and will adequately manage any potential conflict between uses.
- 8.5.11 It should be further noted that the vineyard (and associated operations, including herbicide spraying, frost fans, bird mitigation measures) does not constitute a use with the potential to cause environmental harm under the Attenuation Code of the Brighton Interim Planning Scheme 2015.
- 8.5.12 Notwithstanding the above, it is recommended that conditions be imposed on the permit requiring that:
- the applicant undertakes appropriate landscaping; and
 - the applicant and Council enter into a Part V Agreement, agreeing that the lot is within an established rural area, and may be subject to noise, odour, chemical and dust emissions associated with surrounding agricultural activities.
- 8.5.13 As such, the proposed development meets the Performance Criteria, subject to appropriate conditioning on the planning permit, should the Council determine to grant approval.

8.6 Discretion 3 – 26.3.3 A1 - Discretionary Use

- 8.6.1 The applicant has proposed a discretionary use, being a single dwelling.
- 8.6.2 There is no Acceptable Solution contained in Section 26.3.3 A1. As such, the application must be assessed against the relevant Performance Criteria.
- 8.6.3 Section 26.3.1 P1 states:
- A discretionary non-agricultural use must not conflict with or fetter agricultural use on the site or adjoining land having regard to all of the following:
- a) the characteristics of the proposed non-agricultural use;
 - b) the characteristics of the existing or likely agricultural use;
 - c) setback to site boundaries and separation distance between the proposed non-agricultural use and existing or likely agricultural use;

d) any characteristics of the site and adjoining land that would buffer the proposed non-agricultural use from the adverse impacts on amenity from existing or likely agricultural use.

8.6.4 As stated in Section 8.5 of this report, above, it is considered that the proposed discretionary use (i.e. the residential use) does not conflict with or fetter the agricultural use or potential of the site.

8.6.5 As mentioned above, it is expected that the proposed landscaping on the site, combined with the separation between the residential use and adjoining agricultural uses, will provide a buffer, and will adequately manage any potential conflict between those uses.

8.6.6 It is recommended that conditions be imposed on the permit requiring that:

- the applicant undertakes appropriate landscaping; and
- the applicant and Council enter into a Part V Agreement, agreeing that the lot is within an established rural area, and may be subject to noise, odour, chemical and dust emissions associated with surrounding agricultural activities.

8.6.7 As such, the proposed development meets the Performance Criteria, subject to appropriate conditioning on the planning permit, should the Council determine to grant approval.

8.7 Discretion 4 - 26.4.2 A2 - Building Setback from Side or Rear Boundaries

8.7.1 The Acceptable Solution contained in Section 26.4.2 A2 states:

Building setback from side and rear boundaries must be no less than 50m.

8.7.2 The development does not comply with the Acceptable Solution. As such, the application invokes discretion for this standard, and must be assessed against the relevant Performance Criteria.

8.7.3 Section 26.4.2 P2 states:

Building setback from side and rear boundaries must maintain the character of the surrounding rural landscape, having regard to all of the following:

- a) the topography of the site;
- b) the size and shape of the site;

- c) the location of existing buildings on the site;
- d) the proposed colours and external materials of the building;
- e) visual impact on skylines and prominent ridgelines;
- f) impact on native vegetation.

8.7.4 The site slopes from the west, down towards the east, towards Back Tea Tree Road. This means that the proposed building site is on the higher elevations of the site.

8.7.5 A large portion of the site is impacted by waterway protection areas, being Tea Tree Rivulet, and other subsidiary waterways. This limits the potential building areas on the site, due to either inundation or limitations to access.

8.7.6 There are no existing buildings on the site.

8.7.7 The proposed colours and external materials are of a low light reflectance value and are not considered to be obtrusive for the area.

8.7.8 Neither the dwelling or the outbuilding is proposed to be located on a skyline or ridgeline.

8.7.9 No native vegetation is required to be cleared to facilitate the proposed dwelling or outbuilding.

8.7.10 It is therefore considered that the proposed development (i.e. both the dwelling and the outbuilding), in relation to setback from side and rear boundaries, maintains the character of the surrounding rural landscape.

8.7.11 As such, the proposed development meets the Performance Criteria.

8.8 Discretion 5 - E6.7.3 A1 - Vehicular Passing Areas Along an Access

8.8.1 The Acceptable Solution contained in Section E6.7.3 A1 states:

Vehicular passing areas must:

- a) be provided if any of the following applies to an access:
 - i. it serves more than 5 car parking spaces;
 - ii. is more than 30 m long;
 - iii. it meets a road serving more than 6000 vehicles per day;

- b) be 6 m long, 5.5 m wide, and taper to the width of the driveway;
- c) have the first passing area constructed at the kerb;
- d) be at intervals of no more than 30 m along the access.

8.8.2 The development does not comply with the Acceptable Solution. As such, the application invokes discretion for this standard, and must be assessed against the relevant Performance Criteria.

8.8.3 Section E6.7.3 P1 states:

Vehicular passing areas must be provided in sufficient number, dimension and siting so that the access is safe, efficient and convenient, having regard to all of the following:

- a) avoidance of conflicts between users including vehicles, cyclists and pedestrians;
- b) avoidance of unreasonable interference with the flow of traffic on adjoining roads;
- c) suitability for the type and volume of traffic likely to be generated by the use or development;
- d) ease of accessibility and recognition for users.

8.8.4 Should the Planning Authority determine to approve the development application, it is considered that the proposed development can satisfy the Performance Criteria with standard conditions being imposed on a permit requiring passing bays to be provided at dimensions and intervals determined by a bushfire hazard management plan, prepared by a person accredited by the Tasmania Fire Service.

8.8.5 The development satisfies the Performance Criteria.

8.9 Discretion 6 – E6.7.6 A1 - Surface Treatment of Parking Areas

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

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

- a) paved or treated with a durable all-weather pavement where within 75m of a property boundary or a sealed roadway;

- b) drained to an approved stormwater system, unless the road from which access is provided to the property is unsealed.

8.9.2 The development does not comply with the Acceptable Solution. As such, the application invokes discretion for this standard, and must be assessed against the relevant Performance Criteria.

8.9.3 Section E6.7.6 P1 states:

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

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

8.9.4 Should the Planning Authority determine to approve the development application, it is considered that the proposed development can satisfy the Performance Criteria with standard conditions being imposed on a permit.

8.9.5 The development satisfies the Performance Criteria.

8.10 Discretion 7 - E7.7.1 A1 - Stormwater Drainage and Disposal

The Acceptable Solution contained in Section E7.7.1 A1 states: Stormwater from new impervious surfaces must be disposed of by gravity to public stormwater infrastructure.

8.10.1 Public stormwater infrastructure is not available at the site. As such, the application invokes discretion for this standard, and must be assessed against the relevant Performance Criteria.

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.

8.10.2 Stormwater will be collected for re-use on site.

8.10.3 As such, the proposed development meets the Performance Criteria.

9. Concerns raised by representors

- 9.1. The application was advertised in accordance with the statutory requirements of the Land Use Planning and Approvals Act 1993.
- 9.2. Two (2) representations were received during the statutory public advertising period. The concerns of the representors are listed below:

Concerns Raised by Representor	Planning Response
Representor 1	
<p>The Rural Resource Use Standards at 26.4.2 require a 50m setback from side and rear boundaries.</p> <p>The proposed application is for the dwelling to be setback 20m and the outbuilding only 10m. I am concerned the proposed site and size (21m x 25m) of the dwelling will not meet the Performance Criteria P2 of the Standards which stimulates (sic) that the setback must maintain the character of the surrounding rural landscape, as it will have a substantial visual impact.</p>	<p>The concerns of the representor are noted.</p> <p>For a detailed response, please refer to Section 8.7, above.</p>
<p>I am also concerned that the proposed location with a setback of only 20m will not meet Performance Criteria P3 in terms of preventing conflict or fettering of primary industry uses on adjoining land. I have a vineyard on my property which necessitates activities (fungicide and herbicide spraying, harvesting, bird scaring etc) which may not be consistent with the applicants' intention for the enjoyment of their dwelling.</p>	<p>The proposed development complies with the Acceptable Solution, as found in Section 26.4.2 A3. As such, the Performance Criteria listed in P3 do not apply to this application.</p> <p>Notwithstanding the above, the concerns of the representor have been considered when addressing the proposal against the relevant</p>

	use standards. Please refer to Sections 8.5 and 8.6 above.
I note that the application incorrectly states that 'the boundary to the north has a 10m access road to the vineyard property to the northwest'.	The comments of the representor are noted.
I am concerned that the proposed dwelling will interfere with stormwater runoff to the Tea Tree Rivulet which runs through the property.	Stormwater from any new impervious surface will be retained on site for re-use.
Representor 2	
<p>Please find information relating to my re use water pipe that is co-owned by the Council where the pipeline runs on Council land and is connected to the main re use pipeline below lot no 4 and situated on lot no 3. This pipeline has been in situ since 2009.</p> <p>Following instructions from Brighton Council and TasWater I installed the pipeline with the grace of Graeme Gangell, the land owner at the time, as described in the SMP drawn up in the same year (2009).</p> <p>The SMP regulations applied to both properties equally.</p> <p>Mr Gangell originally signed the Heads of Agreement document in Oct 2000.</p> <p>The SMP details how I was to lay the pipeline and states the pipeline is not to be buried and that there is a nominal right of way.</p> <p>I am permitted to drawn up to 3ML per year.</p> <p>Stipulations from Sarah Jones from TasWater dated 4/9/2019 stated that:</p> <ul style="list-style-type: none"> • The pipeline must be above ground • The flow is to be turned off when not in use 	The comments of the representor are noted.

<ul style="list-style-type: none"> • I am to check the pipeline regularly • Stop valves are to be fitted other than the main connecting valve. <p>All these things have been done</p> <p>As to the section of the pipeline the Council wanted buried, along Back Tea Tree Road:</p> <ul style="list-style-type: none"> • The trenches were dug by Blair Saville as recommended by Council and subsequently checked by Council, marked with sand and filled in. • I have enclosed a detailed plan which you should already have on file showing my pipeline and the rest of the re use system <p>I hope this is acceptable.</p> <p>I did inform (the applicant) of the pipeline during a conversation with him when he was inspecting the land pre purchase and this did not seem the be a concern.</p> <p>The position of the pipeline would not obstruct any enjoyment of the land. As per stipulations from TasWater I would require access to turn the water on and off 2-3 times a year which would be at a mutually acceptable time.</p>	
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10. Conclusion

- 10.1. The proposal is for a Dwelling and Outbuilding at 919 Back Tea Tree Road, Tea Tree. The site is within the Rural Resource Zone.
- 10.2. The application has been assessed against the relevant standards of the Brighton Interim Planning Scheme 2015 and is considered to perform well. As such, the application is recommended for approval, subject to conditions.

RECOMMENDATION:

That pursuant to the Brighton Interim Planning Scheme 2015, Council approve application DA 2019/00142 for the proposed development of a Dwelling and Outbuilding in the Rural Resource Zone at 919 Back Tea Tree Road, Tea Tree, subject to the following conditions and advice:

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 permit unless, as the applicant and the only person with a right of appeal, you notify Council in writing that you propose to commence the use or development before this date, in accordance with Section 53 of the Land Use Planning and Approvals Act 1993.

Amenity

- (3) The proposed colours and materials for the walls (sandstone-coloured brick) and roof (Colorbond 'gun metal grey') of the dwelling are hereby approved. The approved colours form part of this permit and must be adhered to. Any variation in the approved colours and materials must be submitted to and approved by the Council's Manager Development Services.
- (4) The proposed colours and materials for the walls and roof (Colorbond 'gun metal grey') of the outbuilding are hereby approved. The approved colours form part of this permit and must be adhered to. Any variation in the approved colours and materials must be submitted to and approved by the Council's Manager Development Services.
- (5) All external metal building surfaces must be maintained to the satisfaction of the Manager Development Services.

Agreements

- (6) Prior to commencement of works or the issue of building consent under the Building Act 2016 (whichever occurs first), or in a timeline otherwise agreed to by Council's General Manager, the owner and Council must enter into an agreement pursuant to Part 5 of the Land Use Planning and Approvals Act 1993 in respect of the land. The Agreement is to provide that the owner covenants and agrees with the Brighton Council that the lot is within an established rural area and may be subject to noise, odour, chemical and dust emissions associated with surrounding agricultural activities.

- (7) 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.

Landscaping

- (8) Prior to the issue of building consent under the Building Act 2016 or the commencement of works (whichever occurs first), a landscape plan for the proposed vegetation buffer must be prepared by a landscape architect or other person approved by Council's Manager Development Services. The landscape plan must be submitted to and approved by Council's Manager Development Services, and must show:
 - (a) Vegetation located between the dwelling and the north-western boundary of the site, providing an adequate shield for the dwelling from adjoining agricultural uses;
 - (b) Vegetation located between the dwelling and the south-western boundary of the site, providing an adequate shield for the dwelling from adjoining agricultural uses; and
 - (c) The species to be planted, including mature heights.

Once approved, the landscaping plan shall form part of the permit and must be adhered to.

- (9) Planting must not use species listed as noxious weeds within Tasmania, displaying invasive characteristics.
- (10) The approved vegetation buffer must be completed prior to the issue of a Certificate of Occupancy for the dwelling under the Building Act 2016, and be completed to the satisfaction of Council's Manager Development Services. The vegetation buffer must continue to be maintained to the satisfaction of Council.
- (11) Prior to the issue of a Certificate of Occupancy for the dwelling under the Building Act 2016, the vegetation forming the vegetation buffer must be at least 1.8m in height.

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) At least two (2) car parking spaces must be provided on the land at all times for the use of the development, in accordance with Standards Australia (2004) Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney.
- (14) The internal driveway and areas set-aside for parking and associated access and turning must be provided in accordance with Standards Australia (2004): Australian Standard AS 2890.1 - 2004 – Parking Facilities Part 1: Off Street Car Parking; Standards Australia, Sydney and to the satisfaction of Council's Municipal Engineer, and must include all of the following;
 - (a) Constructed with a durable all weather pavement.
 - (b) Minimum carriageway width of 4 metres
 - (c) Drained to an approved stormwater system.
 - (d) Vehicular passing areas 6 metres wide (total) x 20 metres long every 200 metres.

or as otherwise required by an approved Bushfire Plan.

- (15) The internal driveway and areas set-aside for parking and associated access and turning must be designed, constructed and maintained to avoid dust or mud generation, erosion and sediment transfer off site or de-stabilisation of the soil on site or on adjacent properties to the standard required by Council's Municipal Engineer.

Access to Road

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

Stormwater

- (18) Stormwater drainage from the proposed development must be retained on site to the satisfaction of Council's General Manager and in accordance with a Certificate of Likely Compliance or Plumbing permit issued by the Permit Authority in accordance with the Building Act 2016.

Wastewater

- (19) Wastewater from the development must discharge to an on-site waste disposal system in accordance with a Certificate of Likely Compliance or Plumbing Permit issued by the Permit Authority in accordance with the Building Act 2016.

Soil and Water Management

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

Construction Amenity

- (22) The development must only be carried out between the following hours unless otherwise approved by the Council's Manager Development Services:
- Monday to Friday 7:00 a.m. to 6:00 p.m.
 - Saturday 8:00 a.m. to 6:00 p.m.
 - Sunday and State-wide public holidays 10:00 a.m. to 6:00 p.m.
- (23) All works associated with the development of the land shall be carried out in such a manner so as not to unreasonably cause injury to, or prejudice or affect the amenity, function and safety of any adjoining or adjacent land, and of any person therein or in the vicinity thereof, by reason of:
- (a) Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, ash, dust, waste water, waste products, grit or otherwise.
 - (b) The transportation of materials, goods and commodities to and from the land.
 - (c) Obstruction of any public footway or highway.
 - (d) Appearance of any building, works or materials.

- (24) Any accumulation of vegetation, building debris or other unwanted material must be disposed of by removal from the site in an approved manner. No burning of such materials on site will be permitted unless approved in writing by the Council's Manager Development Services.
- (25) Public roadways or footpaths must not be used for the storage of any construction materials or wastes, for the loading/unloading of any vehicle or equipment; or for the carrying out of any work, process or tasks associated with the project during the construction period.
- (26) The developer must make good and/or clean any footpath, road surface or other element damaged or soiled by the development to the satisfaction of the Council's Municipal Engineer.

THE FOLLOWING ADVICE APPLIES TO THIS PERMIT:

- A. This permit does not imply that any other approval required under any other legislation or by-law has been granted.
- B. If you notify Council that you intend to commence the use or development before the date specified above you forfeit your right of appeal in relation to this permit.
- 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 Foster moved, Cr Murtagh seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

In favour Against

Cr Curran
Cr Foster
Cr Geard
Cr Gray
Cr Murtagh
Cr Owen
Cr Whelan

4.3 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 MINOR AMENDMENT TO DA 2018/116 – 20 MAGNOLIA COURT, BRIGHTON MULTIPLE DWELLINGS:

Type of Report	Planning Authority – Minor Amendment
Application No:	DA 2018/116
Address:	20 Magnolia Court, Brighton
Applicant:	Pontville Homes
Proposal:	Minor Amendment to Planning Permit
Zone:	General Residential
Author	Patrick Carroll (Acting Senior Planner)

1. Executive Summary

- 1.1. Approval is sought in relation for a minor amendment to a planning permit, pursuant to Section 56 of the Land Use Planning and Approvals Act 1993.
- 1.2. The minor amendment application seeks to amend conditions on the planning permit that relate to stormwater and staging of the development.
- 1.3. The minor amendment is recommended for approval.
- 1.4. As the original planning permit was determined by the Planning Authority, any subsequent minor amendment must also be determined by the Planning Authority, in accordance with Council delegations.

2. Legislative & Policy Content

- 2.1. The purpose of this report is to enable the Planning Authority to determine an application for a minor amendment to the approved planning permit for DA 2018/116.
- 2.2. 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.

2.3. This report details the reasons for the officer's recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the Judicial Review Act 2000 and the Local Government (Meeting Procedures) Regulations 2005.

2.4. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application. Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

3. Risk & Implications

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

4. Relevant Background and Past Applications

4.1. DA 2016/116 – Multiple Dwellings – Approved August 2018

5. Proposed Amendment

5.1. The proposal is for amended conditions in relation to stormwater management, and to allow for a financial contribution being made towards Council's stormwater infrastructure in lieu of on-site detention.

5.2. The proposed amendment also proposes to amend the approved staging of the development.

6. Assessment

6.1. Pursuant to the Act, the Planning Authority may amend the permit if it is satisfied that the proposed amendment satisfies the requirements of Section 56(2) of the Act, which states:

56(2) The planning authority may amend the permit if it is satisfied that the amendment –

- (aa) is not an amendment of a condition or restriction, specified in the permit, that is required, imposed or amended by the Appeal Tribunal; and
 - (a) does not change the effect of a condition or restriction, specified in the permit, that is required, imposed or amended by the Appeal Tribunal; and
 - (b) will not cause an increase in detriment to any person; and
 - (c) does not change the use or development for which the permit was issued other than a minor change to the description of the use or development.
- 6.1 The original application was not subject to appeal. Accordingly, Section 56(2)(aa) and Section 56(2)(a) above are not applicable
- 6.2 It is considered that the amended conditions will not cause an increase in detriment to any person. The proposed minor amendment satisfies the requirements of Section 56(2)(b) of the Act.
- 6.3 The proposed amendment does not constitute a change in description of the development. The proposed minor amendment satisfies the requirements of Section 56(2)(c) of the Act.

7. Referrals

- 7.1. The proposed minor amendment was referred to Council's Senior Technical Officer, who has recommended the permit be amended.

8. Discussion

- 8.1. It is proposed to amend the permit in the following manner:
- 8.2. Amend Condition 1 to incorporate a revised staging plan.

The amended staging plan is:

- *Stage 1: Units 1-6, Units 12-13*
- *Stage 2: Units 7-11*

This amended staging plan forms part of the permit, and must be adhered to.

The amended staging plan supersedes the previously approved staging plan, which was:

- *Stage 1: Units 1-3*
- *Stage 2: Units 4-6, Units 11-13*
- *Stage 3: Units 7-10*

- 8.3. Condition 9 (a) to be amended by deleting the words “treatment and” and “quality is maintained and”, so the condition reads:

The stormwater detention systems must be maintained to ensure water is conveyed so as not to create any nuisance to adjacent properties.

- 8.4. Delete advice after Condition 21, headed “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.

And replace with:

ADVICE: Works on or affecting any Council road reservation are to be carried out in accordance with the endorsed plans and Council’s Guidelines for Works Within the Road Reservation and to the satisfaction of Council’s Municipal Engineer. The applicant must provide a minimum of 48 hours’ notice to Council’s Asset Services department prior to commencing any works within the road reservation.

- 8.5. Condition 23 to be amended to add the following paragraph:

Alternatively:

The developer may, at the discretion of Council’s Municipal Engineer, make a financial contribution to Brighton Council for the provision of stormwater treatment. The value of the contribution must be equal to the cost of implementing on site treatment to meet the targets specified in Table E7.1 Acceptable Stormwater Quality and Quantity Targets of the Brighton Interim Planning Scheme, or as otherwise agreed by Council’s Municipal Engineer.

Where partial treatment is provided on site a proportional contribution may be considered. The contribution must be paid prior to the use commencing.

8.6. Delete Advice Clause B, which reads:

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 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.

8.7. It is considered that the proposed amendments are minor in nature and that no person will be suffer an increase in detriment, in accordance with the relevant requirements of Section 56(2) of the Act.

9. Statutory Notification

9.1. Section 56(3) of the Act requires that, If the planning authority amends a permit, it must, by notice in writing served on –

(a) the person who requested the permit to be amended; and

(b) if that person is not the owner of the land, the owner; and

(c) in the case of a permit granted under section 57, the owner or occupier of any property which adjoins the land; and

(d) any person who made a representation under section 57(5) in relation to the application for the permit –

notify those persons of the amendments made to the permit.

9.2. Any party notified then has the right to appeal the Planning Authority's decision under Section 61 of the Act to the Appeal Tribunal.

10. Conclusion

10.1. The proposed minor amendment to the planning permit for DA 2018/116 at 20 Magnolia Court, Brighton satisfies the relevant provisions of Section 56 of the Land Use Planning and Approvals Act 1993, and as such, is recommended for approval.

RECOMMENDATION:

That pursuant to Section 56 of the *Land Use Planning and Approval Act 1993*, Council approve a minor amendment to the planning permit in relation to application DA 2018/116 for use and development of Multiple Dwellings at 20 Magnolia Court, Brighton, for the reasons outlined in the officer's report and an amended 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.

This condition was amended on 8 October 2019, pursuant to Section 56 of the Land Use Planning and Approvals Act 1993, to incorporate an amended staging plan. The amended staging plan is:

- *Stage 1: Units 1-6, Units 12-13*
- *Stage 2: Units 7-11*

This amended staging plan forms part of the permit, and must be adhered to. The amended staging plan supersedes the previously approved staging plan, which was:

- *Stage 1: Units 1-3*
- *Stage 2: Units 4-6, Units 11-13*
- *Stage 3: Units 7-10*

- (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.

This condition was amended on 8 October 2019, pursuant to Section 56 of the Land Use Planning and Approvals Act 1993

- (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.~~

ADVICE: Works on or affecting any Council road reservation are to be carried out in accordance with the endorsed plans and Council's Guidelines for Works Within the Road Reservation and to the satisfaction of Council's Municipal Engineer. The applicant must provide a minimum of 48 hours' notice to Council's Asset Services department prior to commencing any works within the road reservation.

This advice was amended on 8 October 2019, pursuant to Section 56 of the Land Use Planning and Approvals Act 1993

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.

Alternatively:

The developer may, at the discretion of Council's Municipal Engineer, make a financial contribution to Brighton Council for the provision of stormwater treatment. The value of the contribution must be equal to the cost of implementing on site treatment to meet the targets specified in Table E7.1 Acceptable Stormwater Quality and Quantity Targets of the Brighton Interim Planning Scheme, or as otherwise agreed by Council's Municipal Engineer. Where partial treatment is provided on site a proportional contribution may be considered. The contribution must be paid prior to the use commencing.

This condition was amended on 8 October 2019, pursuant to Section 56 of the Land Use Planning and Approvals Act 1993

- (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.~~

This advice was amended on 8 October 2019, pursuant to Section 56 of the Land Use Planning and Approvals Act 1993

- 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

DECISION:

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

CARRIED

VOTING RECORD

In favour Against

Cr Curran
Cr Foster
Cr Geard
Cr Gray
Cr Murtagh
Cr Owen
Cr Whelan

4.4 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 MINOR AMENDMENT TO DA 2019/047 – 70 FINLAY STREET, BRIDGEWATER- MULTIPLE DWELLINGS:

Type of Report	Planning Authority – Minor Amendment
Application No:	DA 2019/047
Address:	70 Finlay Street, Bridgewater
Applicant:	Wilson Homes
Proposal:	Minor Amendment to Planning Permit
Zone:	General Residential
Author	Jo Blackwell (Planning Officer)

1. Executive Summary

- 1.1. Approval is sought in relation for a minor amendment pursuant to Section 56 of the Land Use Planning and Approvals Act 1993.
- 1.2. The minor amendment application seeks to amend conditions on the planning permit that relate to stormwater.

- 1.3. The minor amendment is recommended for approval.
- 1.4. As the original planning permit was determined by the Planning Authority, any subsequent minor amendment must also be determined by the planning authority, in accordance with Council delegations

2. Legislative & Policy Content

- 2.1. The purpose of this report is to enable the Planning Authority to determine an application for minor amendment to the approved planning permit for DA 2019/047.
- 2.2. 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.
- 2.3. This report details the reasons for the officer's recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the Judicial Review Act 2000 and the Local Government (Meeting Procedures) Regulations 2005.
- 2.4. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application. Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

3. Risk & Implications

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

4. Relevant Background and Past Applications

- 4.1. DA 2019/47 - Multiple Dwellings - Approved July 2019.

5. Proposed Amendment

- 5.1. The proposal is for amended conditions in relation to stormwater management, and to allow for a financial contribution being made towards Council's stormwater infrastructure in lieu of on-site detention.

6. Assessment

- 6.1. Pursuant to the Act, the Planning Authority may amend the permit if it is satisfied that the proposed amendment satisfies the requirements of Section 56(2) of the Act, which states:

56(2) The planning authority may amend the permit if it is satisfied that the amendment –

- (aa) is not an amendment of a condition or restriction, specified in the permit, that is required, imposed or amended by the Appeal Tribunal; and
 - (a) does not change the effect of a condition or restriction, specified in the permit, that is required, imposed or amended by the Appeal Tribunal; and
 - (b) will not cause an increase in detriment to any person; and
 - (c) does not change the use or development for which the permit was issued other than a minor change to the description of the use or development.
- 6.2. The original application was not subject to appeal. Accordingly Section 56(2)(aa) and Section 56(2)(a) above are not applicable
- 6.3. It is considered that the amended conditions will not cause an increase in detriment to any person. The proposed minor amendment satisfies the requirements of Section 56(2)(b) of the Act.
- 6.4. The proposed amendment does not constitute a change in description of the development. The proposed minor amendment satisfies the requirements of Section 56(2)(c) of the Act.

7. Referrals

- 7.1. The proposed minor amendment was referred to Council's Senior Technical Officer, who has recommended that the permit be amended.

8. Discussion

- 8.1. It is proposed to amend the permit in the following manner:
- 8.2. Condition 1 to be amended by including after the word “drawings” in the second line “, engineering plans prepared by Gandy and Roberts dated 27 August 2019”, so the condition reads:

The use or development must be carried out substantially in accordance with the application for planning approval, the endorsed drawings, engineering plans prepared by Gandy and Roberts dated 27 August 2019 and with the conditions of this permit and must not be altered or extended without the further written approval of Council.

- 8.3. Condition 4(a) to be amended by deleting the words “treatment and”, so the condition reads:

The stormwater treatment (where required) systems must be maintained to ensure quality is maintained and water is conveyed so as not to create any nuisance to adjacent properties.

- 8.4. Delete advice after Condition 16 of the permit under the heading “Access to Public Road”:

Works on or affecting any Council road reservation are to be carried out in accordance with the endorsed plans and Council’s Guidelines for Works Within The Road Reservation and to the satisfaction of Council’s Municipal Engineer. The applicant must provide a minimum of 48 hours’ notice to Council’s Asset Services department prior to commencing any works with the road reservation.

- 8.5. Condition 18 to be amended to include the following as a second paragraph:

Alternatively:

The developer may, at the discretion of Council’s Municipal Engineer, make a financial contribution to Brighton Council for the provision of stormwater treatment. The value of the contribution must be equal to the cost of implementing on site treatment to meet the targets specified in Table E7.1 Acceptable Stormwater Quality and Quantity Targets of the Brighton Interim Planning Scheme, or as otherwise agreed by Council’s Municipal Engineer.

Where partial treatment is provided on site a proportional contribution may be considered. The contribution must be paid prior to the use commencing.

8.6. Delete Condition 22:

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 (if required) and outfalls must be prepared by a suitably qualified civil engineer and be submitted to Councils Municipal Engineer for approval.

8.7. Delete Condition 23:

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.

8.8. It is considered that the proposed amendments are minor in nature and that no person will be suffer increased detriment, in accordance with the relevant requirements of s56(2) of the Act.

9. Statutory Notification

9.1. Section 56(3) of the Act requires that, If the planning authority amends a permit, it must, by notice in writing served on –

(a) the person who requested the permit to be amended; and

(b) if that person is not the owner of the land, the owner; and

(c) in the case of a permit granted under section 57, the owner or occupier of any property which adjoins the land; and

(d) any person who made a representation under section 57(5) in relation to the application for the permit –

notify those persons of the amendments made to the permit.

9.2. Any party notified then has the right to appeal the Planning Authority's decision under Section 61 of the Act to the Appeal Tribunal.

10. Conclusion

- 10.1. The proposed minor amendment to the planning permit for DA 2019/047 at 70 Finlay Street, Bridgewater, satisfies the relevant provisions of Section 56 of the Land Use Planning and Approvals Act 1993, and as such, is recommended for approval.

RECOMMENDATION:

That pursuant to Section 56 of the Land Use Planning and Approval Act 1993, Council approve a minor amendment to the planning permit in relation to application DA 2019/047 for use and development of Multiple Dwellings at 70 Finlay Street, Bridgewater, for the reasons outlined in the officer's report and an amended 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, engineering plans prepared by Gandy and Roberts dated 27.08.19 and with the conditions of this permit and must not be altered or extended without the further written approval of Council.

Condition amended pursuant to s56 of the Land Use Planning and Approvals Act 1993 on 8th October 2019

- (2) This permit shall not take effect and must not be acted on until 15 days after the date of receipt of this letter or the date of the last letter to any representor, whichever is later, in accordance with section 53 of the land Use Planning And Approvals Act 1993.

Amenity

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

Agreements

- (4) 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 dwellings, to the effect that:

- a. the stormwater treatment ~~and detention~~ (where required) 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.

Condition amended pursuant to s56 of the Land Use Planning and Approvals Act 1993 on 8th October 2019

- (5) 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.
- (6) Prior to the use commencing the owner/body corporate must provide written agreement allowing Council's 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.

Private open space

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

Landscaping

- (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 first use of the development. Trees must be a minimum of 1.5m high at the time of planting. All landscaping must continue to be maintained to the satisfaction of Council.

Services

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

Parking and Access

(10) A new 5.5m minimum width vehicle accesses must provided from Finlay Street 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.

(11) At least ten (10) 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 two (2) 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.

(12) 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 the endorsed drawings, 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 3m
- (b) Passing bays 5.5m wide by 6.0m long located at the road and every 30m
- (c) Constructed with a durable all weather pavement.
- (d) Drained to an approved stormwater system.
- (e) Surfaced with concrete, asphalt or pavers.
- (f) Provision for two way traffic.

- (13) 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.
- (14) 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:
- pavement details,
 - design surface levels and gradients,
 - drainage,
 - turning paths,
 - dimensions,
 - line marking,
 - signage,
 - pedestrian access,
 - lighting
- and shall form part of the permit when approved.
- (15) 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.
- (16) 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: Works on or affecting any Council road reservation are to be carried out in accordance with the endorsed plans and Council's Guidelines for Works Within The Road Reservation and to the satisfaction of Council's Municipal Engineer. The applicant must provide a minimum of 48 hours' notice to Council's Asset Services department prior to commencing any works with the road reservation.~~

Advice deleted pursuant to s56 of the Land Use Planning and Approvals Act 1993 on 8th October 2019

Stormwater

- (17) 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.
- (18) 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.

Alternatively:

The developer may, at the discretion of Council's Municipal Engineer, make a financial contribution to Brighton Council for the provision of stormwater treatment. The value of the contribution must be equal to the cost of implementing on site treatment to meet the targets specified in Table E7.1 Acceptable Stormwater Quality and Quantity Targets of the Brighton Interim Planning Scheme, or as otherwise agreed by Council's Municipal Engineer. Where partial treatment is provided on site a proportional contribution may be considered. The contribution must be paid prior to the use commencing.

Condition amended pursuant to s56 of the Land Use Planning and Approvals Act 1993 on 8th October 2019

- (19) 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.

ADVICE: The proposed underground Stormwater detention tank may be deleted from the proposal subject to approval from Council's Municipal Engineer following confirmation the public stormwater system has adequate capacity.

- (20) Unless approved otherwise by Council's Municipal Engineer, any increase from pre-development stormwater runoff generated from the subject site, for an ARI of 100 years, is to be detained on site and not discharge to adjacent properties.

ADVICE: Detention for the major event (ARI of 100 years) may be within the parking and driveway areas.

- (21) 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.

- ~~(22) 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 (if required) and outfalls must be prepared by a suitably qualified civil engineer and be submitted to Council's Municipal Engineer for approval.~~

Condition deleted pursuant to s56 of the Land Use Planning and Approvals Act 1993 on 8th October 2019

- ~~(23) 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.~~

Condition deleted pursuant to s56 of the Land Use Planning and Approvals Act 1993 on 8th October 2019

Tas Water

- (24) The development must meet all required Conditions of approval specified by Tas Water Submission to Planning Authority Notice TWDA 2019/00512-BTN, dated 16/04/2019.

Soil and Water Management

- (25) 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

- (26) 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.

- (27) 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.

- (28) 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.
- (29) 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.
- (30) 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 standard agreement pursuant to Part 5 of the Land Use Planning and Approvals Act 1993 is available from Council for use with this development. Contact the Council's Environment and Development Services Department on 6268 7028 for further information.
- 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 Murtagh moved, Cr Foster seconded that the recommendation be adopted.

CARRIED

VOTING RECORD

In favour Against

Cr Curran
Cr Foster
Cr Geard
Cr Gray
Cr Murtagh
Cr Owen
Cr Whelan

The meeting closed at 5.55 pm.

Confirmed: _____
(Mayor)

Date: _____
15th October 2019