



# 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,  
9<sup>TH</sup> JULY, 2019

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

**IN ATTENDANCE:** Mrs J Banks (Governance Manager); Mr D Allingham  
(Senior Planner) and Mr L Wighton (Senior Technical  
Officer)

## 1. APOLOGIES:

*All members were present.*

## 2. QUESTION TIME & DEPUTATIONS:

*There was no requirement for question time.*

## 3. DECLARATION OF INTEREST:

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

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

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

*Cr Geard and Cr Whelan declared an interest in Item 4.1*

#### 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.

*Cr Geard and Cr Whelan left the meeting at 5.31pm.*

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

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

##### 1. Executive Summary

- 1.1. Planning approval is sought for a dwelling necessary to support agricultural use at 27 Fergusson Road, Brighton. The site is located within the Significant Agricultural Zone of the Brighton Interim Planning Scheme 2015 (the 'Interim Scheme').
- 1.2. The application invokes six (6) discretions under the Interim Scheme, specifically:

- Use table (27.2)
  - Sensitive use (27.3.1 A1)
  - Discretionary use (27.3.3 A1)
  - Building setback for buildings for sensitive use (27.4.2 A3)
  - Surface treatment of parking areas (E6.7.6 A1)
  - Stormwater drainage and disposal (E7.7.1 A1)
- 1.3. Two representations were received within the statutory public advertising period. Both representations objected to the proposed development. The concerns of the representors were considered as part of the assessment of the proposal.
- 1.4. The key issues are the necessity for a dwelling on-site for the proposed agricultural use, and the potential for the proposed residential use to conflict with or fetter agricultural use both on the site and adjoining land.
- 1.5. The proposal is recommended for refusal as an on-site dwelling is not considered necessary to support the proposed agricultural use, and the discretionary non-agricultural use would likely conflict with or fetter agricultural use on the site.
- 1.6. The final decision is delegated to the Planning Authority or by full Council acting as a Planning Authority due to the receipt of representations via the public exhibition period for the development application.

## **2. Legislative & Policy Content**

- 2.1. The purpose of this report is to enable the Planning Authority to determine application DA2018/00226.
- 2.2. This determination must be made no later than 31 July 2019, which has been extended beyond the statutory timeframe with the consent of the applicant.
- 2.3. The relevant legislation is the Land Use Planning and Approvals Act 1993 (LUPAA). The provisions of LUPAA require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the Judicial Review Act 2000 and the Local Government (Meeting Procedures) Regulations 2015.

- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the State Policies and Projects Act 1993.
- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application. Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

### **3. Risk & Implications**

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

### **4. Application History**

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

### **5. Relevant Background**

- 5.1. The site was created from a 2 lot plus balance subdivision approved in 2015 (permit SA 2015/00005). The justification for the subdivision was that the land could be used for higher value and more diverse agricultural/horticultural operations, thus facilitating more effective utilisation of the existing land.
- 5.2. Several subdivisions have been approved in the area with a similar lot layout (i.e. lots 5-8ha) and similar justification. The subdivisions were approved with a condition for a Part 5 Agreement, which required a Farm Management Plan. SA 2015/00005 was approved with a Part 5 Agreement and for a dwelling to be integral to an agricultural use, and approved only if:

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

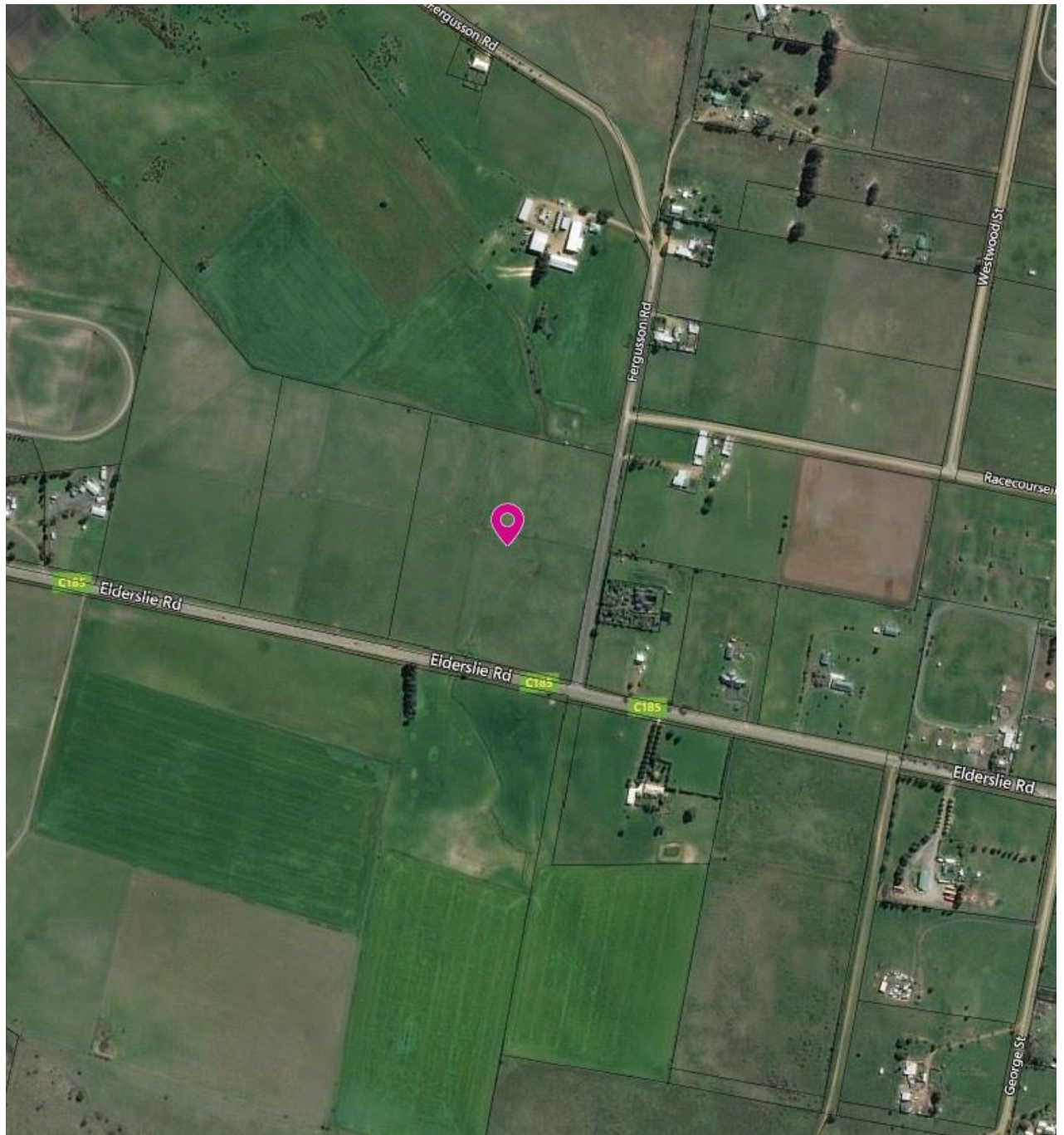
- 5.3. The owner subsequently lodged a request for a minor amendment to their permit to remove the requirement for a Part 5 Agreement, arguing on the basis that the Part 5 Agreement was superfluous, and that the Significant Agricultural Zone (SAZ) provisions under the Brighton Interim Scheme had similar requirements. For example, a residential use is discretionary within the SAZ with a qualification only if a single dwelling necessary to support agricultural use on the property.
- 5.4. This minor amendment was approved, and the requirement for a Part 5 Agreement was removed from the permit.
- 5.5. Historically, Council has approved a number of dwellings in the area under similar circumstances to this application. Unfortunately, this has resulted in many dwellings being constructed without an agricultural use being established and the area around the Stonefield Rd and Elderslie Rd beginning to take the form of a pseudo rural-living area. This has the potential to fetter existing and potential agricultural use on land that is zoned for the protection of agricultural land.
- 5.6. Several recent occurrences have caused Council's Development Services Department to re-assess its approach to applications for residential use on agricultural land and elevate the importance of protecting agricultural land and the rigour of information that should be provided with an application for a dwelling in the Significant Agricultural Zone. These include:
  - The Agricultural Land Mapping Project undertaken by the State Government to inform the preparation of the Agriculture and Rural Zones for the Tasmanian Planning Scheme.
  - The growing body of evidence that past approvals have not produced the outcomes that were proposed in their respective development applications.
  - The formation of the Technical Reference Group and Statutory Planners Reference Group for planners across the southern region. The two groups shared their approaches to assessing dwellings on agricultural land.
  - Becoming aware of the Resource Management and Planning Appeal Tribunal ('Tribunal') decision in *P & K Degenhardt v Waratah Wynyard Council* and *A & M Jackson* (2015) TASRMPT 10 which examines in detail the necessity of a dwelling to support an agricultural use and a realisation that Council has not been stringent enough in its assessment against the Scheme.

- Lobbying by farmers in the area to protect the land as an agricultural resource.
- Mapping of the Agricultural Zone for the draft Brighton Local Provisions Schedule (LPS) with input from agricultural consultants AK Consulting.

5.7. Due to the issues identified above, Council staff have initiated a project to investigate the most appropriate zoning of the Brighton West area with specialist input from an agricultural consultant. However, as it stands the land is zoned Significant Agriculture and all applications must be assessed under the requirements of this zone.

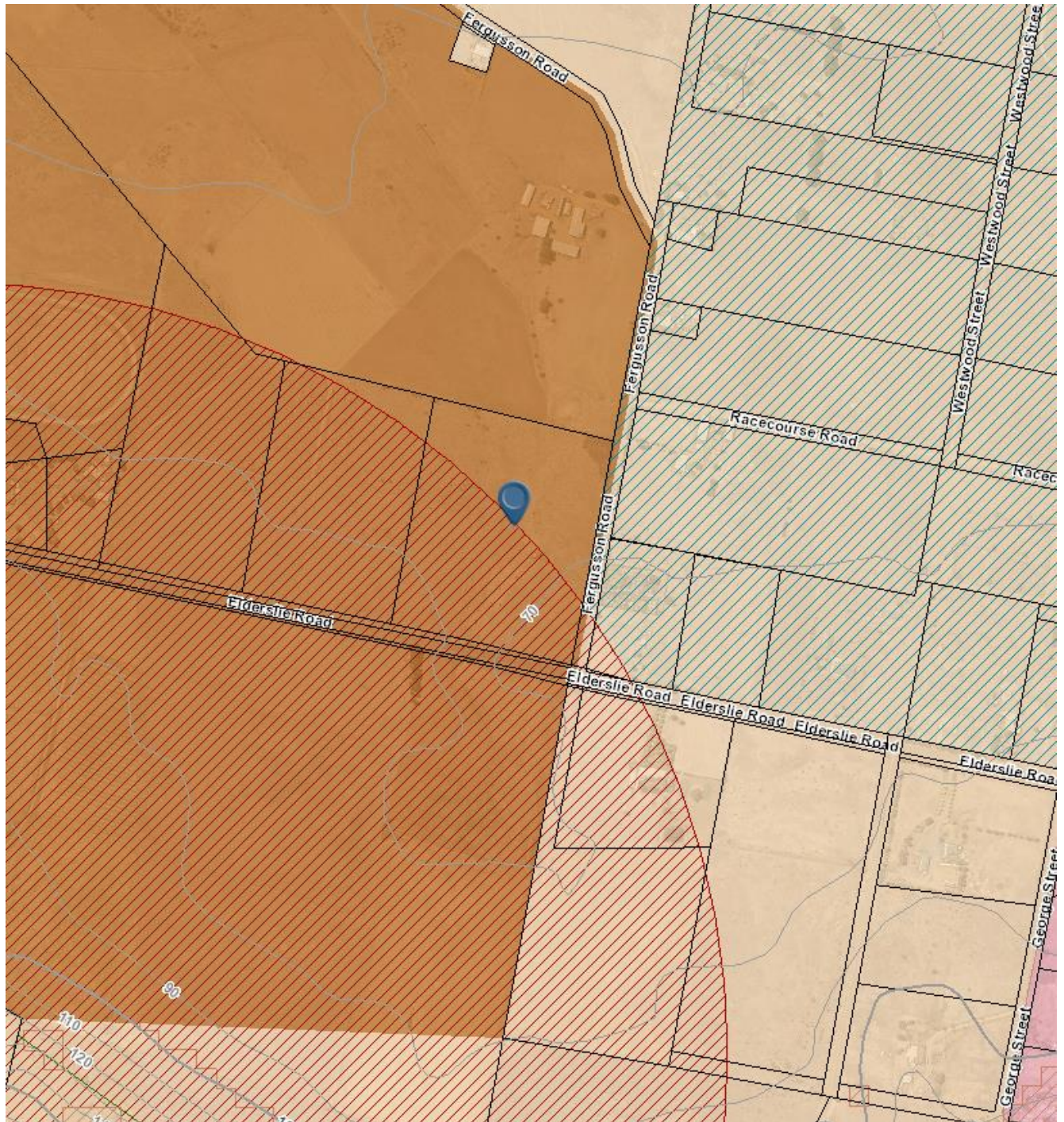
## **6. Site Detail**

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



**Figure 1.** Aerial image: 27 Fergusson Rd and surrounds





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

## 7. Proposal

- 7.1. Proposed is a dwelling necessary to support agricultural use. The dwelling is a barn-style 3 bedroom with carport attached. The floor area (incl. carport) is 216m<sup>2</sup> and the maximum height is 5.9m. The exterior of the building is Colourbond 'Monument'.



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

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

## 8. Assessment

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

### Assessment against planning scheme provisions

- 8.4. The following provisions are relevant to the proposed use and development:
- Part D - Clause 27 - Significant Agricultural Zone
  - Part E - Clause E6.0 - Parking & Access Code
  - Part E - Clause E7.0 - Stormwater Management Code
- 8.5. The application satisfies the following relevant AS of the applicable provisions:
- 27.4.1 A1 - Building height
  - 27.4.2 A1 - Building setback from frontage
  - 27.4.2 A2 - Building setback from side and rear boundaries
  - 27.4.3 A1 - Design
  - 27.4.3 A2 - Colour
  - 27.4.3 A3 - Cut/fill
  - E6.6.1 A1 - Number of parking spaces

- E6.7.1 A1 - Number of vehicular accesses
- E6.7.2 A1 - Design of vehicular accesses
- E6.7.14 A1 - Access to a road

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

- 27.2 - Use table
- 27.3.1 A1 - Sensitive use
- 27.3.3 A1 - Discretionary use
- 27.4.2 A3 - Building setback for buildings for sensitive use
- E6.7.6 A1 - Surface treatment of parking areas
- E7.7.1 A1 - Stormwater drainage and disposal

8.7. **Discretion 1 - 27.2 - Use table**

8.7.1 The applicant has proposed a Residential Use at the site.

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

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

8.7.3 Under Table 27.2 of the Interim Scheme, Residential is a Discretionary use in the Significant Agricultural Zone, with the qualification “only if a single dwelling necessary to support agricultural use on the property”.

8.7.4 All other uses not specified within Table 27.2 are prohibited. This would include other residential uses, such as single dwellings not necessary to support agricultural use, or multiple dwellings.

8.7.5 Single dwelling is defined in Section 4.1.3 of the Interim Scheme as:

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

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

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

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

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

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

- 8.7.8 Section 8.10.2 of the Interim Scheme states:

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

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

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

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

- 27.1.1.1 *To provide for the use or development of land for higher productivity value agriculture dependent on soil as a growth medium.*
- 27.1.1.2 *To protect the most productive agricultural land and ensure that non-agricultural use or development does not adversely affect the use or development of that land for agriculture.*
- 27.1.1.3 *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*
- 27.1.1.4 *To provide for limited non-agricultural uses that support the continued use of the land for agricultural use.*
- 27.1.1.5 *To protect regionally significant areas of significant agricultural land identified in the Regional Land Use Strategy, including areas subject to existing or proposed irrigation schemes, from conversion to non-agricultural use.*

- 27.1.1.6      *To protect areas used for reuse water irrigation.*
- 27.1.1.7      *To ensure that new residential use is only established where necessary to facilitate the management of the land for agricultural purposes and does not fetter existing or potential agricultural use on other land.*
- 8.7.10      As such, the Zone Purpose Statement found in Section 27.1.1.7 of the Interim Scheme is deemed to be relevant in assessing the discretion invoked by the Use Table (Table 27.2).
- 8.7.11      It is satisfied that the proposed development is for a single dwelling and an agricultural use. Therefore, it is required to assess whether the proposed single dwelling is necessary to support the proposed agricultural use on the property.
- 8.7.12      The applicant's planning consultant submits that:
- The advantages of establishing and maintaining a residential presence on the site are spelt out in Mr Walker's Agricultural Review of the proposal. Mr Walker states that a dwelling is "necessary to effectively implement the intensive farming program" proposed for the site. A less intensive program, that is less reliant upon direct supervision and intervention, is unlikely to be viable on the site given its obvious limitations for agricultural production. Therefore, the proposal meets with the above qualification for residential use within the Significant Agriculture Zone. A single dwelling is proposed that would support agricultural use on the site.
- 8.7.13      The Resource Management and Planning Appeal Tribunal (the 'Tribunal') decision in *P & K Degenhardt v Waratah Wynyard Council and A & M Jackson* (2015) TASRMPT 10, relating to a new residential dwelling within a zone dedicated for agricultural use (albeit a different scheme and zone), considered various dictionary definitions of the word 'necessary' as "that cannot be dispensed with" (Macquarie Concise Dictionary) and "requiring to be done, achieved, etc: requisite, essential" (Australian Concise Oxford Dictionary).
- 8.7.14      In that matter, the Tribunal required the applicant to provide sufficient evidence to demonstrate why a residential development on the particular site was "necessary", as opposed to the dwelling simply affording a more convenient lifestyle.
- 8.7.15      The terms used in the *Waratah-Wynyard Interim Planning Scheme 2013* do slightly differ from the test identified in Table 27.2 of the Interim Scheme. Whilst different phrases are used, i.e. "necessary" vs "required", the mandatory nature of the requirements remains.
- 8.7.16      The intent of the discretionary qualification in the Use Table at 27.2 of the Scheme and the provisions of the scheme in the context of *P & K Degenhardt v Waratah Wynyard Council and A & M Jackson* [2015] TASRMPAT 10 are the same. Both state that, for the Residential use to occur, it is a mandatory requirement that a Residential use be linked to and be integral to the agricultural activity.



- 8.7.17 Using both the Macquarie Dictionary definitions for “necessary” and “support” the following definition of the relevant qualification can be arrived at, that gives proper effect to the purpose of the Significant Agricultural Zone:

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

- 8.7.18 The application does not provide compelling evidence nor a persuasive argument as to why the proposed residential use is necessary to support the proposed agricultural use on-site. The application includes no supporting information, evidence and/or approvals regarding:

- No indication of when the water storage dam will be constructed and no detail or correspondence/permits from dam authority provided re: the proposed dam. No detail provided from TasWater re: proposed bulk water supply.
- Details of the proposed frost protection system and why it requires constant on-site monitoring during several months of the year when there are automated systems available.
- Reasons why an on-site residence is required for the proposed animal husbandry use.
- Timeline for orchard expansion and no reason why the orchard needs to be planted in stages rather than the full 0.8ha up front.
- Identification of markets for sale of produce.
- Crops planned for the greenhouse.
- Indication of labour inputs.

- 8.7.19 The representors also objected to the proposed residential use on this basis and provided evidence as to why a dwelling for an on-site farm manager was not required (see Table 10.1 for summary).

- 8.7.20 It is considered that the development of a single dwelling on the property is nothing more than that of convenience to the applicant. Of note is the fact that General Residential zoning is less than 850m from the Property. An agricultural use could be established on the site, and the operator living elsewhere, within a reasonably commutable distance.

- 8.7.21 The proposed agricultural use would provide a modest income of approximately \$14,000 per year which suggests that the agricultural use is not a significant commercial activity and is little more than a hobby farm.
- 8.7.22 Further, it can be argued that should the Planning Authority determine to approve the proposed development, it would essentially convert the property into a rural-residential site in a way that is contrary to the Zone Purpose Statement found in Section 27.1.1.2, in that the most productive agricultural land will not be protected and that the Residential use will adversely affect the use or development of that land for agriculture.
- 8.7.23 As such, it is considered that the application does not adequately demonstrate that the proposed single dwelling is necessary to support agricultural use of the property.
- 8.7.24 The proposed residential use would then simply be defined as a 'single dwelling' and would be prohibited pursuant to Table 27.2.
- 8.7.25 It is recommended the application be refused on this discretion.

**8.8. Discretion 2 – 27.3.1 A1 - Sensitive use**

- 8.8.1 A residential use is a 'sensitive use'. The Acceptable Solution in Section 27.3.1 A1 states:

*A sensitive use is for a home-based business or an extension or replacement of an existing dwelling or existing ancillary dwelling.*

- 8.8.2 There is no existing dwelling on-site, nor is the application for a 'home-based business'. Therefore, the application does not comply with the Acceptable Solution found in Section 27.3.1 A1. The development invokes discretion under this standard, and must be assessed against the relevant Performance Criteria.

- 8.8.3 Section 27.3.1 P1 states:

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

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

- 8.8.4 The site adjoins 2 parcels of land: 192 Elderslie Road (C/T 175792/2) and 59 Fergusson Road (C/T 111887/1).
- 8.8.5 The 192 Elderslie Road site is similar in size and characteristics to the subject site. It is within the same ownership and recently been used for sheep grazing and hay production.
- 8.8.6 The 59 Fergusson Road site provides for an existing agricultural operation which undertakes multi-cropped, seasonally rotated cereal and grass hay production, as well as Merino wool production. This operation is well established, having operated for decades across multiple parcels of land in the immediate vicinity.
- 8.8.7 Both representors objected to the proposed sensitive use based on the likelihood it would conflict with and fetter the existing operation's current and future ability to:
- Irrigate crops or pasture,
  - Spray weeds/pests,
  - Control pests by shooting,
  - Farm during the night/early morning &
  - Minimise potential wind drift of soil
- on the adjoining parcel of land at 59 Fergusson Road. Specific supporting evidence was not provided by the representors.
- 8.8.8 The applicant also did not address this performance criteria in great detail. However, the applicant noted the existing mix of agricultural and residential uses in the immediate area, and the minimum 159.45m setback of the proposed dwelling to the adjoining agricultural use at 59 Fergusson Road. Also noted was that potential future occupants may have a greater empathy and consideration of the agricultural activities surrounding the site.
- 8.8.9 On balance, it is considered that, should the Planning Authority determine to approve the application, appropriate conditioning of the permit (for example, a requirement for screening vegetation) could satisfactorily ensure the sensitive use would not conflict with or fetter non-sensitive use on adjoining land.
- 8.8.10 It is considered that, with appropriate conditioning, the proposed development satisfies the Performance Criteria contained in Section 27.3.1 P1.

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

- 8.9.1     There is no Acceptable Solution contained in Section 27.3.3 A1. As such, the proposed development invokes discretion under this standard, and must be assessed against the corresponding Performance Criteria.
- 8.9.2     Section 27.3.3 P1 states:
- A discretionary non-agricultural use must not conflict with or fetter agricultural use on the site or adjoining land having regard to all of the following:
- (a) the characteristics of the proposed non-agricultural use;*
  - (b) the characteristics of the existing or likely agricultural use;*
  - (c) setback to site boundaries and separation distance between the proposed non-agricultural use and existing or likely agricultural use;*
  - (d) any characteristics of the site and adjoining land that would buffer the proposed non-agricultural use from the adverse impacts on amenity from existing or likely agricultural use.*
- 8.9.3     Whilst similar to Section 27.3.1 P1 (Discretion 2 above), an important distinction is that Section 27.3.3 P1 looks not just at the adjoining land, but also the land to which the assessment specifically relates.
- 8.9.4     It is considered that the proposed Residential use will conflict with and fetter the agricultural use, both on the site, and on adjoining land.
- 8.9.5     The quasi-conversion of the property to that of a rural-residential site, and the subsequent conflict this will have on the adjoining agricultural use, will, in all practical terms, limit the scope of agricultural pursuits that will be able to be undertaken both on the subject site, and on adjoining land in the future. Further, at some stage, the property could be consolidated with other surrounding lots to create a more financially-viable agricultural operation.
- 8.9.6     Should the proposed development be approved, it will permanently alter the property in such a way that it will only be a perpetual hobby farm. This is further supported by the information provided by the applicant that the proposed agricultural use would provide an income of approximately \$14,000 per year, and not that of an operation of significant agricultural importance.

8.9.7 Furthermore, the characteristics of the proposed Residential use will shift the fundamental nature of the site, further limiting the agricultural potential of the land. Proceeding on the basis that the Residential use is not “necessary” or “required” for the intensified nature of the farming practices, the Residential use of the site will only limit into the future the type of agricultural uses that can be undertaken. That is because the intensive agriculture activities proposed could be undertaken on the site without the Residential use.

8.9.8 It is therefore considered that the proposed development does not fully satisfy the Performance Criteria contained within Section 27.3.3 P1 of the Interim Scheme, particularly (a) and (b).

**8.10 Discretion 4 – 27.4.2 A3 - Building setback for buildings for sensitive use**

8.10.1 The Acceptable Solution contained in Section 27.4.2 A3 requires:

*Building setback for buildings for sensitive use must comply with all of the following:*

- (a) be sufficient to provide a separation distance from horticultural use or crop production on adjoining land of 200m;*
- (b) be sufficient to provide a separation distance from land zoned Rural Resource of 100m.*

8.10.2 The dwelling is setback a minimum of 159.45m from horticultural use and crop production on adjoining land, and a minimum of 40m from land zoned Rural Resource.

8.10.3 Therefore, the proposed development does not comply with the Acceptable Solution. The application invokes discretion, and must be assessed against the corresponding Performance Criteria. Section 27.4.2 P3 states:

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

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

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

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



- 8.10.4 Should the Planning Authority determine to approve the proposed development, the permit can be adequately conditioned so that screening vegetation for the sensitive use is required, resulting in compliance with Section 27.4.2 P3 (a).
- 8.10.5 The proposal complies with Section 27.4.2 P3 (b).
- 8.10.6 As such, it is considered that the proposed development satisfies the Performance Criteria contained in Section 27.4.2 P3 with appropriate conditioning of a permit, should approval be granted.

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

- 8.11.1 The Acceptable Solution contained in Section E6.7.6 A1 states:  
*Parking spaces and vehicle circulation roadways must be in accordance with all of the following;*
  - (a) *paved or treated with a durable all-weather pavement where within 75m of a property boundary or a sealed roadway;*
  - (b) *drained to an approved stormwater system,*  
*unless the road from which access is provided to the property is unsealed.*
- 8.11.2 Fergusson Road is sealed along the frontage of the subject site. The proposed surface treatment does not comply with the Acceptable Solution. Therefore, the application invokes discretion, and must be assessed against the corresponding Performance Criteria. Section E6.7.6 P1 states:  
*Parking spaces and vehicle circulation roadways must not unreasonably detract from the amenity of users, adjoining occupiers or the quality of the environment through dust or mud generation or sediment transport, having regard to all of the following:*
  - (a) *the suitability of the surface treatment;*
  - (b) *the characteristics of the use or development;*
  - (c) *measures to mitigate mud or dust generation or sediment transport.*
- 8.11.3 Should the Planning Authority determine to approve the proposed development, it is considered that the proposed development can satisfy this Performance Criteria with the inclusion of standard rural access permit conditions.

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

- 8.12.1 The Acceptable Solution contained in Section E7.7.1 A1 states:  
*Stormwater from new impervious surfaces must be disposed of by gravity to public stormwater infrastructure.*
- 8.12.2 Public stormwater infrastructure is not available to the subject site. Therefore, the proposal invokes discretion, and must be assessed against the corresponding Performance Criteria. Section E7.7.1 P1 states:

*Stormwater from new impervious surfaces must be managed by any of the following:*

- (a) disposed of on-site with soakage devices having regard to the suitability of the site, the system design and water sensitive urban design principles*
- (b) collected for re-use on the site;*
- (c) disposed of to public stormwater infrastructure via a pump system which is designed, maintained and managed to minimise the risk of failure to the satisfaction of the Council.*

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

## 9. Concerns raised by representors

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

Concern	Response
The author (Southern Planning) of the planning report submitted is not an expert in the agricultural field.	Noted.  This report has only been considered as a linking document to support how the Agricultural Review submitted accords with the requirements of the Significant Agricultural Zone.
The Southern Planning report statement, "I note that the predominant land use to the east and north east of the site is rural residential rather than agricultural" is false. Most of these land parcels are pursuing agricultural practices combined as a 2 <sup>nd</sup> and 3 <sup>rd</sup> generation family business.	Noted. This land is zoned Rural Resource and there is a mixture of agricultural and residential uses.
The Southern Planning report states, "the site does not have the capacity to support commercial agriculture" and "the agricultural potential of these lots is clearly compromised by their relatively small area". This is strong support for the amalgamation of titles to provide for a commercially viable enterprise.	Noted. There is no requirement for land to be consolidated in the Scheme.  However, the three titles along Elderslie Rd are all in the same ownership. If a high value enterprise was proposed across all three titles it would have strengthened the argument that a dwelling was necessary to support an agricultural use.

<p>The Part 5 Agreement on the title was not addressed in the application.</p> <p>a) Each lot owner will be required to produce a site management plan for their lot prior to the establishment of any intensive agricultural activity. The site management plan shall utilise the 'Agricultural Assessment of Proposed Three Lot Subdivision for B.E. Knight, 192 Elderslie Road, Brighton, Tasmania' prepared by Complete Agricultural Consulting Services and address the following issues:-</p> <ul style="list-style-type: none"> <li>i. Description of crops to be irrigated;</li> <li>ii. Design of irrigation system, including necessary on site storage for the restricted off-peak water supply;</li> <li>iii. Measures to prevent spray drift beyond boundaries;</li> <li>iv. Measures to prevent run-off from irrigation areas;</li> <li>v. Use of machinery, pumps and hours of operation;</li> <li>vi. Scaled plans of all permanent sub-surface potable reticulation system and method of back flow prevention;</li> <li>vii. Potential house site showing access road, outbuildings, recreational areas and waste disposal method and location.</li> </ul> <p>b) A dwelling is discretionary only if integral to the agricultural use and will not be approved by Council on any lot unless there is an approved site management plan for that lot, Council is satisfied that substantial commencement of an intensive agricultural activity has occurred and that the dwelling would not conflict with neighbouring activities. The council must be satisfied that the rural activity shall be the primary activity on that lot.</p>	<p>There is currently no Part 5 Agreement on the property title.</p> <p>The Part 5 Agreement the representor refers to was a condition of the original subdivision permit, however, this requirement was removed prior to the completion of the subdivision (i.e. issuing of titles) after a successful Minor Amendment application by the owner. The rationale provided for this was that the Agreement was superfluous, as it created a duplication of the applicable Significant Agricultural Zone standards.</p>
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<p>The applicant intends to gain residential approval and on-sell as a rural residence, as highlighted by the recent advertising of the property on realestate.com.au as a residential block.</p>	<p>If a permit is granted for the application, conditions tying the dwelling to the ongoing agricultural use will be necessary.</p>
<p>The proposed sensitive use conflicts with and fetters existing and likely non-sensitive use on adjoining land, does not meet 27.3.1 or 27.3.3.</p> <p>Further fettering threatens the sustainable viability of existing agricultural enterprises. Contrary to the supporting planning report, intense and sensitive farming practices are in operation over multiple titles adjoining and nearby the subject site. The operation undertakes multi-cropped, seasonally rotated cereal and grass hay production, as well as super/ultra-fine Merino wool production.</p>	<p>Noted. See Sections 8.8 and 8.9 above.</p>
<p>The dwelling setback is insufficient to prevent land use conflict that would fetter non-sensitive use of adjoining land. The 159.45m setback to the adjoining 59 Fergusson Rd land could impact on the operation's ability to:</p> <ul style="list-style-type: none"> <li>• Irrigate crops or pasture</li> <li>• Spray weeds/pests</li> <li>• Control pests by shooting</li> <li>• Farm during the night/early morning</li> <li>• Minimise potential wind drift of soil.</li> </ul>	<p>Noted. See Sections 8.7, 8.8 and 8.9 above.</p>

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



The proposed full Colourbond dwelling will have an adverse impact on the rural landscape when viewed from the road and therefore does not meet the Performance Criteria related to building setback from frontage.	The proposed development satisfies the relevant Acceptable Solutions regarding building setback from a frontage.
The Bushfire-Prone Areas Code has not been addressed. The proposed dwelling materials are at higher bushfire risk than a brick-walled building.	Not a relevant consideration.
The Stormwater Management Code has not been addressed.	See Section 8.12
The Waterway and Coastal Protection Code has not been addressed.	Not a relevant consideration.

## 10. Conclusion

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

## RECOMMENDATION:

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

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

**DECISION:**

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

**MOTION LOST**

**VOTING RECORD**

<b>In favour</b>	<b>Against</b>
Cr Curran	Cr Foster
Cr Gray	Cr Garlick
Cr Owen	Cr Jeffries
	Cr Murtagh

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

**CARRIED**

**VOTING RECORD**

<b>In favour</b>	<b>Against</b>
Cr Foster	Cr Curran
Cr Garlick	Cr Gray
Cr Jeffries	Cr Owen
Cr Murtagh	

*Cr Geard and Cr Whelan rejoined the meeting at 6.25pm*

**4.2 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015  
- DA 2019/047 - 70 FINLAY STREET, BRIDGEWATER - MULTIPLE  
DWELLINGS (X4):**

Type of Report	Planning Authority – For Decision
Author	Jo Blackwell
Application No:	DA 2019/047
Address:	70 Finlay Street, Bridgewater
Applicant:	Wilson Homes
Proposal:	Multiple Dwellings (x4)
Zone:	General Residential
Representations:	Two (2)

- Discretions:
1. Building Envelope (D10.4.2 A3)
  2. Private open space (D10.4.3 A2)

## **11. Executive Summary**

- 11.1. Approval is sought in relation to the use and development of the site to allow for the construction of 4 units. The site is currently vacant, with the original dwelling being demolished in 2012 (BA 2012/49).
- 11.2. The application is discretionary arising from reliance on performance criteria in relation to the building envelope and access to private open space.
- 11.3. Two (2) representations were received raising concerns in relation to the provision of suitable stormwater and sewerage infrastructure. The representors' concerns are addressed more fully in this report.
- 11.4. The proposal is recommended for approval subject to conditions relating to the above key planning issues and on servicing of the site.
- 11.5. 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.

## **12. Legislative & Policy Content**

- 12.1. The purpose of this report is to enable the Planning Authority to determine application DA 2019/47.
- 12.2. This determination must be made no later than 16<sup>th</sup> July 2019, which has been extended beyond the statutory timeframe with the consent of the applicant.
- 12.3. 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.
- 12.4. This report details the reasons for the officer's recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the Judicial Review Act 2000 and the Local Government (Meeting Procedures) Regulations 2005.

- 12.5. This report has been prepared with appropriate regard to the State Policies that apply under the State Policies and Projects Act 1993.
- 12.6. 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.

### **13. Risk & Implications**

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

### **14. Relevant Background and Past Applications**

- 14.1. BA 2012/49 – Demolition of existing dwelling

### **15. Site Detail**

- 15.1. The subject site is currently vacant and has a land area of 1,334m<sup>2</sup>. It is located in a cul-de-sac approximately 200m south west of Finlay Street's intersection with Gunn Street. The site is bounded by single dwellings adjoining lots (refer Figure 1).



*Figure 1: Site Map (source: Listmap)*

- 15.2. There are two nearby pocket parks; one accessed via Gunn Street, Finlay Street and Swan Street; the other is contained within the Gunn Street deviation located to the west. Both parks are zoned Open Space. The Midlands Highway is located to the north of Finlay Street. There are no planning scheme overlays which affect the site (Figure 2)



Figure 2: Zoning/Location Map. Red = General Residential; Green = Open Space; Yellow = Utilities zone.

## 6. Proposal

- 6.1 The proposal is for four units to be constructed on the site. Three will be situated adjacent to the northern boundary, with the fourth in the southern corner of the site. Each unit has a floor area of 75sqm, a single car garage and open car parking space. The floor plans for each dwelling show an open plan living area together with two bedrooms and amenities. Two visitor parking spaces are provided, in excess of that provided for by the Planning Scheme, bringing the total carparking provided on site to 10 car parking spaces.

- 6.2 The application is supported by the attached site plan and elevations.

## 7 Assessment

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



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

**8 Assessment against planning scheme provisions**

- 8.1 The following provisions are relevant to the proposed use and development:
- 8.1.1 Part D – Clause 10 – General Residential Zone
  - 8.1.2 Part E – Clause 5.0 – Road and Railway Assets Code
  - 8.1.3 Part E – Clause 6.0 – Parking and Access Code
  - 8.1.4 Part E – Clause 7.0 – Stormwater Management Code
- 8.2 The proposed use is for Multiple Dwelling Units in the General Residential zone. Multiple dwelling units are a Permitted Use for the site pursuant to the Use Table set out in clause 10.2 of the Scheme.
- 8.3 The proposal is considered to satisfy the acceptable solutions (AS) of the relevant planning controls as follows:
- 10.4.1 Density
  - 10.4.2 A1 & A2 - Setbacks
  - 10.4.3 A1 Site Coverage
  - 10.4.4 Sunlight and Overshadowing for all Dwellings

10.4.5 Width of Openings

10.4.6 Privacy for all Dwellings

10.4.7 Frontage Fences for all Dwellings

10.4.8 Waste Storage for Multiple Dwellings

E5.0 Road and Railways Assets Code (E5.5.1; E5.5.2, E5.6.1; E5.6.2, E5.6.3)

E6.0 Parking and Access Code (E

E7.0 Stormwater Management Code (E7.7.1 A1, A3, A4)

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

8.4.1 General Residential Zone – Clause D10.4.2 A3 – Building Envelope

8.4.2 General Residential zone – Clause D10.4.3 A2 – Private Open Space.

**8.5 Discretion 1: Building Envelope (D 10.4.2. A3)**

8.5.1 The AS for a minimum setback to a rear boundary is 4m. The proposal shows a minimum setback to the rear boundary of 2.289m for unit 4.

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

The siting and scale of a dwelling must:

(a) not cause unreasonable loss of amenity by:

- (i) reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining lot; or
- (ii) overshadowing the private open space of a dwelling on an adjoining lot; or
- (iii) overshadowing of an adjoining vacant lot; or

- (iv) visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining lot; and
- (b) provide separation between dwellings on adjoining lots that is compatible with that prevailing in the surrounding area.

### Planning Response

As required by the Henry decision (refer clause 7.3 above), the whole of the site must address the performance criteria set out above.

Units 1 – 3 are located to the south of the dwellings adjoining the northern boundary. They will not cause an unreasonable loss of amenity to adjoining properties, due to the orientation/siting of the dwellings, separation distances between existing and proposed dwellings, and the location of existing outbuildings

Unit 4 is to be sited in the southern corner of the site, downhill of the dwellings located at 68 Finlay and 97 Gunn Street. The plans show excavation for unit 4 of approximately 650mm, which will reduce the overall height of the building above natural ground level.

Each of the dwellings are single storey, have a floor area of approximately 94sqm (including carport) and are articulated through the use of glazing, materials and finishes.

The proposal is not considered to cause an unreasonable loss of amenity to adjoining lots.

## **8.6 Discretion 2 – Private Open Space 10.4.3. A2**

### **8.6.1** The acceptable solution for 10.4.3 A2 requires that:

*A dwelling must have an area of private open space that:*

- (a) *is in one location and is at least:*
  - (i) *24 m<sup>2</sup>; or*
  - (ii) *12 m<sup>2</sup>, if the dwelling is a multiple dwelling with a finished floor level that is entirely more than 1.8 m above the finished ground level (excluding a garage, carport or entry foyer); and*
- (b) *has a minimum horizontal dimension of:*

- (i) 4 m; or
- (ii) 2 m, if the dwelling is a multiple dwelling with a finished floor level that is entirely more than 1.8 m above the finished ground level (excluding a garage, carport or entry foyer); and
- (c) is directly accessible from, and adjacent to, a habitable room (other than a bedroom); and
- (d) is not located to the south, south-east or south-west of the dwelling, unless the area receives at least 3 hours of sunlight to 50% of the area between 9.00am and 3.00pm on the 21st June; and
- (e) is located between the dwelling and the frontage, only if the frontage is orientated between 30 degrees west of north and 30 degrees east of north, excluding any dwelling located behind another on the same site; and
- (f) has a gradient not steeper than 1 in 10; and
- (g) is not used for vehicle access or parking.

8.6.2 The proposal shows that a landing and two (2) steps are required to provide access from the door to the private open space for unit 3.

8.6.3 Accordingly, the PC needs to be satisfied 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.

8.6.4 A 2.1m glass sliding door from the open plan living area provides access to the rear yard which has been orientated to take advantage of the access to all day sunlight. It is therefore considered that the proposal satisfies the PC.

## **8.7 Discretion 3 – Sight Distances E5.6.4**

8.7.1 The acceptable solution for E5.6.4 is:

*Sight distances at:*

- (a) an access or junction must comply with the Safe Intersection Sight Distance shown in Table E5.1; and

- (b) *rail level crossings must comply with AS1742.7 Manual of uniform traffic control devices - Railway crossings, Standards Association of Australia.*

**8.7.2** Given the site's location within a cul-de-sac, the proposal is not able to conform with the required site distances provided by Table E5.1.

**8.7.3** The PC requires:

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

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

**8.7.4** The proposal was referred to Council's Senior Technical Officer who has assessed the application, and determined that the proposed development has sufficient sight distance to ensure the safe movement of vehicles.

## **9. Referrals**

### **9.1 Technical Officer**

Council's Technical Officer has reviewed the application against Code E5, E6 & E7. That officer's comments are set out below:

"The application proposes 4 residential dwellings at 70 Finlay St, Bridgewater. The was previously developed with a single dwelling which is no longer there.

The site fronts a short cul-de-sac on Finlay Street. The existing crossover is to be widened to allow for 2-way traffic.

The development proposes 10 car parking spaces on the site which complies with the requirements of the Brighton Interim Planning Scheme.

No traffic related issues are foreseen as a result of the development.

The proposal originally included on site detention in an underground tank as shown on the advertised plans. This was based development discharging to a DN150 stormwater main. Council records indicate this main is actually DN225 and as such the applicant's engineers have advised detention is not required for a 20 year ARI. The underground detention may be removed subject to approval from Council's Municipal Engineer following confirmation the public system has adequate capacity.

A representation was received based on stormwater issues. This is addressed below.

The applicant proposes to use proprietary treatment devices.

Sewer and Water reticulation is available. The application was referred to TasWater who have imposed conditions.

## **9.2 TasWater**

The application was referred to TasWater, who have issued a Submission to Planning Authority Notice (SPAN) TWDA 2019/00512-BTN dated 16<sup>th</sup> April 2019. The SPAN will form part of any permit approved.

## **10. Discussion**

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

10.1.1.1 To provide for residential use or development that accommodates a range of dwelling types at suburban densities, where full infrastructure services are available or can be provided.

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

10.1.1.3 To provide for the efficient utilisation of services.

The proposal is considered to meets the zone purpose statements.

## **11. Concerns raised by representors**

10.1 Two (2) representations were received during the public notification period. The following table briefly summarises the issues raised by the representors.

Representation 1	Brief Response
<p>... I have a problem with drainage. I reported several times to the housing dept but the response I got was it doesn't rain like that all the time but I think that is a poor response because I have been flooded out before that because of the fall of the land water builds up along the fenceline and then seeps through and floods my garage out. If there was a ag drain put in along the fence line that would fix the problem connected to stormwater. I was thinking while they have a back hoe digging the foundations that would be able to dig the drain, I would appreciate a response on this issue.</p>	<p>The application involves changes to the site levels including retaining walls along or adjacent the northern boundary. It is common practice for ag drains to be place behind these walls.</p> <p>The parking areas and driveway will be drained by a series of grated pits. Whilst it is likely that the stormwater issues raised by the representor will be mitigated by the new development a condition requiring that any increase from pre development runoff generated from the subject site for an ARI of 100 years is to be detained on site is recommended.</p>
Representation 2	Brief Response
<p>My concern is where the sewerage will be connected for the 4 units built behind my property. During my 46 years of residing at this property I have on many occasions needed call out crews to clear overflows of sewerage.</p> <p>As the sewerage pipes have been laid (for approximately 50 years) I feel that extra sewage from extra units will be detrimental for the old pipes to contend with, I would hope this will be taken into consideration when the planning process is underway.</p>	<p>The application was referred to TasWater as the relevant Sewer authority. TasWater have provided conditions however there is nothing specific relating to capacity of the existing system.</p>

## **Conclusion**

The proposed use and development of Multiple Dwelling (x4) in the General Residential Zone at 70 Finlay Street, Bridgewater, satisfies the relevant provisions of the Brighton Interim Planning Scheme 2015, and as such is recommended for approval, subject to conditions.

## **RECOMMENDATION:**

That pursuant to the Brighton Interim Planning Scheme 2015, Council approve application DA 2019/47 for use and development of Multiple Dwellings (x4) at 70 Finlay Street, Bridgewater, for the reasons outlined in the officer's report and a permit containing the following conditions be issued:

### *General*

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

### *Amenity*

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

### *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.



- (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.*

#### *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.
- (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.
- (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.

#### *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 Owen moved, Cr Foster seconded that the recommendation be adopted.*

**CARRIED**

**VOTING RECORD**

<b>In favour</b>	<b>Against</b>
Cr Curran	
Cr Foster	
Cr Garlick	
Cr Geard	
Cr Gray	
Cr Jeffries	
Cr Murtagh	
Cr Owen	
Cr Whelan	

The meeting closed at 6.30pm.

Confirmed:

\_\_\_\_\_  
(Mayor)

Date:

\_\_\_\_\_  
16<sup>th</sup> July 2019