



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,
13TH AUGUST, 2019

PRESENT: Cr Gray (Chairperson) Cr Owen; (Deputy Chairperson);
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 H Macpherson (Municipal
Engineer)

1. APOLOGIES:

Cr Garlick moved, Cr Whelan seconded that Cr Curran and Cr Foster be granted leave of absence.

CARRIED

VOTING RECORD

| In favour | Against |
|-------------|---------|
| Cr Garlick | |
| Cr Geard | |
| Cr Gray | |
| Cr Jeffries | |
| Cr Murtagh | |
| Cr Owen | |
| Cr Whelan | |

2. QUESTION TIME & DEPUTATIONS:

There was no requirement for public 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 2018/00161 – 830 MIDDLE TEA TREE ROAD, TEA TREE - DWELLING (NECESSARY TO SUPPORT AGRICULTURAL USE)

| | |
|------------------|---|
| Type of Report | Planning Authority – For Decision |
| Application No: | DA 2018/00161 |
| Address: | 830 Middle Tea Tree Road, Tea Tree |
| Proposal: | Dwelling (Necessary to Support Agricultural Use) |
| Zone: | Significant Agricultural |
| Representations: | Nil |
| Discretions: | <ol style="list-style-type: none"> 1. Use table (27.2) 2. Sensitive use (27.3.1 A1) 3. Discretionary use (27.3.3 A1) 4. Building setback from side and rear boundaries (27.4.2 A2) 5. Building setback for buildings for sensitive use (27.4.2 A3) 6. Vehicular passing areas along an access (E6.7.3 A1) 7. Surface treatment of parking areas (E6.7.6 A1) 8. Stormwater drainage and disposal (E7.7.1 A1) |
| Author: | Planning Officer (Patrick Carroll)/Senior Planner (David Allingham) |

1. Executive Summary

- 1.1. Planning approval is sought for a dwelling necessary to support agricultural use at 830 Middle Tea Tree Road, Tea Tree (the 'site'). The site is within the Significant Agricultural 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. No representations were received within the statutory public advertising period.
- 1.4. The application is recommended for refusal for the following reasons:
 - 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 of the Brighton Interim Planning Scheme 2015.
 - The proposed Residential use therefore reverts to a prohibited use under Table 27.2 of the Brighton Interim Planning Scheme 2015, and the Planning Authority is bound to refuse the development pursuant to Section 8.9.1(a) of the Brighton Interim Planning Scheme 2015.
- 1.5. As the Officer's recommendation is that the development application be refused, 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 DA2018/00161.
- 2.2. This determination must be made no later than 31 August 2019, which has been extended beyond the statutory timeframe at the request of the applicant, and with the delegated consent of the Council.
- 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. Application History

- 4.1. This application was advertised in April 2019 in accordance with statutory requirements. However, at the conclusion of the advertising period and following discussion with Council's Planning staff (which included advice that the application was unlikely to be supported at an Officer level), the applicant requested an extension to the statutory assessment period referred to in Section 57 of the Act, so that all options could be considered by the applicant. Council consented to the applicant's request.
- 4.2. In correspondence to Council from the applicant's representative, it was confirmed that the applicant wished for Council to consider the application in the form that it was publicly advertised.

5. Relevant Background

- 5.1. A development application (DA 2018/00297) was lodged in October 2018 for the development of two agricultural outbuildings at the site. The plans also showed a third outbuilding, which complied with the limited exemption for Minor Structures and Outbuildings (Section 6.1.5 of the Interim Scheme).
- 5.2. As part of the application documentation, the applicant stated that the two larger outbuildings were ancillary to an agricultural use, being the grazing and management of sheep.
- 5.3. Council exempted the development (DA 2018/00297) from requiring a permit, pursuant to the limited exemption found in Section 6.5.2 of the Interim Scheme, which states:

The construction of buildings or works, other than a dwelling, in the Rural Resource Zone or the Significant Agricultural Zone, that are directly associated with, and a subservient part of, an agricultural use if:

- a) individual buildings do not exceed 100m² in gross floor area;
- b) the setback from all property boundaries is not less than 30m;
- c) no part of the building or works are located within 30m of a wetland or watercourse;
- d) no part of the building or works encroach within any service easement or within 1m of any underground service; and
- e) the building or works are not located on prime agricultural land.

5.4. The agricultural outbuildings have since been constructed on the site.

6. Site Detail

- 6.1. The subject site is a 1.523 hectare (ha) lot with existing access to Middle Tea Tree Road. The site is developed with three outbuildings (refer to paragraphs 5.1-5.4, above).
- 6.2. The site forms part of the a significant agricultural land holding in the same ownership which adjoining this title and titles on the opposite side of the road spanning all the way to Back Tea Tree Rd.
- 6.3. The site has recently been used for pastoral activities, specifically being the grazing of three sheep.
- 6.4. The site is within the Significant Agricultural Zone. No overlays affect the site.
- 6.5. The surrounding land is also zoned Significant Agriculture.

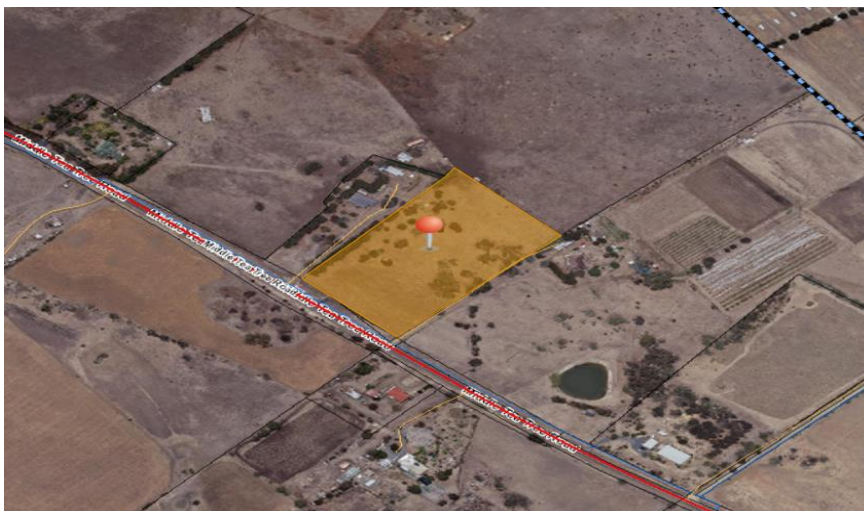


Figure 1. Aerial photography of the subject site.



Figure 2. Zoning of the subject site and surrounds. Dark brown denotes the Significant Agricultural Zone.

7. Proposal

- 7.1. The applicant has proposed the development of a single dwelling.
- 7.2. The proposed dwelling measures 38.69 metres by 14.91 metres, and will be constructed to a maximum height of 4.26 metres above natural ground level.
- 7.3. The proposed dwelling will be sited 30.00 metres from the northern (or rear) boundary, 30.00 metres from the western (or side) boundary, 30.01 metres from the eastern (or side) boundary, and 113.76 metres from the southern boundary (road frontage).
- 7.4. The proposed dwelling features three bedrooms, two bathrooms, a kitchen/dining/living/study nook area, a laundry, an alfresco area, a yoga room, and a verandah. Adjoining the proposed dwelling is a carport, which incorporates one of the existing outbuildings.
- 7.5. The applicant proposes a mixed native vegetation shelter belt to be established along the northern and eastern boundary of the property.

- 7.6. The applicant has also proposed the development of a “small “cottage” scale” agricultural use, being an olive grove of 30 trees and sheep grazing. The application documents state that the grove will produce approximately 30kg of fruit and 5 litres of oil per tree per year from the eighth year after planting.
- 7.7. The applicant submits that the total output would be 1500 litres of oil per year. However, this output seems to be significantly overestimated and, based on the information provided (i.e. 30 trees producing 5 litres), the output would actually be 150 litres of oil per year.
- 7.8. The applicant’s intention is to sell the olive oil at local markets and fairs and is investigating creating specialty olive oils with infusions of truffle oil, garlic, chilli, etc.

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.

9. Assessment against planning scheme provisions

- 9.1. The following provisions are relevant to the assessment of the proposed use and development:
 - Part D – Section 27.0 – Significant Agricultural Zone
 - Part E – Section E6.0 – Parking & Access Code
 - Part E – Section E7.0 – Stormwater Management Code
- 9.2. The application satisfies the following relevant Acceptable Solutions of the applicable provisions:
 - Section 27.4.1 A1 – Building Height

- Section 27.4.2 A1 – Building Setback from Frontage
- Section 27.4.3 A1 – Design
- Section 27.4.3 A2 – Colouration and light reflectance value
- Section 27.4.3 A3 – Cut and fill
- Section E6.6.1 A1 – Number of parking spaces
- Section E6.7.1 A1 - Number of vehicular accesses
- Section E6.7.2 A1 - Design of vehicular accesses
- Section E6.7.14 A1 - Access to a road

9.3. The following discretions are invoked by the proposal:

- Section 27.2 - Use Table
- Section 27.3.1 A1 - Sensitive use
- Section 27.3.3 A1 - Discretionary use
- Section 27.4.2 A2 – Building setback from side and rear boundaries
- Section 27.4.2 A3 - Building setback for buildings for sensitive use
- 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

9.4. Discretion 1 - Table 27.2 - Use table -

9.4.1 The applicant has proposed a ‘Residential’ use at the site.

9.4.2 ‘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.

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

9.4.4 All other uses not specified within Table 27.2 are prohibited. This would include all other residential uses, such as those single dwellings not necessary to support agricultural use, multiple dwellings (such as units), or a retirement village.

9.4.5 '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.

9.4.6 'Agricultural use' is defined within 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.

9.4.7 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.

9.4.8 Section 8.9.1 of the Interim Scheme relates to Prohibited Use and Development. It states:

A use or development must not be granted a permit if:

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

- b) the use or development does not comply with an acceptable solution for an applicable standard and there is no corresponding performance criterion; or
- c) it is prohibited under any other provision of the planning scheme.

9.4.9 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.

9.4.10 Section 27.1.1 of the Interim Scheme provides for the Zone Purpose Statements for the Significant Agricultural Zone. It states:

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.
- 9.4.11 There are no Local Area Objectives or Desired Future Character Statements for land zoned Significant Agricultural within the Interim Scheme.
- 9.4.12 It is satisfied that the proposal is for a single dwelling and agricultural use, being the development of a small olive grove.
- 9.4.13 However, it is required to assess and determine whether the proposed single dwelling is necessary to support the proposed agricultural use on the site, or whether the agricultural use can exist without the presence of the dwelling - i.e. can the agricultural use reasonably operate without the constant presence and care of the dwelling's occupants. This assessment will determine whether the proposed Residential use is discretionary or prohibited.
- 9.4.14 The applicant has proposed the development of a small olive grove of 30 trees. This grove would represent a relatively minor investment of \$5,000 and would be expected to yield 30kg of fruit per tree in the eighth year after planting.
- 9.4.15 Resource Management and Planning Appeal Tribunal decision 52/14P¹ (the 'Waratah Wynyard decision') related to a new residential dwelling within a zone dedicated for agricultural use (albeit a different scheme and zone). The Waratah Wynyard decision 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).
- 9.4.16 In the Waratah Wynyard decision, the Tribunal required the applicant to provide sufficient evidence to demonstrate why a residential development on the particular site is "necessary" as opposed to affording a more convenient lifestyle.
- 9.4.17 This application was supported by an assessment undertaken by a qualified agricultural consultant. However, the agricultural assessment submitted does not provide any evidence or argument as to why the residential use is "necessary" to support the proposed agricultural use on-site.

¹ *P & K Degenhardt v Waratah Wynyard Council and A & M Jackson (2015) TASRMPT 10*

- 9.4.18 The application includes no supporting information, evidence and/or approvals regarding:
- Reasons why an on-site residence is required for the proposed olive grove.
 - Timeline for planting of the olive grove.
 - Estimation of income generated by the agricultural use.
 - Indication of labour inputs.
- 9.4.19 The agricultural assessment states that sustainable commercial scale agriculture is unviable on the lot. It is therefore assumed that the olive grove will not be a sustainable commercial scale agricultural operation and is little more than a hobby farm. Further, the applicant has stated on the application form that the proposed use is “residential and light agriculture”, describing the development as a “simple dwelling with some subsistence agriculture (not on a commercial scale)”.
- 9.4.20 Although specific income generation is not detailed in the application, it is plainly obvious that the approximated income from the proposed olive grove itself could not fund the construction of the dwelling proposed to support it, and would potentially only cover annual maintenance costs of the property, such as rates and utilities charges.
- 9.4.21 Further, the proposed olive grove could be developed on the property without the need for the owner to live on site. There are plenty of residential or rural living properties within reasonable commuting distance from the agricultural land to warrant that the commute itself is not a factor. The grove is not a substantial capital investment, and can be adequately protected from any unwanted visitors to the site with appropriate infrastructure in place, such as fencing or nets.
- 9.4.22 As such, it is the Officer’s opinion that the application does not adequately demonstrate, nor does it even attempt to demonstrate, why the proposed single dwelling is necessary to support agricultural use on the property, and that the development of the dwelling is merely a lifestyle choice for the applicant.

The Significant Agricultural Zone is considered to be an inappropriate zone for such lifestyle choices, as it dilutes the agricultural potential of the site and surrounding land, and may prevent the site being adhered to other adjoining agricultural parcels (regardless of ownership), so that a more productive agricultural use can be established.

- 9.4.23 If the Planning Authority takes the view that the dwelling is not necessary to support the proposed agricultural use, then the residential use does not meet the use qualification in Table 27.2. The residential use would then revert to a Prohibited use (see discussion in paragraph 9.4.4, above), and the Planning Authority must refuse the development.
- 9.4.24 It is the Officer's opinion that the application does not meet the standards set by the Interim Scheme for Residential development within the Significant Agricultural Zone. If the Officer's opinion is shared by the Planning Authority, then the Planning Authority is bound to refuse a prohibited use, pursuant to Section 8.9.1(a) of the Interim Scheme.

9.5 Discretion 2 - 27.3.1 A1 - Sensitive Use

- 9.5.1 The applicant has proposed a sensitive use, being residential development. The Acceptable Solution contained 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.

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

- 9.5.3 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.

- 9.5.4 The site adjoins three parcels of land, being 830 Middle Tea Tree Road (CT 160381/2), 830 Middle Tea Tree Road (CT 160381/5) and 820 Middle Tea Tree Road (CT 51597/4). The site is in the same ownership as the two other properties addressed as 830 Middle Tea Tree Road. The site is in different ownership to that of 820 Middle Tea Tree Road.
- 9.5.5 CT 160381/2 is smaller in area than the subject site and is developed by a single dwelling. No agricultural or other non-sensitive use occurs on this site.
- 9.5.6 CT 160381/5 is a larger 14 ha lot. This lot is used for pastoral activities and is developed by small scale agricultural buildings.
- 9.5.7 820 Middle Tea Tree Road is developed by a single dwelling. There is also an agricultural use occurring at the site, being crops. There are two dams on this property to provide water to the uses.
- 9.5.8 It is considered that the proposed mixed native vegetation shelter belt to be established along the northern and eastern boundary of the property will adequately manage any potential conflict between uses.
- 9.5.9 As such, the proposed development meets the Performance Criteria subject to a requirement for the shelter belt to be established..

9.6 Discretion 3 – 27.3.3 A1 - Discretionary Use

- 9.6.1 The applicant has proposed a discretionary use, being a single dwelling (necessary to support an agricultural use).
- 9.6.2 If the Planning Authority takes the view that the proposed Residential use is discretionary (i.e. that the Residential use is necessary to support the proposed agricultural use), then assessment must be made under this use standard.
- 9.6.3 There is no Acceptable Solution contained in Section 27.3.3 A1. As such, the application must be assessed against the relevant Performance Criteria. Section 27.3.1 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.

9.6.4 It is considered that the proposed discretionary use (i.e. the residential use) will not conflict with or fetter with the proposed agricultural use or any existing agricultural use occurring on the site or on adjoining land subject to the planting of the proposed shelter belt.

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

9.7 Discretion 4 – 27.4.2 A2 - Building Setback from Side or Rear Boundaries

9.7.1 The Acceptable Solution contained in Section 27.4.2 A2 states:

Building setback from side and rear boundaries must be no less than 100m.

9.7.2 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.

9.7.3 Section 27.4.2 P2 states:

Building setback from side and rear boundaries 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 no less than:

40 m, if the lot is greater than 1 ha or if there is an existing building set back less than this distance, the setback must not be less than the existing building;

20 m, if the lot is less than or equal to 1 ha or if there is an existing building set back less than this distance, the setback must not be less than the existing building.

9.7.4 Subject to planting of the proposed shelter belt, the dwelling is adequately setback from side and rear boundaries so as to prevent potential for land use conflict that would fetter non-sensitive use of adjoining land.

- 9.7.5 The lot is greater than 1ha in area, and the dwelling is setback less than 40m from property boundaries. However, the site has previously been developed by outbuildings (refer to paragraphs 5.1 – 5.4, above). These outbuildings are setback 30m from the property boundaries.
- 9.7.6 The proposed dwelling will be setback no closer to side or rear boundaries than the existing outbuildings.
- 9.7.7 As such, the proposed development meets the Performance Criteria.

9.8 Discretion 5 – 27.4.2 A3 – Building Setback for Sensitive Uses

- 9.8.1 The Acceptable Solution contained in Section 27.4.2 A3 states:

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 100 m.
- 9.8.2 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.
- 9.8.3 Section 27.4.2 P2 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:

80 m 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;

40 m 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.

9.8.4 Subject to the proposed shelter belt, it is considered that the proposed setback of the dwelling is sufficient enough to prevent or mitigate against potential land use conflicts that would fetter non-sensitive uses on adjoining land.

9.8.5 The setback is not less than an existing building, so complies with the absolute minimum separation distances.

9.8.6 The development satisfies the Performance Criteria.

9.9 Discretion 6 – E6.7.3 A1 – Vehicular Passing Areas Along an Access

9.9.1 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.

9.9.2 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.

9.9.3 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.

9.9.4 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 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.

9.9.5 The development satisfies the Performance Criteria.

9.10 Discretion 7 - E6.7.6 A1 - Surface Treatment of Parking Areas

9.10.1 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.

9.10.2 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.

9.10.3 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.

9.10.4 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.

9.10.5 The development satisfies the Performance Criteria.

9.11 Discretion 8 – E7.7.1 A1 - Stormwater Drainage and Disposal

9.11.1 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.

9.11.2 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.

9.11.3 Stormwater will be collected for re-use on site as drinking water or for watering the olive grove.

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

10. Concerns raised by representors

10.1. The application was advertised in accordance with the statutory requirements of the *Land Use Planning and Approvals Act 1993*.

10.2. No representations were received during the statutory public advertising period.

11. Conclusion

11.1. The proposal is for a dwelling necessary to support agricultural use in the Significant Agricultural Zone at 830 Middle Tea Tree Road, Tea Tree.

11.2. The key issues are the necessity for a dwelling on-site for the proposed agricultural use. It is the Officer's opinion that the dwelling is not necessary to support a small-scale olive grove of 30 trees and sheep grazing.

11.3. The proposed olive grove will produce approximately 150 litre of oil per year in the eighth year after planting.

- 11.4. If the Planning Authority takes the view that the dwelling is not necessary to support the proposed agricultural use, then the proposed residential use does not comply with the use qualification contained in Table 27.2, and the proposed residential use would be prohibited (see discussion in paragraph 9.4.4, above). The Planning authority is bound to refuse a development application for a prohibited use, pursuant to Section 8.9.1(a) of the Interim Scheme.
- 11.5. The proposal is therefore not considered to meet all 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 DA 2018/00161 for the proposed development of a Dwelling (Necessary to Support Agricultural Use) in the Significant Agricultural Zone at 830 Middle Tea Tree Road, Tea Tree 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 of the Brighton Interim Planning Scheme 2015.
- b) The proposed use therefore reverts to a prohibited use under Table 27.2 of the Brighton Interim Planning Scheme 2015, and the Planning Authority is bound to refuse the development pursuant to Section 8.9.1(a) of the Brighton Interim Planning Scheme 2015.

DECISION:

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

VOTING RECORD

| In favour | Against |
|------------|-------------|
| Cr Garlick | Cr Jeffries |
| Cr Geard | Cr Murtagh |
| Cr Gray | Cr Whelan |
| Cr Owen | |

The meeting closed at 6.00pm.

Confirmed: _____
(Mayor)

Date: _____
20th August 2019