



Brighton Council

**MINUTES OF THE ORDINARY COUNCIL MEETING
OF THE BRIGHTON COUNCIL HELD
IN THE COUNCIL CHAMBER, COUNCIL OFFICES
OLD BEACH AT 5.35 P.M. ON TUESDAY,
21st JANUARY 2020**

PRESENT: Cr L Gray (Acting Mayor); Cr Garlick; Cr Geard; Cr Jeffries; Cr Murtagh; Cr Owen and Cr Whelan.

IN ATTENDANCE: Mr Ron Sanderson (General Manager), Mr G Davoren (Deputy General Manager); Mrs J Banks (Governance Manager); Mr P Carroll (Acting Manager Development Services) and Mr C Pearce-Rasmussen (Acting Municipal Engineer).

1. CONFIRMATION OF MINUTES:

1.1 CONFIRMATION OF MINUTES OF THE ORDINARY COUNCIL MEETING OF 17TH DECEMBER 2019.

Cr Geard moved, Cr Garlick seconded that the Minutes of the Ordinary Council Meeting of 17th December 2019 be confirmed.

CARRIED

VOTING RECORD

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

2. APPLICATIONS FOR LEAVE OF ABSENCE:

- Mayor Tony Foster had requested a leave of absence at the December Council meeting.
- Deputy Mayor Barbara Curran had requested a leave of absence as she is currently interstate.

Cr Murtagh moved, Cr Jeffries seconded that the applications for leave of absence be granted.

CARRIED

VOTING RECORD

In favour

Against

Cr Garlick
Cr Geard
Cr Gray
Cr Jeffries
Cr Murtagh
Cr Owen
Cr Whelan

3. PUBLIC QUESTION TIME AND DEPUTATIONS:

- Mr G Dodge addressed Council in relation to Item 8.3 and Item 12.1
- Mrs S Williams addressed Council in relation to Item 8.3

4. 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 declared an interest in Item 5.2.

Cr Gray declared an interest in Item 12.1.

5. 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 5 on this agenda, inclusive of any supplementary items.

5.1 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 - SA 2019/025 – 46 KATHLEEN DRIVE AND 60 KATHLEEN DRIVE, OLD BEACH - SUBDIVISION – 4 LOTS

Type of Report	Planning Authority – For Decision
Author	Jo Blackwell (Planning Officer)
Application No:	SA 2019/025
Address:	46 Kathleen Drive and 60 Kathleen Drive, Old Beach
Applicant:	PDA Surveyors
Proposal:	Subdivision (4 Lots)
Zone:	General Residential
Representations:	One (1)
Discretions:	<ol style="list-style-type: none"> 1. Building Area 2. Internal Lots 3. Ways and Public Open Space 4. Services 5. Services 6. Parking and Access 4. Attenuation 8. Waterway and Coastal Protection Code 9. Development on Dispersive Soils

1. Executive Summary

- 1.1. Approval is sought in relation to a combined subdivision of two lots, in order to create a total of four lots on the subject sites.
- 1.2. The application is discretionary due to reliance on performance criteria in relation to a number of standards, including lot design, public open space and services. There are a number of codes applicable to the proposal due to mapped overlays including Attenuation Code, Waterway and Coastal Protection Code and the Dispersive Soils Code.

- 1.3. One (1) representation was received raising concerns in relation to maintaining native vegetation to protect privacy and landscape values. The representor's concerns are addressed more fully in this report.
- 1.4. The proposal is recommended for approval, subject to conditions.
- 1.5. Due to the receipt of representations during the public advertising period, the final decision is delegated to the Planning Authority or to the 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 SA 2019/025.
- 2.2. This determination must be made no later than 21 January 2020, which has been extended beyond the statutory timeframe with the consent of the applicant.
- 2.3. The relevant legislation is the Land Use Planning and Approvals Act 1993 (LUPAA). The provisions of LUPAA require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer's recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the Judicial Review Act 2000 and the Local Government (Meeting Procedures) Regulations 2005.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the State Policies and Projects Act 1993.
- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application. Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

3. Risk & Implications

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

4. Relevant Background and Past Applications

- 4.1. SA 2019/0019 – 60 Kathleen Drive, Old Beach – Subdivision (1 lot plus balance).

5. Site Detail

- 5.1. The subject sites are comprised in Certificate of Title Volume 106247 Folio 24 (60 Kathleen Drive) and Certificate of Title Volume 106247 Folio 25 (46 Kathleen Drive). The two internal lots have a combined total land area of 10.098ha.
- 5.2. 60 Kathleen Drive is a 4.96ha internal lot with a 40m frontage to Kathleen Drive. There is an existing rural access, with a dwelling and outbuildings constructed pursuant to DA 2010/162. The site varies in steepness and is largely covered by native vegetation (refer Figure 1).
- 5.3. 46 Kathleen Drive comprises 5.130ha, and is similar in topography and development to its neighbour, with a dwelling approved pursuant to DA 2007/29 and a garage approved pursuant to DA 2007/103.



Figure 1: Aerial photography of subject site, with the approximate property boundaries shown in red (source: LISTmap).

- 5.4. The subject sites are zoned Rural Living, with the southern boundaries adjoining Environmental Living zoned land. On the western side of

Baskerville Road is Rural Resource Zoned land; to the north west is the Baskerville Raceway, to which the attenuation buffer on the site is relevant (refer Figure 2).

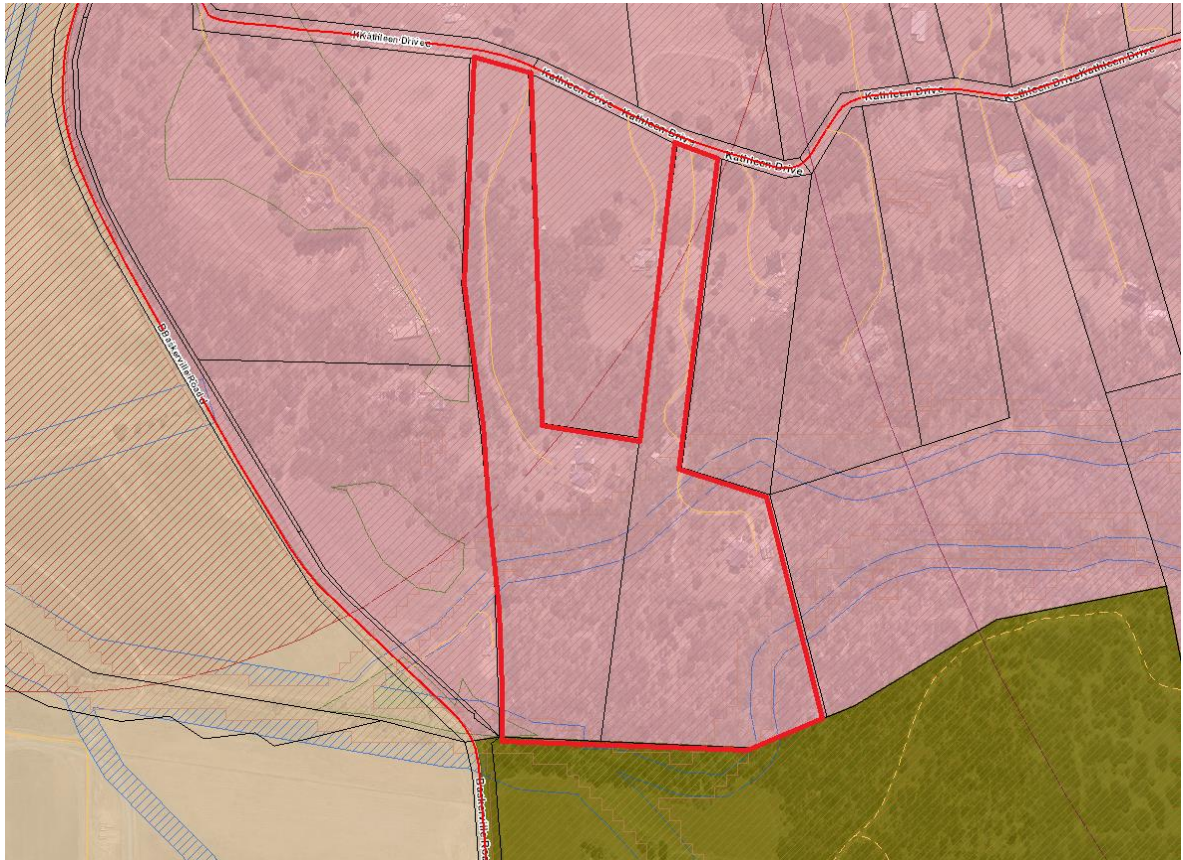


Figure 2: Zoning and Location Map. Pink denotes the Rural Living Zone.

6. Proposal

- 6.1 The proposal is for each site to be subdivided into 1 lot plus balance, with the access to Lot 2 at 46 Kathleen Drive, having a shared access via right of way over the access strip for both lots on 60 Kathleen Drive. Lot 1 (as per Plan of Subdivision) is to have an area of 2.25ha, with the Balance Lot B being 3.30h. Lot 2 is to have an area of 2.69ha, with Balance Lot A being reduced to 2.04ha.
- 6.2 The application is supported by the attached Plan of Subdivision and Planning Assessment report, prepared by PDA Surveyors.

7 Assessment

- 7.1 The *Brighton Interim Planning Scheme 2015* (the 'Interim Scheme') is a performance-based planning scheme.
- 7.2 To meet an applicable standard, a proposal must demonstrate compliance with either an Acceptable Solution or a Performance Criterion. Where a proposal complies with a standard by relying on one or more Performance Criteria, the Council may approve or refuse the proposal on that basis. The ability to refuse the proposal relates only to the Performance Criteria relied upon.

8 Assessment against planning scheme provisions

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

- Part D – Section 13.0 – Rural Living Zone
- Part E – Section E5.0 – Road and Railway Assets Code
- Part E – Section E6.0 – Parking and Access Code
- Part E – Section E7.0 – Stormwater Management Code
- Part E – Section E9.0 – Attenuation Code
- Part E – Section E11.0 – Waterway and Coastal Protection Code
- Part E – Section E21.0 – Dispersive Soils Code

8.2 The proposal is considered to satisfy the acceptable solutions (AS) of the relevant planning controls as follows:

- Section 13.5.1 A1 Lot Design (Lot Size)
- Section 13.5.1 A3 Lot Design (Frontage)
- Section 13.5.1 A5 Lot Design (Setbacks)
- Section 13.5.2 A1 Roads
- Section 13.5.4 A1 Services (Water Supply)
- Section E1.0 Bushfire Prone Areas Code
- Section E3.0 Landslide Code
- Section E5.0 Road and Railway Assets Code
- Section E7.0 Stormwater Management Code

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

- Section 13.5.1 A2 Lot Design (Building Area)
- Section 13.5.1 A4 Lot Design (Internal Lots)
- Section 13.5.3 A2 Ways and Public Open Space
- Section E6.7.3 A1 Parking and Access (Passing Bays)
- Section E9.7.2 A1 Attenuation Code
- Section E11.8.1 A1 Waterway and Coastal Protection Code
- Section E21.7.1 A1 Development on Dispersive Soils

8.4 Discretion 1: Building Area (Section 13.5.1 A2)

8.4.1 The Acceptable Solution contained in Section 13.5.1 A2 of the Interim Scheme states:

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

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

8.4.2 The proposal does not satisfy the Acceptable Solution, as the building area on Lot 1 is an irregular shape, rather than a 30mx30m square, and the existence of various overlays across portions of the sites. Accordingly, the application is required to address the relevant Performance Criteria:

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

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

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

8.4.3 The indicative building areas on Lot 1 and Lot 2 are each sited on a relatively level section of the land, which is considered sufficient to accommodate residential use of the site with sufficient solar access. Lot 1's building area - whilst irregular in shape - is in excess of the required 900m².

8.4.4 As discussed below, it is considered that the proposed subdivision can satisfy the standards for relevant codes. Should approval be granted, it is recommended that a condition be imposed on the permit requiring that an On-Site Wastewater Report be submitted to Council for approval prior to sealing of the final plan, demonstrating each lot's capacity to accommodate an on-site wastewater system.

8.4.5 Each of the lots are more than 200m from the Rural Resource, Significant Agriculture and Environmental Management Zones.

8.4.6 Any future development on the new lots will require a site-specific dispersive soils assessment and management plan to be submitted in support of the proposed development.

However, given that dwellings in Kathleen Drive have been able to previously satisfy code requirements relating to dispersive soils, it is considered that, with appropriate management, the additional lots are also able to comply with the requirements of the Interim Scheme.

8.4.7 The development satisfies the Performance Criteria contained in Section 13.5.1 P2.

8.5 Discretion 2 – Internal Lots (Section 13.5.1 A4)

8.5.1 The Acceptable Solution contained in Section 13.5.1 A4 of the Interim Scheme states:

No lot is an internal lot.

8.5.2 The proposed subdivision will result in two new internal lots. As such, the application does not comply with the Acceptable Solution, and is required to be assessed against the Performance Criteria contained in Section 13.5.1 P4 of the Interim Scheme, which states:

An internal lot must satisfy all of the following:

- a) access is from a road existing prior to the planning scheme coming into effect, unless site constraints make an internal lot configuration the only reasonable option to efficiently utilise land;*
- b) it is not reasonably possible to provide a new road to create a standard frontage lot;*
- c) the lot constitutes the only reasonable way to subdivide the rear of an existing lot;*
- d) the lot will contribute to the more efficient utilisation of rural living land;*
- e) the amenity of neighbouring land is unlikely to be unreasonably affected by subsequent development and use;*
- f) the lot has access to a road via an access strip, which is part of the lot, or a right-of-way, with a width of no less than 3.6m;*
- g) passing bays are provided at appropriate distances along the access strip to service the likely future use of the lot;*
- h) the access strip is adjacent to or combined with no more than three other internal lot access strips and it is not appropriate to provide access via a public road;*
- i) a sealed driveway is provided on the access strip prior to the sealing of the final plan.*
- j) the lot addresses and provides for passive surveillance of public open space and public rights of way if it fronts such public spaces.*

- 8.5.3 The two new lots each have a 6m frontage to Kathleen Drive, with 60 Kathleen Drive maintaining a 28m frontage. The frontage to 48 Kathleen Drive remains unchanged.
- 8.5.4 Given that the proposed subdivision is for two additional lots, it would be considered onerous that a new road be required to be constructed. Accordingly, a shared access via right of way 6.0m wide is proposed to access Lot 1, Lot 2 and Balance A, with a further Right of Way providing continued access from Lot 1 to Lot 2. Passing bays will be required, in accordance with the Bushfire Hazard Management Plan prepared by Mulcahy (23 September 2019) on behalf of PDA Surveyors.
- 8.5.5 The proposed subdivision will allow for increased utilisation of rural living land by creating additional lots that satisfy the minimum lot size under Section 13.5.1 A1.
- 8.5.6 A representation was received in relation to the application which cited concerns regarding privacy and overlooking, arising from clearing of vegetation on the site. The proposed lots are not subject to a biodiversity overlay, there are no threatened species identified on the lot, and there is no proposal to clear vegetation at this time. Land clearance will be addressed as part any future development application. However, it is considered that any future development can reasonably address privacy concerns, given the land area of the proposed lots.
- 8.5.7 It is considered that the development satisfies the Performance Criteria.

8.6 Discretion 3 – Ways and Public Open Space (Section 13.5.3 A2)

- 8.6.1 There is no Acceptable Solution contained in Section 13.5.3 A2. The corresponding Performance Criteria states:

Public Open Space must be provided as land or cash in lieu, in accordance with the relevant Council policy.

- 8.6.2 Should approval be granted, it is recommended that a condition be imposed requiring that cash in lieu of public open space is provided, in accordance with Council policy.

- 8.6.3 *The development satisfies the Performance Criteria.*

8.7 Discretion 4 – Services (Section 13.5.4 A2)

- 8.7.1 There is no Acceptable Solution contained in Section 13.5.4 A2. The corresponding Performance Criteria states:

Each lot must be capable of accommodating an on-site wastewater treatment system adequate for the future use and development of the land.

8.7.2 The existing wastewater absorption trenches are located within the proposed lot boundaries and are a minimum of 47m north-east from the proposed building area for Lot 1 and 20m from the boundary. Trenches for Balance Lot B are a minimum of 31m from the dividing boundary to Lot 2.

8.7.3 Council's Senior Environmental Health Officer has considered the proposed subdivision and considers that on-site wastewater can be accommodated on the site. However, a condition is recommended that an on-site wastewater report be provided prior to sealing of the final plan, demonstrating that each lot (existing and new) can fully contain wastewater within property boundaries.

8.7.4 The development satisfies the Performance Criteria.

8.8 Discretion 5 – Services (Section 13.5.4 A3)

8.8.1 The Acceptable Solution contained in Section 13.5.4 A3 states:

Each lot must be connected to a stormwater system able to service the building area by gravity.

8.8.2 The development does not comply with the Acceptable Solution. The corresponding Performance Criteria states:

Each lot must be capable of accommodating an on-site stormwater management system adequate for the likely future use and development of the land.

8.8.3 Council's Senior Technical Officer has considered the proposed subdivision and considers that stormwater can be managed on the site.

8.8.4 The development satisfies the Performance Criteria.

8.9 Discretion 6 – Parking and Access Code (E6.7.3 A1)

8.9.1 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.*
- 8.9.2 The proposed development does not comply with the Acceptable Solution. As such, the development must be assessed against the corresponding Performance Criteria.
- 8.9.3 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.*
- 8.9.4 The use standards for the Rural Living Zone limits residential construction to one dwelling per lot. Therefore, the shared access strip will service a maximum of three dwellings, reducing the opportunity for conflict between all users, and minimising any disruption to traffic flows.
- 8.9.5 The Bushfire Hazard Management Report submitted in support of the application requires that passing bays of an additional 2m carriageway width and 20m in length, every 200m are to form part of the development works. However, the distances quoted by the bushfire report (i.e. every 200m) are incorrect as the access is shared by 3 or more properties. Therefore, a condition is recommended that passing bays are required every 100m, in accordance with the standard requirements of the Bushfire Code, and a passing bay should be provided for the shared access at the road.
- 8.9.6 It is considered that the development satisfies the Performance Criteria.

8.10 Discretion 7 – Attenuation Code (Section E9.7.2 A1)

8.10.1 The mapped attenuation area for the Baskerville Raceway overlays the north western portion of Balance Lot B, and the northern portion of the access strip at the road frontage of Balance Lot A. The new lots are not affected by the overlay. There is no Acceptable Solution provided, so the Performance Criteria must be addressed.

8.10.2 Section E9.7.2 P1 states:

Development for sensitive use, including subdivision of lots within a sensitive zone, must not result in potential to be impacted by environmental harm from use with potential to cause environmental harm, having regard to all of the following:

(a) the nature of the use with potential to cause environmental harm; including:

(i) *operational characteristics;*

(ii) *scale and intensity;*

(iii) *degree of hazard or pollution that may emitted from the activity;*

(b) the degree of encroachment by the sensitive use into the Attenuation Area or the attenuation distance;

(c) measures in the design, layout and construction of the development for the sensitive use to eliminate, mitigate or manage effects of emissions

8.10.3 The proposal is considered to accord with the Performance Criteria, given that the area of the subdivision covered by the overlay is not subject to future development as a result of the subdivision.

8.10.4 The development satisfies the Performance Criteria.

8.11 Discretion 8 – Waterway and Coastal Protection Code (Section E11.8.1 A1)

8.11.1 The Acceptable Solution contained in Section E11.8.1 A1 states:

Subdivision of a lot, all or part of which is within a Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area must comply with one or more of the following:

a) *be for the purpose of separation of existing dwellings;*

- b) *be for the creation of a lot for public open space, public reserve or utility;*
- c) *no works, other than boundary fencing works, are within a Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area;*
- d) *the building area, bushfire hazard management area, services and vehicular access driveway are outside the Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area.*

8.11.2 The application requires driveway works within the Waterway and Coastal Protection Area located to the northwest of the existing dwelling on Balance Lot A. The indicative building areas for both lots sit outside the WCP overlay. Regardless, the development does not comply with the Acceptable Solution, and must be assessed against the corresponding Performance Criteria.

8.11.3 Section E11.8.1 P1 states:

Subdivision of a lot, all or part of which is within a Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area, must satisfy all of the following:

- a) *minimise impact on natural values;*
- b) *provide for any building area and any associated bushfire hazard management area to be either:*
 - i. *outside the Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area; or*
 - ii. *able to accommodate development capable of satisfying this code.*
- c) *if within a Potable Water Supply Area, be in accordance with the requirements of the water and sewer authority.*

8.11.4 The proposal was referred to Council's Senior Technical Officer who has assessed the application and determined that the proposed development can satisfy the Performance Criteria.

8.12 Discretion 9 – Development on Dispersive Soils (Section E21.7.1 A1)

8.12.1 The Dispersive Soils overlay covers the entirety of the sites. The works required to be carried out pursuant to this application for subdivision are works required to upgrade the driveway and to extend the access to Lots 1 and 2.

8.12.2 There is no Acceptable Solution contained in Section E21.7.1 A1. The corresponding Performance Criteria states:

Development must be designed, sited and constructed to minimise the risk of dispersive soils to property and the environment having regard to the following, as appropriate:

- a) *the dispersive potential of soils in the vicinity of proposed buildings, driveways, services and the development area generally;*
- b) *the potential of the development to affect or be affected by erosion, including gully and tunnel erosion;*
- c) *the dispersive potential of soils in the vicinity of water drainage lines, infiltration areas/trenches, water storages, ponds, dams and disposal areas;*
- d) *the level or risk and potential consequences for property and the environment from potential erosion, including gully and tunnel erosion;*
- e) *management measures that would reduce risk to an acceptable level.*

8.12.3 The access to Lot 2 will be an extension of the existing vehicle path already developed. Accordingly, a condition is recommended requiring provision of a Dispersive Soils Management Plan to be submitted for approval by Council's Manager Development Services prior to sealing of the Final Plan.

8.12.4 Any works in the indicative building areas will be the subject of a future development application. As such a Dispersive Soils Management Plan will need to be submitted in support of that application based on the proposed development at that time.

8.12.5 Given the potential for dispersive soils on the site, it is recommended that a condition be included on the permit requiring that no vegetation be removed without a separate permit, other than for the upgrade of the internal access strip as required by the Bushfire Hazard Management Plan.

8.12.6 The development satisfies the Performance Criteria.

9 Referrals

9.1 Senior Technical Officer

Council's Senior Technical Officer has reviewed the application, and has provided comments, conditions and advice.

9.2 TasWater

The proposal was referred to TasWater for assessment. That authority responded on 1 August 2019, stating:

Pursuant to the Water and Sewerage Industry Act 2008 (TAS) Section 56P(1) TasWater has assessed the application for the above mentioned permit and has determined that the proposed development did not require a referral and therefore does not require a submission from TasWater as the subdivision is located in an area unserved for water and sewerage by TasWater and as such will not;

- a. Increase the demand for water supplied by TasWater; or*
- b. Increase the amount of sewage or toxins that is to be removed by, or discharged into, TasWater sewerage infrastructure; or*
- c. Damage or interfere with TasWater works; or*
- d. Adversely affect TasWater operations.*

10 Concerns raised by representors

10.1 One (1) representation was received during the public notification period. The following table briefly summarises the issues raised by the representors.

Representation 1	Planning Response
<p>I would once again like to raise our concerns regarding the clearing of the vegetation in the buffer area once the property is sold to another party. Based on image 32 in the application (refer the submitted Bush Fire Hazard assessment) it is clear that the area has direct line of sight to our dwelling to the south and in turn, we would also be able to see any dwelling built within the proposed build zone, if the trees and shrubs are removed. This obviously has a direct impact on our privacy and the enjoyment of our property.</p> <p>After several conversations with planning staff at Brighton Council regarding the protection of the vegetation, I was told "<i>there is no head of power under the Planning Scheme to condition for a Part 5 Agreement</i>" and such there was nothing that could be done as part of the planning approval process. That said, what other mechanisms or avenues does the Council have</p>	<p>The application is for subdivision only, including minor works to upgrade the existing driveway and extend the internal access to service Lots 1 and 2. The Bushfire Hazard Management Plan requires that the access accommodates carriageway widths, horizontal clearances, passing bays and turning areas for access by fire-fighting appliances.</p> <p>Accordingly, other than for BHMP, there is no requirement for significant vegetation removal at this time.</p> <p>Any future development on each site will be required to be</p>

<p>to ensure that both our privacy and the natural values of the area are kept intact?</p> <p>When I spoke to Miss Way previously, she offered to place special condition of sale on property to assist with the protection of the trees however I am unsure of how this may be enforced after sale. Other subdivisions developed recently in Hobart have a range of restrictions placed on them by councils which I was led to believe are part of the sale of each lot. These restrictions include aspects of the buildings that can be erected and also the impact of dwellings on neighbouring properties outlook etc. Could a similar thing be imposed here?</p> <p>Our primary concerns with the application are as follows:</p> <ul style="list-style-type: none"> • Clearing of trees to the south of the proposed Hazard Management Area on each property would have a detrimental impact on the privacy we have from the north and given the elevation of the proposed indicative building areas they would look down into the back yard area behind our house. This type of issue is listed on the Brighton Council Website (extract below) as being something that can be addressed as part of planning process so we are hoping this will be taken into consideration <p>The planning approval process focuses particularly on the impact of the proposal on the site and neighbouring land. Generally, it will address issues such as the following:</p> <ul style="list-style-type: none"> • Will it cause overshadowing or loss of privacy to neighbours? • Currently we are unable to see any dwellings to our north from our home and we believe that neighbouring dwellings are unable to see us, when looking south - we would like this to continue if the application is approved 	<p>address Planning Scheme requirements including the development standards for the Rural Living Zone (including building height, setbacks to boundaries, removal of native vegetation, cut and fill, and exterior colour schemes, etc). Further the requirements of the Dispersive Soils Code, Stormwater Management Code, Parking and Access Code and potentially the Waterway and Coastal Protection Code and Attenuation Code will need to be addressed.</p> <p>The indicative building area on each new lot is located approximately 80m north of the southern boundary, with the nearest house to the south a further 115m from the dividing boundary. Given that the boundary setback for the Rural Living Zone is 20m, and the Environmental Living Zone is 30m (in total, 50m) it is considered that there is sufficient separation to maintain privacy at this time.</p> <p>The Planning Scheme maps do not include a Biodiversity Code overlay for the site, nor are there threatened species identified on the site (ref: LISTmap).</p> <p>Accordingly, a condition requiring a Part 5 Agreement pursuant to s71 of the Land Use Planning and Approvals Act 1993 to be registered against the new titles limiting vegetation clearance is not</p>
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<ul style="list-style-type: none"> • The new land owner may not share the same values in relation to retaining the trees • More up to date satellite imagery from Google Maps shows a much higher density of growth compared to that shown in the application and Bushfire Hazzard Assessment (Appendix A in the Bushfire Hazzard Assessment contains photos showing the current growth in the area) • If the trees in question are removed any building/s in the Indicative building areas will be visible from many properties to the south, impacting multiple resident <p>We would ask Council to review the application with regard to the concerns we have outlined herein and assist us in protecting both our privacy and the natural values of the location, which we (and our neighbours to the south) enjoy every day and we would like to see the Council apply restrictions to the removal of any trees (or part there of) as part of the sale of the property if possible.</p>	<p>considered appropriate for this subdivision.</p> <p>However, given the potential for dispersive soils across the sites, a condition can be included on the permit prohibiting works (including the removal of vegetation) without Council approval, unless for the purpose of access construction to Lot 1 in accordance with engineering and bushfire hazard management plan requirements, as approved under this permit.</p>
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11. Conclusion

11.1 The proposed subdivision in the Rural Living Zone at 46 Kathleen Drive and 60 Kathleen Drive, Old Beach, satisfies the relevant provisions of the Brighton Interim Planning Scheme 2015, and as such is recommended for approval, subject to conditions.

12. RECOMMENDATION:

That: A. Pursuant to the Brighton Interim Planning Scheme 2015, Council approve application SA 2019/14 for Subdivision of Four (4) lots at 46 Kathleen Drive and 60 Kathleen Drive, Old Beach, for the reasons outlined in the officer's report and a permit containing the following conditions be issued:

General

1. The subdivision layout or development must be carried out substantially in accordance with the application for planning approval, the endorsed drawings and with the conditions of this permit and must not be altered or extended without the further written approval of Council.

2. This permit shall not take effect and must not be acted on until 15 days after the date of receipt of this letter or the date of the last letter to any representor, whichever is later, in accordance with section 53 of the *Land Use Planning And Approvals Act 1993*.
3. In addition to the endorsed documentation in condition 1, the development and works must be carried out in accordance with:
 - a. The Dispersive Soils and their Management: Technical Reference Manual (DPIW, 2009)
 - b. 'Wetlands and Waterways Works Manual' (DPIWE, 2003).

Additional Documents

4. Prior to sealing of the Final Plan, the following must be submitted to and approved by Council's Manager Development Services:
 - a wastewater report prepared by a suitably qualified engineer demonstrating that onsite wastewater can be accommodated and contained within each lot; and
 - a dispersive soils management plan prepared by a suitably qualified engineer in accordance with the best practice guidelines which details:
 - (a) the dispersive potential of soils in the vicinity of the proposed driveway works;
 - (b) the potential for the development to cause or contribute to gully or tunnel erosion;
 - (c) an analysis of the level of risk to the development and the level of risk to users of the development;
 - (d) proposed management measures to reduce risk to an acceptable level where necessary,

Once approved, the reports shall form part of this permit and must be adhered to.

Public Open Space

5. In accordance with the provisions of Section 117 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*, payment of a cash contribution for Public Open Space must be made to the Council prior to sealing the Final Plan of Survey. The cash contribution amount is to be equal to 5% of the value of the land being subdivided (described as lots 1 and 2 in the plan of subdivision) at the date of lodgement of the Final Plan of Survey.

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

6. The cash-in-lieu of public open space must be in the form of a direct payment made before the sealing of the final plan of survey or,

alternatively, in the form of a Bank guarantee to cover payment within ninety (90) days after demand, made after the final plan of survey has taken effect.

Vegetation Protection

7. Vegetation must not be removed, destroyed or lopped without separate Council planning approval, except for upgrade and extension to the access to Lot 1 in accordance with the attached Bushfire Hazard Management Plan (Mulcahy 2019).

Easements

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

Endorsements

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

Covenants

10. Covenants or other similar restrictive controls that conflict with any provisions or seek to prohibit any use provided within the planning scheme must not be included or otherwise imposed on the titles to the lots created by this permit, either by transfer, inclusion of such covenants in a Schedule of Easements or registration of any instrument creating such covenants with the Recorder of Titles, unless such covenants or controls are expressly authorised by the terms of this permit or the consent in writing of the Council's Senior Planner.

Final Plan

11. A final approved plan of survey and schedule of easements as necessary, together with two (2) copies, must be submitted to Council for sealing for each stage.

The final approved plan of survey must be substantially the same as the endorsed plan of subdivision and must be prepared in accordance with the requirements of the Recorder of Titles.

12. Prior to Council sealing the final plan of survey for each stage, security for an amount clearly in excess of the value of all outstanding works and maintenance required by this permit must be lodged with the Brighton Council. The security must be in accordance with section 86(3) of the Local Government (Building & Miscellaneous Provisions) Council 1993. The amount of the security shall be determined by the Council's Municipal Engineer in accordance with Council Policy 6.3 following approval of any engineering design drawings and shall not be less than \$5,000.

13. All conditions of this permit, including either the completion of all works and maintenance or payment of security in accordance with this permit, must be satisfied before the Council seals the final plan of survey for each stage. It is the subdivider's responsibility to notify Council in writing that the conditions of the permit have been satisfied.
14. The subdivider must pay any Titles Office lodgement fees direct to the Recorder of Titles.

Engineering

15. The subdivision must be carried out in accordance with the Tasmanian Subdivision Guidelines October 2013 (attached).
16. Engineering design drawings, to the satisfaction of the Council's Municipal Engineer, must be submitted to and approved by Council before any works associated with development of the land commence.
17. Engineering design drawings are to be prepared by a qualified and experienced civil engineer, or other person approved by Council's Municipal Engineer, in accordance with the Tasmanian Subdivision Guidelines October 2013, and must show –
 - a) all existing and proposed services required by this permit;
 - b) all existing and proposed roadwork required by this permit;
 - c) measures to be taken to provide sight distance in accordance with the relevant standards of the planning scheme;
 - d) measures to be taken to limit or control erosion and sedimentation;
 - e) any other work required by this permit.
18. Approved engineering design drawings will remain valid for a period of 2 years from the date of approval of the engineering drawings.

Water quality

19. A soil and water management plan (here referred to as a 'SWMP') prepared in accordance with the guidelines Soil and Water Management on Building and Construction Sites, by the Derwent Estuary Programme and NRM South, must be approved by Council's Municipal Engineer before development of the land commences.
20. Temporary run-off, erosion and sediment controls must be installed in accordance with the approved SWMP and must be maintained at full operational capacity to the satisfaction of Council's Municipal Engineer until the land is effectively rehabilitated and stabilised after completion of the development.

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

Property Services

23. The Subdivider must pay the cost of any alterations and/or reinstatement to existing services, Council infrastructure or private property incurred as a result of the proposed subdivision works. Any work required is to be specified or undertaken by the authority concerned.
24. Any existing services shared between lots are to be separated to the satisfaction of Councils Municipal Engineer.
25. Property services must be contained wholly within each lots served or an easement to the satisfaction of the Council's Municipal Engineer or responsible authority.
26. Property services must be extended the length of the access strip to the lot proper, or conduits for future services provided, to the satisfaction of Council's Municipal Engineer.

Telecommunications and Electrical Reticulation

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

Vehicular Access

29. A sealed vehicle access must be provided from the road carriageway to service each lot.

30. Vehicular accesses must be located and constructed in accordance with the standards shown on standard drawings TSD-R03-v1 Rural Roads Typical Property Access, TSD-R04-v1 Rural Roads Typical Driveway Profile and TSD-RF01-v1 Guide To Intersection And Domestic Access Sight Distance Requirements prepared by the IPWE Aust. (Tasmania Division), or as otherwise required by this permit, and the satisfaction of Council's Municipal Engineer.
31. The shared vehicular access to Lots 1, 2 and Balance A must be constructed/upgraded for the entire length of the R.O.W. to Lot 1 and Lot 2 lot proper (approx. 418m) and, unless approved otherwise by Council's Municipal Engineer, be:
 - (a) Constructed with a durable all weather pavement
 - (b) Drained to an approved stormwater system
 - (c) Upgraded culvert at the watercourse
 - (d) Surfaced with a material to resist abrasion from traffic and to minimise the entry of water. The surfacing material may be a spray seal, asphalt, concrete, pavers or other approved material.
 - (e) A min trafficable width of 4.0m with a minimum sealed width of 3.0m
 - (f) Sealed passing bay 5.5m wide x 6m min length located at the edge of the road (Kathleen Drive)
 - (g) Additional passing pays of 2m additional width and 20 metres long (excluding tapers) every 100 metres.
 - (h) As required by Bushfire Hazard Report - 44476CT, Proposed Subdivision, 60 & 46 Kathleen Dve, Old Beach prepared by PDA Surveyors, dated 23 September 2019.

Advice: Detailed design for the driveway waterway crossings, including:

- a. Culvert size and type;*
- b. Measures to mitigate erosion;*
- c. Calculations to determine pipe sizes;*

is to be included in the submission of engineering design drawings for approval.

32. The vehicular access to Balance B must be upgraded as required by Bushfire Hazard Report - 44476CT, Proposed Subdivision, 60 & 46 Kathleen Dve, Old Beach prepared by PDA Surveyors, dated 23 September 2019, and to the satisfaction of Council's Municipal Engineer.

Construction Amenity

33. The development must only be carried out between the following hours unless otherwise approved by the Council's General Manager
- Monday to Friday 7:00 AM to 6:00 PM
 - Saturday 8:00 AM to 6:00 PM
 - Sunday and State-wide public holidays 10:00 AM to 6:00 PM
34. All subdivision works associated with the development of the land must be carried out in such a manner so as not to unreasonably cause injury to, or unreasonably prejudice or affect the amenity, function and safety of any adjoining or adjacent land, and of any person therein or in the vicinity thereof, by reason of -
- (a) emission from activities or equipment related to the use or development, including noise and vibration, which can be detected by a person at the boundary with another property; and/or
 - (b) transport of materials, goods or commodities to or from the land; and/or
 - (c) appearance of any building, works or materials.
35. Any accumulation of vegetation, building debris or other unwanted material must be disposed of by removal from the land in an approved manner. No burning of such materials on-site will be permitted unless approved in writing by the Council's General Manager.
36. Public roadways or footpaths must not be used for the storage of any construction materials or wastes, for the loading/unloading of any vehicle or equipment; or for the carrying out of any work, process or tasks associated with the subdivision during the construction period.

THE FOLLOWING ADVICE APPLIES TO THIS PERMIT: -

- A. This permit does not imply that any other approval required under any other legislation or by-law has been granted.
- B. This permit does not take effect until all other approvals required for the use or development to which the permit relates have been granted.
- C. The owner is advised that an engineering plan assessment and inspection fee of 1% of the value of the approved engineering works, or a minimum of \$286.00, must be paid to Council in accordance with Council's fee schedule.
- D. **This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval if the development for which the approval was given has not been substantially commenced. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development shall be treated as a new application.**

DECISION:

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

CARRIED

VOTING RECORD

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

Cr Geard had declared an interest in the next Item and left the meeting 6.02pm

5.2 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 - DA2019/00177 – 37 STONEFIELD ROAD, BRIGHTON DWELLING (NECESSARY TO SUPPORT AGRICULTURAL USE)

Type of Report	Planning Authority – For Decision
Application No:	DA2019/00177
Address:	37 Stonefield Road, Brighton
Proposal:	Dwelling (Necessary to Support Agricultural Use)
Zone:	Significant Agricultural Zone
Representations:	One (1)
Discretions:	1. Use table (27.2) 2. Sensitive use (27.3.1 A1) 3. Discretionary use (27.3.3 A1) 4. Surface treatment of parking areas (E6.7.6 A1) 5. Stormwater drainage and disposal (E7.7.1 A1)
Author:	Manager Development Services (David Allingham)

1. Executive Summary

- 1.1. Planning approval is sought for a dwelling and outbuilding necessary to support agricultural use at 37 Stonefield Road, Brighton. The site is located within the Significant Agricultural Zone of the *Brighton Interim Planning Scheme 2015* (the 'Interim Scheme').

- 1.2. One representation was received within the statutory public advertising period. The representation objected to the proposed development. The concerns of the representors were considered as part of the assessment of the proposal.
- 1.3. The key issues are the necessity for a dwelling on-site for the proposed agricultural use, and the type of agricultural use proposed.
- 1.4. The proposal is recommended for approval subject to conditions relating to the establishment of an agricultural enterprise.
- 1.5. 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 DA2019/00177.
- 2.2. This determination must be made no later than 28 January 2020, 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 October 2019 and consisted of plans and a cover letter prepared by the applicant. Two representations were 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 late November 2019 a revised application was submitted which included an Agricultural Assessment and Planning Scheme Compliance Report prepared by Macquarie Franklin (Attachment C).
- 4.2. The amended application was subsequently re-advertised to include the above information in December 2019. One representation was received in the second advertising period.
- 4.3. Council staff also wrote to the two original representors, advising them that the application was being re-advertised with new information. The original representors were asked if they wanted their representation to stand, or if they wished to provide an addendum. No response was received from either. The legal advice that Council has received is that the original representations do not constitute statutory representations, and are not considered.

5. Relevant Background

- 5.1. Councillors would be aware that there have been several recent applications for dwellings on agricultural land that have been recommended for refusal. The basis for the refusals were legal advice that Council had received that set a very high bar to satisfy the qualification in the use table at 27.2 of the Scheme in that Residential use is a discretionary use "Only if a single dwelling necessary to support agricultural use on the property".
- 5.2. Councillors would also be aware that Council engaged Agribusiness consultants to undertake a review of the Brighton West Area, which includes the subject property. Unfortunately, at the time of writing this report, this final report for the review had not been completed. The review was to investigate what the most appropriate zoning was for the area particularly given the small lot sizes throughout the area.

- 5.3. As part of the review, a Community Meeting was held on the 29 October 2019. The consensus of the meeting seemed to be that the land should remain under an agricultural zoning and had the potential to be good agricultural land. It was noted that the water supply was a limiting factor, but there are projects under investigation that may provide irrigation water to the area in the future (e.g. expansion of Tas Irrigation Schemes, additional re-use water from TasWater's Honeywood WWTP and re-use water from Norske Skog). It was also noted that the geographical location of the area provided significant advantages due to access to markets, low freight costs, etc. The community acknowledged that owners should be able to build dwellings on the land if it didn't significantly impact on the agricultural potential of the land and adjoining land.

6. Site Detail

- 6.1. The subject site is a 5.141 hectare (ha) triangular shaped corner lot with existing access to Stonefield Road. The corner lot has frontage to both Stonefield Road and Elderslie Road.
- 6.2. The vegetation on the site is dominated by degraded pasture land. The land is currently vacant and used for small scale and low intensity pastoral use. The land has been classified as Class 5 land.
- 6.3. The site is within the Significant Agricultural Zone, as are all surrounding properties.
- 6.4. The surrounding land to the north, east and west are generally low intensity hobby farms or simply residential lots. There is a horse racing track at 38 Stonefield Rd opposite the subject property. Land on the opposite side of the road are larger farm holdings with some residential use as well. A small residential lot at 269 Elderslie Road also has a vineyard.

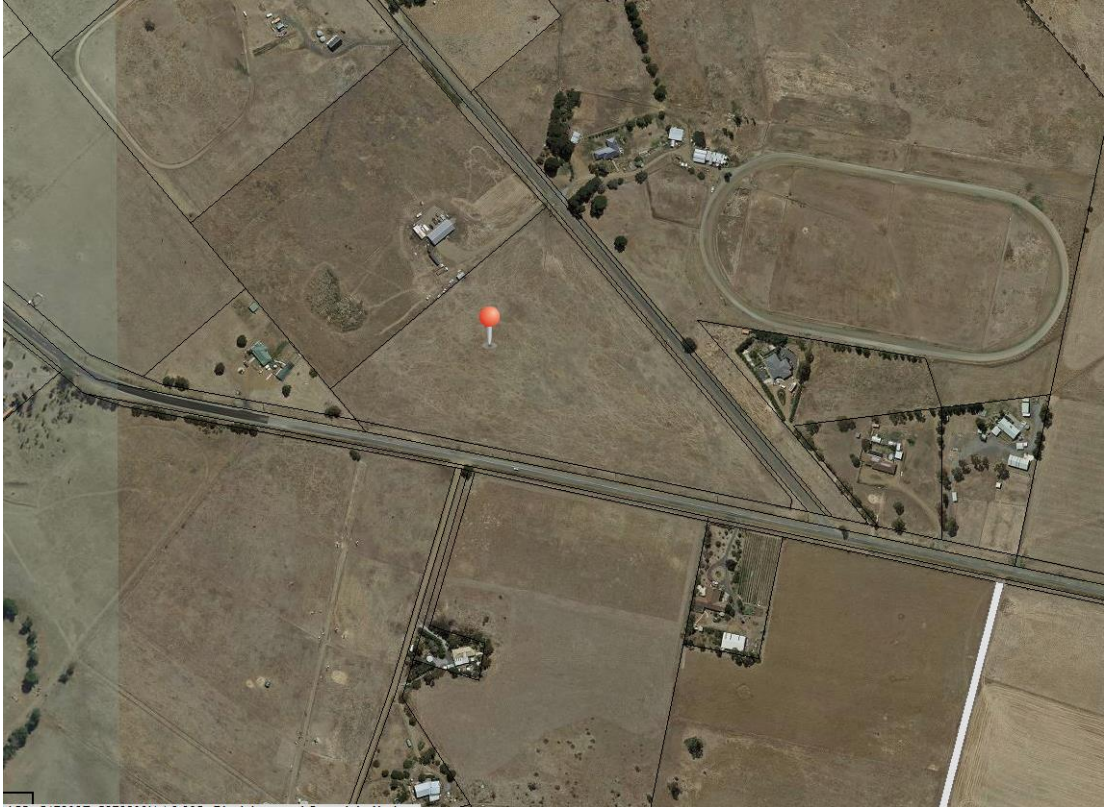


Figure 1. Aerial image: 37 Stonefield Rd and surrounds



Figure 2. Zones: Significant Agricultural (Dark Brown)

7. Proposal

- 7.1. The proposal is for a 139m² three-bedroom dwelling and 260m² outbuilding which is necessary to support an agricultural use. The proposed agricultural use is a small scale equine artificial insemination (AI) enterprise and continuation of the pastoral use.
- 7.2. The proposed residential dwelling would allow the proponent to living on the property in order to undertake and manage the agricultural land use activity that could be conducted on the property. It is argued that it is necessary to live on-site as AI must be carried out when the recipient mare is ready to breed and there is only a short window to carry out AI. It is expected that up to 5 yearlings will be sold as harness horses (trotters) from the AI operation per year. In 2019, the proponent sold three yearlings for \$19,000. The broodmare stock will be limited to four.
- 7.3. 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*.
- 7.4. The dwelling has been sited to comply with the Acceptable Solutions of the planning scheme to have the least amount of impact on surrounding agricultural uses.

The supporting Agricultural Assessment states that it would be reasonable to include landscaping and establish a shelter belt around the proposed dwelling to enhance the mitigation of the potential for negatively impacting adjacent properties.
- 7.5. The Agricultural Assessment uses an example of a ewe/lamb/breeding enterprise as the most appropriate pastoral land use that could be conducted at the property. This livestock enterprise would involve running ewes throughout the year and lambs being sold off at the point of weaning. Based on the present land capability and provided appropriate pasture improvements are undertaken it is reasonable to consider that the property has the potential to be a 22 ewe/lamb livestock enterprise with a gross margin return of approximately \$1400.

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.

Assessment against planning scheme provisions

- 8.3. The following provisions are relevant to 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
- 8.4. 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
 - 27.4.2 A3 – Building setback for sensitive use
 - 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
- 8.5. 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
 - E6.7.6 A1 – Surface treatment of parking areas
 - E7.7.1 A1 – Stormwater drainage and disposal
- 8.6. **Discretion 1 – 27.2 – Use table**
- 8.6..1. The applicant has proposed a Residential Use at the site.
- 8.6..2. 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”.

- 8.6..3. "Agricultural use" is listed as an example of the "Resource Development" use class. Resource Development is defined as:

*use of land for propagating, cultivating or harvesting plants or for keeping and breeding of livestock or fishstock. If the land is so used, the use may include the handling, packing or storing of produce for dispatch to processors. Examples include **agricultural use**, aquaculture, bee keeping, controlled environment agriculture, crop production, **horse stud**, intensive animal husbandry, plantation forestry and turf growing.*

- 8.6..4. 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.

- 8.6..5. The definition of agricultural use, includes breeding of animals, excluding pets. Horses are not considered pets and therefore the breeding of horses can fit under an agricultural use definition. This is somewhat contestable as "horse stud" is also listed as an example of a Resource Development use class suggesting it is not meant to be considered keeping of horses is not meant to be considered as an "agricultural use". However, the application also refers to ongoing pastoral which can definitely be considered an agricultural use.

- 8.6..6. 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.

- 8.6..7. 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.

- 8.6..8. 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).

8.6..9. Responses to each of the Zone Purpose Statements are provided in the Agricultural Assessment and summarised below.

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.

The land is not “Prime” agricultural land. The size, land capability and lack of water allows only for small scale low intensity cottage scale agriculture.

The property will be maintained for its current pastoral use and introduce a small scale equine AI enterprise.

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.

The proposal will have minimal impact on the land and adjoining properties. The dwelling location has been selected to minimise impacts.

27.1.1.3 To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

The property is incapable of supporting intensive agricultural activity and is only suitable for small scale and low intensity pastoral use.

27.1.1.4 To provide for limited non-agricultural uses that support the continued use of the land for agricultural use.

The dwelling would allow the proponent to live on site and establish an equine AI enterprise and allow for a continuation of the existing low intensity and small scale pastoral 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.

The property in question is not considered to be regionally significant and is not located within a declared irrigation district.

27.1.1.6 To protect areas used for reuse water irrigation.

The property is not covered by a re-use scheme.

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.

The dwelling would allow the establishment of an AI enterprise and continuation of the pastoral use and would not fetter existing and or future agricultural land use activity.

- 8.6..10. 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).
- 8.6..11. 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.
- 8.6..12. 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.
- 8.6..13. 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.
- 8.6..14. 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:
- 8.6..15. 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.
- 8.6..16. Through the Brighton West Zoning Review Project and agricultural assessments, it is becoming increasingly clear that a large proportion of the small lots have poor land capability and are seriously constrained by lack of water resources and the size of the lot. This combination of factors makes the small lots in the Brighton West to be mainly suitable for small scale, low intensity agricultural activities that are unlikely to be commercially sustainable.

- 8.6..17. Given the constraints of the land and the difficulty in setting up a sustainable agricultural enterprise on the land it would be difficult to ever be able to establish an enterprise where a dwelling was necessary to support an agricultural use. It is likely that the establishment of a dwelling on the land will improve the management of the land if it is tied to an agricultural use.
- 8.6..18. For example, in this instance, the establishment of the dwelling will likely lead to better weed management and management of pasture as well as introduce a new enterprise into the area.
- 8.6..19. This approach is also in keeping with the feedback from the community during the Agricultural Zoning Review that this is an agricultural area and should be used for agriculture, but people should be able to live on their land as long as they weren't significantly impacting on agricultural operations of adjoining properties and also the potential of the subject land.
- 8.6..20. It could be argued that on the smaller lots (e.g. 5-8ha), a dwelling is necessary to support an agricultural use because without one an agricultural use simply won't exist because it is unlikely to be commercially sustainable without augmented water supply.
- 8.6..21. The key issue then becomes ensuring that not only is an agricultural use established on the property, but the agricultural productivity of the land is improved due to the existence of the residential use.
- 8.6..22. To achieve this, it is recommended that a Part 5 Agreement be required whereby the residential use of the property is dependent upon the establishment and ongoing operation of an agricultural use that maximises the potential of the land with consideration of limitations and constraints such as land capability, access to water, etc.
- 8.6..23. A further condition should be included that prior to occupancy being issued for the dwelling, the AI use and complementary lamb/ewe livestock enterprise be established. On 6 January 2020, the applicant provided written advice to Council, confirming that they agreed to the inclusion of such a condition.
- 8.7. **Discretion 2 – 27.3.1 A1 - Sensitive use**
- 8.7..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.

8.7..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.

8.7..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.*

8.7..4. The only adjoining land is 39 Stonefield Rd to the west. The land is used for small scale pastoral use and consists of an outbuilding.

8.7..5. 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.

8.7..6. It is considered that, with appropriate conditioning, the proposed development satisfies the Performance Criteria contained in Section 27.3.1 P1.

8.8. Discretion 3 – 27.3.3 A1 - Discretionary use

8.8..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.

8.8..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.

8.8.3. 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.

8.8.4. In regards to adjoining land, this has already been addressed under clause 27.3.1 P1.

8.8.5. In regards to fettering of agricultural use on the site, the residential development is located on the eastern central boundary. The development would allow the balance of the land to be utilised and managed to its current potential, that being continuation of small scale and low intensity pastoral use.

8.9 Discretion 4 – E6.7.6 A1 - Surface treatment of parking areas

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

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

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

(b) drained to an approved stormwater system,

unless the road from which access is provided to the property is unsealed.

8.9.2 Stonefield 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.

8.9.3 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.

8.10 Discretion 5 – E7.7.1 A1 - Stormwater drainage and disposal

8.10.1 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.

8.10.2 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.

8.10.3 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. One representation was received for the application when it was re-advertised.

9.2. Two representations were received when the application was originally advertised, however staff wrote to them advising them that the application was being re-advertised with new information. The representors were asked if they wanted their representation to stand or to provide an addendum. No response was received from either. The legal advice is that the original representations do not need to be considered.

Concern	Response
Horses on application, e.g. trotters/gallopers are not an agriculture pursuit, they are a sport or gambling activity. They don't, support agriculture production	Horses as an agricultural use is discussed in section 8.6.
Living on the site is not required for equine AI, only a holding pen is needed, particularly for the number of horses.	There is little argument in the report that the dwelling is needed to support the agricultural use. Rather, the argument is that the

	land cannot be used for sustainable agricultural enterprise and that AI and a complimentary lamb/ewe livestock enterprise is the best outcome given the constraints.
Land to be used as a retirement block, not an agriculture commercial enterprise and does not meet Zone Purpose of 27.1.1.2 and 27.1.1.7	The Agricultural Assessment suggests that there is limited possibilities for a sustainable commercial enterprise to be established on the land due to its constraints.
Application states town water to be put on, not suitable for irrigation on Lucerne crop, this requires a lot of water. Town water ok for production of stone fruit/apples/grapes/berries/nuts etc. to produce as per surrounding growers.	The application does not propose using the land for Lucerne.
Horses will cause soil erosion and dust problems, plus imported feed bring in weeds. Paterson's curse is present on site, need control measures.	<p>Paterson's curse is a declared weed in Tasmania and property owners have a statutory obligation to eradicate it from their property.</p> <p>A condition requiring the applicant to provide a weed management plan is recommended.</p>
Because previous owners in area have not completed or complied with area planning requirements two wrongs don't make a right. The area was set for intense agriculture use by council and community under planning scheme, good land must be used for sustainable agriculture production	<p>The Agricultural Assessment argues that the land is not suitable for sustainable agricultural production.</p> <p>Feedback from the Agricultural review community meeting also talked about the land being significantly constrained until water became available.</p>

10. Discussion

- 10.1. Through this assessment and other applications in the area as well as the ongoing Zoning Review of Brighton West, there is a growing body of evidence that the land in Brighton West, particularly the lots less than 8ha, are not suitable for commercially sustainable agriculture, mainly due to lack of water resources.
- 10.2. This would indicate that the subdivision of this land into lots ranging from 5-10ha was a poor outcome for the area unless a sustainable water resource is provided.
- 10.3. As noted in the body of the report, the consensus from the Zoning Review for the area is that the area should be an agricultural area, but people should be allowed to construct dwellings on their land. It could be argued that the presence of a dwelling could result in better land management if approved with evidence that an agricultural use will be established prior to the dwelling being constructed and there are a number of examples of successful agricultural enterprises in the area where dwellings are present.
- 10.4. However, there is also evidence of properties with dwellings having no supporting agricultural use in the area, particularly along Stonefield Rd and surrounds.

This is partly due to poor follow-up from planning staff as most of these lots were approved on the basis that an agricultural use would be established. Ongoing enforcement action, possibly with input from an agricultural consultant is critical to the success of this being an agricultural area.

11. Conclusion

- 11.1. The proposal is for a dwelling and supporting agricultural use consisting of a small scale equine artificial insemination (AI) enterprise and continuation of the pastoral use.
- 11.2. The application is supported by an Agricultural assessment by a suitably qualified agricultural consultant which argues that due to the constraints of the land, a commercial scale agricultural enterprise is not achievable on this land and the proposed use, a small scale and low intensity pastoral land use activity is appropriate.
- 11.3. The proposal is considered to meet the relevant provisions of the *Brighton Interim Planning Scheme 2015*, and is recommended for approval subject to conditions.

12. RECOMMENDATION:

That: A. Pursuant to the *Brighton Interim Planning Scheme 2015*, Council approves the application DA2019/00177 for a dwelling & outbuilding necessary to support agricultural use at 37 Stonefield Road, Brighton, for the reasons outlined in the officer's report and a permit containing the following conditions be issued:

General

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

Amenity

- (3) The proposed colours and materials for the walls and roof are approved. Any variation in the colours and materials must be submitted to and approved by the Council's Manager Development Services.
- (4) All external metal building surfaces must be clad in non-reflective pre-coated metal sheeting or painted to the satisfaction of the Manager Development Services.

Agricultural Uses

- (5) The use of the dwelling is incidental to the primary use of land for agricultural purposes, which initially includes the establishment of an equine artificial insemination enterprise and a complementary sheep/ewe livestock enterprise. Residential use of the property is dependent upon the establishment of the agricultural activities and their ongoing operation, and the residential use must cease if and when the agricultural use ceases.
- (6) Prior to the issue of a Certificate of Occupancy for the dwelling under the Building Act 2016, the equine artificial insemination enterprise and a complementary sheep/ewe livestock enterprise must be established with livestock present on site.

Landscaping

- (7) Prior to issue of building consent under the *Building Act 2016*, a comprehensive landscape plan to the satisfaction of Council's Manager Development Services must be submitted and approved. The plans must be drawn to scale with written dimensions. The landscaping plan must show:
 - i. A mixed native vegetation shelter belt along the northern and eastern property boundary as described in the "Agricultural Assessment and Planning Scheme Compliance Report" by Macquarie Franklin (dated 25 November 2019)

- ii. A planting schedule of all proposed trees, shrubs and ground covers including botanical names, common names, pot sizes, sizes at maturity and quantities of each plant.

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

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

Weed Management

- (9) Prior to the lodgement of building and plumbing applications you must provide a basic weed management plan which includes the mapping of Paterson' curse onsite and the timing and control methods required to control/eradicate each weed species identified, to the satisfaction of Council's Manager Development Services.

Advice: Your project site is in an area known for the weed Paterson Curse. The prevention of spread of any declared weeds from your site is legal requirement under the Weed Management Act 1999. Follow the guidelines of the Weed and Disease Planning and Hygiene Guidelines - Preventing the spread of weeds and diseases in Tasmania to ensure you are meeting this requirement.

Agreements

- (10) Prior to commencement of works, the owner and Council must enter into an agreement pursuant to Part 5 of the *Land Use Planning and Approvals Act 1993* in respect of the land. The Agreement is to provide that the owner covenants and agrees with the Brighton Council that the residential use of the property is dependent upon the establishment and ongoing operation of agricultural use(s) that aim to maximise the potential of the land with consideration of limitations and constraints such as land capability, access to water, e, and the residential use must cease if and when the agricultural use ceases.
- (11) Agreement(s) made pursuant to Part 5 of the *Land Use Planning and Approvals Act 1993* must bind the current owner and his/her successors in title and must be prepared on a blank instrument form and registered with the Recorder of Titles in accordance with Section 78 of the *Land Use Planning and Approvals Act 1993* by the applicant at no cost to Council.

Services

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

Parking and Access

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

or as otherwise required by an approved Bushfire Plan.

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

Access to Road

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

Stormwater

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

Wastewater

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

Soil and Water Management

- (19) Before any work commences a soil and water management plan (SWMP) prepared in accordance with the guidelines *Soil and Water Management on Building and Construction Sites*, by the Derwent Estuary Programme and NRM South, must be approved by Council's General Manager before development of the land commences. The SWMP shall form part of this permit when approved.
- (20) 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

- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) The developer must make good and/or clean any footpath, road surface or other element damaged or soiled by the development to the satisfaction of the Council's Municipal Engineer.

THE FOLLOWING ADVICE APPLIES TO THIS PERMIT:

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

DECISION:

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

CARRIED

VOTING RECORD

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

Cr Geard rejoined the meeting at 6.15pm

The following item was withdrawn by the application prior to the Ordinary Council Meeting. This matter will now be listed on the February Planning Authority meeting.

5.3 APPLICATION UNDER BRIGHTON INTERIM PLANNING SCHEME 2015 - DA 2019/00252 - 620 MIDDLE TEA TREE ROAD, TEA TREE - INTENSIFICATION OF USE (INCREASED OPERATING HOURS)

Type of Report	Planning Authority – For Decision
Application No:	DA 2019/00252
Address:	620 Middle Tea Tree Road, Tea Tree
Proposal:	Intensification of Use (Increased Operating Hours)
Zone:	Significant Agriculture Zone
Representations:	One (1)

Discretions: 1. Changes to Existing Non-conforming Uses

Author: Acting Manager Development Services (Patrick Carroll)

1. Executive Summary

- 1.1. Planning approval is sought for an Intensification of Use (Increased Operating Hours) at 620 Middle Tea Tree Road, Tea Tree (the 'site'). The site is known as 'Zoo Doo Fun Park' and is situated within the Significant Agriculture Zone of the *Brighton Interim Planning Scheme 2015* (the 'Interim Scheme').
- 1.2. The use (i.e. Tourist Operation) is classified as an existing use, and was approved under a former planning scheme. The application invokes discretion under the Special Provisions listed in Section 9.0 of the Interim Scheme.
- 1.3. One (1) representation was received within the statutory public advertising period.
- 1.4. The application is recommended for refusal.
- 1.5. Due to the receipt of a representation during the public advertising period, the final decision is delegated to the Planning Authority or by full Council acting as a Planning Authority.

2. Legislative & Policy Content

- 2.1. The purpose of this report is to enable the Planning Authority to determine application DA 2019/00252.
- 2.2. This determination must be made no later than 28 January 2020.
- 2.3. The relevant legislation is the *Land Use Planning and Approvals Act 1993* (the 'Act'). The provisions of the Act require a planning authority to take all reasonable steps to ensure compliance with the planning scheme.
- 2.4. This report details the reasons for the officer recommendation. The Planning Authority must consider this report but is not bound to adopt the recommendation. Broadly, the Planning Authority can either: (1) adopt the recommendation, or (2) vary the recommendation by adding, modifying or removing recommended reasons and conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2015*.
- 2.5. This report has been prepared with appropriate regard to the State Policies that apply under the *State Policies and Projects Act 1993*.
- 2.6. This report has been prepared with appropriate regard to Council's Strategic Plan and other Council policies, and the application is not found to be inconsistent with these. Nevertheless, it must be recognised that the planning scheme is a regulatory document that provides the overriding consideration for this application.

Matters of policy and strategy are primarily a matter for preparing or amending the planning scheme.

3. Risk & Implications

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

4. Relevant Background

- 4.1. The original development application for Zoo Doo Fun Park was approved by Council in January 1999 under the *Brighton Section 46 Planning Scheme No 1 of 1992*. The use of 'Tourist Operation' was a discretionary use under the 1992 Planning Scheme.
- 4.2. Condition 13 of the original planning permit (DA 98/107) states:
Hours of operation are to be restricted to 9:00a.m – 5:00p.m. daily.
- 4.3. Under the both the current *Brighton Interim Planning Scheme 2015* and the superseded *Brighton Planning Scheme 2000*, the 'Tourist Operation' use is a prohibited use within the applicable zone. However, the site continues to legally operate under existing use rights and its 1999 planning permit (DA 98/107).

5. Site Detail

- 5.1. The subject site is a 30.94 hectare (ha) lot with existing access to Middle Tea Tree Road. The site is developed with a Tourist Operation use, being a zoo and/or wildlife park.
- 5.2. The site is within the Significant Agriculture Zone of the Interim Scheme, but adjoins residential uses.
- 5.3. Part of the site is impacted by the Waterway and Coastal Protection overlay, but the provisions of that code are not a relevant consideration when assessing this application.
- 5.4. The surrounding land is zoned Significant Agriculture and Environmental Living.



Figure 1. Aerial photograph of the subject site.

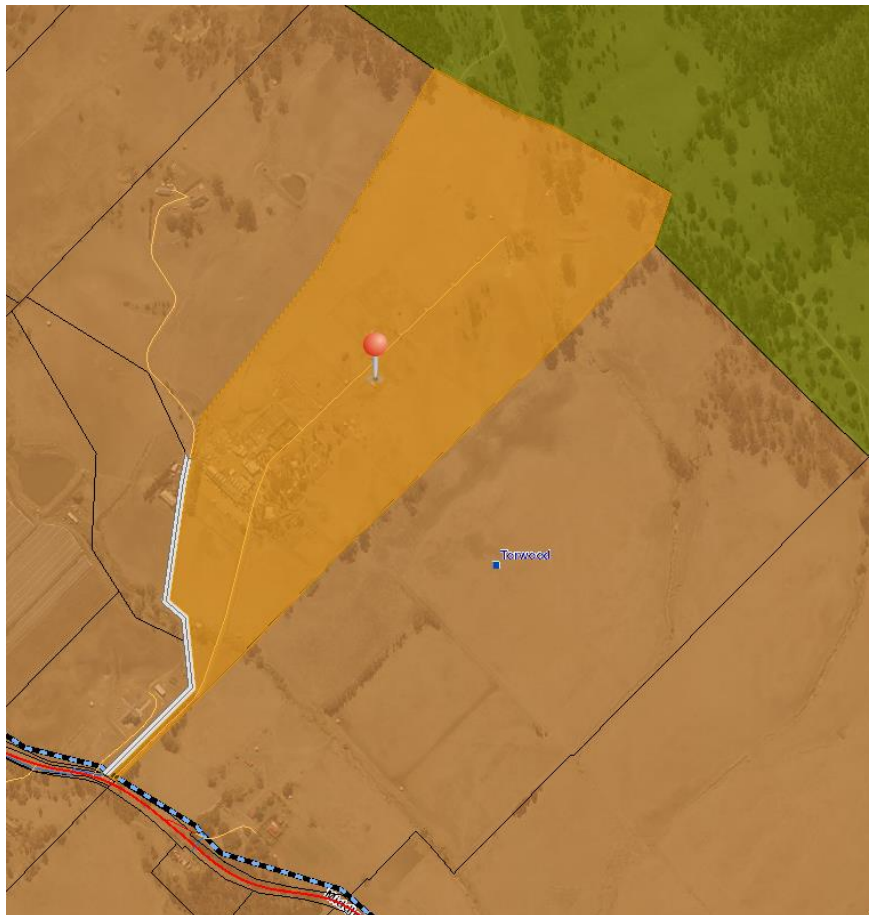


Figure 2. Zoning of the subject site and surrounds. Brown denotes the Significant Agriculture Zone.

6. Proposal

- 6.1. The applicant has proposed intensifying the existing use by increasing the operating hours of the Tourist Operation.
- 6.2. The applicant initially proposed to increase the operating hours from 9:00am – 5:00pm daily to 9:00am – 9:00pm Monday to Saturday. On Sunday, the existing hours would remain as existing.
- 6.3. The purpose of the increased hours would be to operate a “twilight zoo” from 21 December 2019 to 1 February 2020. From April 2020, nocturnal tours would operate. Numbers were not stipulated for either the twilight zoo or for the nocturnal tours.
- 6.4. The above details were stated in the documents that were publicly advertised.
- 6.5. However, the proposed intensification of use was further clarified by the applicant to Council on 14 January 2020. In an email to Council, the applicant states:

We have discussed our aims with the extended hours and while we would like to leave some flex to operate occasional after hours activities, the only planned activities at this point are;

Nocturnal tours operating in the darker months i.e May- September, selected nights per week by pre-booking. This would be for a small group tour of approximately 15 (maximum 20 participants). With families our main customer base, this is around an extra 5 cars. The nocturnal tours will be a quiet activity to view the animals without disturbance. The use of lighting and speakers etc will be extremely minimal and not noticed by neighbours.

Twilight Zoo activities will aim to be held during daylight savings months i.e October- April on select nights, primarily in school holidays but also occasional weekends, likely as pre-booked tickets. Participant attendance will be set at a maximum of 80 people (approximately 20 cars). From 5pm-9pm, noise will be kept to a minimum and our noisiest activity, Safari bus tours will not operate. Instead quieter activities such as small group walking tours.

Both of these activities are commonly operated at most zoo's and wildlife parks. These activities will create additional employment opportunities in Tea tree, in addition to our existing 28 staff.

I can assure you that Zoodoo will be mindful not to disturb the peaceful lifestyle of our neighbours and hope that council are able to see the positive affects the extended hours will have on business growth, tourism industry diversity and employment opportunities.

7. Assessment

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

- 7.2. To meet an applicable standard, a proposal must demonstrate compliance with either an Acceptable Solution or a Performance Criterion. Where a proposal complies with a standard by relying on one or more Performance Criteria, the Council may approve or refuse the proposal on that basis. The ability to refuse the proposal relates only to the Performance Criteria relied upon.

8. Assessment against planning scheme provisions

- 8.1. The following provisions are relevant to the assessment of the proposed use and development:

- Part C – Section 9.0 – Special Provisions
- Part D – Section 27.0 – Significant Agricultural Zone

- 8.2. The following discretions are invoked by the proposal:

- Section 9.1 – Changes to an Existing Non-Conforming Use

- 8.3 Discretion 1 – Changes to Existing Non-Conforming Use

- 8.3.1 The existing use of the site is ‘Tourist Operation’, which is defined as:

Use of land specifically to attract tourists, other than for accommodation. Examples include a theme park, visitors centre, wildlife park and zoo.

- 8.3.2 Tourist Operation is a discretionary use within the Significant Agricultural Zone, only if it is associated with agricultural use on the property.

- 8.3.3 No agricultural use exists on the property, nor is one proposed. As such, the use is prohibited under the Zone provisions. However, as stated above, despite the use being prohibited under the *Brighton Interim Planning Scheme 2015* (as well as the former *Brighton Planning Scheme 2000*), the use is legally operating under existing use rights and the terms of the original planning permit, issued under the *Brighton Section 46 Planning Scheme No 1 of 1992* (Planning Permit DA 98/107). The ‘Tourist Operation’ use is therefore considered to be an existing non-conforming use.

- 8.3.4 The applicant has proposed an Intensification of Use to an existing non-conforming use.

- 8.3.5 The application must be assessed against the Special Provisions found in Part C, Section 9.0 of the Interim Scheme.

- 8.3.6 Section 7.1.1 of the Interim Scheme sets out the operation of the Interim Scheme. It states:

Part C sets out provisions, for certain types of use or development, that are not specific to any zone, specific area plan, or area to which a code applies.

- 8.3.7 Section 7.1.2 of the Interim Scheme continues:

Where there is a conflict between a provision in a zone, specific area plan or code and a special provision in Part C, the special provision in Part C prevails.

- 8.3.8 As such, the Special Provisions in Section 9.0 of the Interim Scheme override any other provision within the Interim Scheme if there is conflict between the provisions.

- 8.3.9 Section 9.1 of the Interim Scheme applies directly to changes to existing non-conforming uses. It states:

Notwithstanding any other provision in this planning scheme, whether specific or general, the planning authority may at its discretion, approve an application:

(a) to bring an existing use of land that does not conform to the scheme into conformity, or greater conformity, with the scheme; or

(b) to extend or transfer a non-conforming use and any associated development, from one part of a site to another part of that site; or

(c) for a minor development to a non-conforming use,

where there is –

(a) no detrimental impact on adjoining uses; or

(b) the amenity of the locality; and

(c) no substantial intensification of the use of any land, building or work.

In exercising its discretion, the planning authority may have regard to the purpose and provisions of the zone and any applicable codes.

- 8.3.10 The applicant is not proposing to bring the existing use of the land into greater conformity with the scheme, nor are they proposing to either transfer the use from one part of the site to another, nor are they proposing a minor development at the site. As such, those elements of Section 9.1 do not apply to this application.

- 8.3.11 Similarly, the applicant is not proposing to extend the use from one part of the site to another.

- 8.3.12 The applicant is proposing to extend the existing non-conforming use, by increasing the operating hours, as described in the applicant's correspondence to Council dated 14 January 2020 and in Section 6 of this report. After 5:00pm, the maximum number of visitors proposed at the site is limited to 80 persons.

- 8.3.13 However, in order for the Planning Authority to approve such an extension to the operating hours, it must be satisfied that there is no detrimental impact on adjoining uses or the amenity of the locality. Further, the Planning Authority must also agree that there is no substantial intensification of the use of any land, building or work.
- 8.3.14 The Planning Authority may have regard to the purpose of the Significant Agricultural Zone, which is provided for in Section 27.1.1 of the Interim Scheme. 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.*
- 8.3.15 The proposed intensification of use does not further the Zone Purpose Statements for the Significant Agricultural Zone
- 8.3.16 There are no Local Area Objectives or Desired Future Character Statements within the Significant Agricultural Zone of the Interim Scheme.
- 8.3.17 It is considered that approving an extension to the operating hours has the potential to create a detrimental impact on adjoining properties, which include residential uses. This potential impact would largely be created through visitation to the site by up to 80 guests out of ordinary business hours, creating a potential for environmental nuisance, generated largely by noise impacts and vehicle movements of the 80 guests.

By having a Tourist Operation operate out of ordinary business hours, the potential for adjoining residential uses to use areas of private open space (such as for outdoor dining or recreation purposes) without encroachment from the non-conforming Tourist Operation use is further diminished, creating a detrimental impact to those adjoining residences.

8.3.18 The impacts from the increased operating hours on the wider locality that surrounds the site are not considered to be significant.

8.3.19 Finally, by increasing the operating hours by 4 hours per day for up to 6 days of the week, it is considered that the use of the land at 620 Middle Tea Tree Road is being substantially intensified.

8.3.20 It is the Officer's opinion that, based on the information provided to Council as part of the development application, the proposed increase in operating hours does not satisfy the requirements of the Special Provisions for Changes to Existing Non-conforming Uses, as found in Section 9.1 of the Interim Scheme. As such, Council should refuse the application, as currently proposed, to increase the existing operating hours of the Tourist Operation use at 620 Middle Tea Tree Road, Tea Tree.

9. Referrals

9.1. Environmental Health

The application was referred to the Council's Senior Environmental Health Officer (SEHO), who provided comment on the proposed intensification of use and potential amenity impacts to the surrounding area.

The SEHO's opinion is that the proposed intensification of use has the potential to create an environmental nuisance, and impact upon the amenity of surrounding uses.

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. One (1) representation was received during the statutory public advertising period. The concerns of the representor are summarised below:

<i>Concerns of Representor</i>	<i>Planning Response</i>
Not enough information on how 'low noise' and low visitation will be managed and regulated.	The proposed intensification of use was clarified by the applicant. See correspondence from the applicant dated 14 January 2020 and referenced in Section 6 of this report.
<p>Currently during the day a loud speaker/amplifier is used on the safari bus that traverses the site, and can be heard at our property.</p> <p>We do not agree to the extended hours if the amplifier is used.</p> <p>We have the right to enjoy peace and quiet in the evening, and we have tolerated the use during the day for an 8 hour period, but the evenings are a time that we like to wind down and share our outdoor areas with friends and family.</p>	<p>The proposed intensification of use has since been clarified by the applicant. Refer to correspondence dated 14 January 2020 and Section 6 of this report for revised proposal.</p> <p>The applicant has stated that the safari bus will not be used after ordinary business hours (i.e. 5pm).</p>
More information needs to be supplied in respect to exact dates and times, and stipulate the activities that will be carried out, including what vehicles will be used.	<p>The proposed intensification of use was clarified by the applicant. See correspondence from the applicant dated 14 January 2020 and referenced in Section 6 of this report.</p> <p>The safari bus will not operate after ordinary business hours (i.e. 5pm)</p>
We are not totally opposed to the extension of hours, however we would be impacted if some restrictions were not placed on the hours of extension. We request that the Council do further enquiry with the application and seek more details on their intended activities and how they will be conducted, perhaps discussions with others including ourselves to come to a mutual agreeance on dates/times and noise abeyance before approval is granted.	Following the closure of the public exhibition period, Council has made contact with both the representor and the applicant to further clarify the scope of the proposed intensification of use.

11. Conclusion

- 11.1. The proposal is for an Intensification of Use (Increased Operating Hours) for an existing Tourist Operation use in the Significant Agricultural Zone at 620 Middle Tea Tree Road, Tea Tree.
- 11.2. The key issues are the potential detrimental impact that the increased operating hours may have on adjoining residential uses, as well as the substantial intensification of the use of the site.
- 11.3. The existing use is a non-conforming use under the *Brighton Interim Planning Scheme 2015*, and the application is being considered under the Special Provisions of the Interim Scheme.
- 11.4. The proposal is not considered to satisfy the requirements of the relevant Special Provision the *Brighton Interim Planning Scheme 2015*, and as such, is recommended for refusal.

12. RECOMMENDATION:

That: A. Pursuant to the *Brighton Interim Planning Scheme 2015*, Council refuse application DA 2019/00252 for the proposed Intensification of Use (Increased Operating Hours) in the Significant Agricultural Zone at 620 Middle Tea Tree Road, Tea Tree for the following reasons:

1. The proposed Intensification of Use (Increased Operating Hours) does not satisfy the requirements of Section 9.1 of the *Brighton Interim Planning Scheme 2015*, as the proposed intensification of use:
 - a. Has the potential to create a detrimental impact on adjoining uses through environmental nuisance; and
 - b. The proposed increased operating hours are a substantial intensification of the existing Tourist Operation use.

DECISION:

6. REPORTS FROM COUNCILLORS:

6.1 ACTING MAYOR'S COMMUNICATIONS:

AUTHOR: Acting Mayor
(Cr L Gray)

The Acting Mayor's communications were as follows:-

- 9th January Signing of National Redress Scheme Documents as approved at December Council Meeting.
- 14th January Meeting with Senior Management Team.
- 14th January Meeting with Janine Banks and Cathy Harper in regards to planning Australia Day Function.
- 17th January Opening of the brand new Supported Affordable Accommodation Trust housing in Glenorchy.
- 21st January January Ordinary Council Meeting.

RECOMMENDATION:

That the Acting Mayor's communications be received.

DECISION:

Cr Geard moved, Cr Whelan seconded that the report be received.

CARRIED

VOTING RECORD

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

6.2 REPORTS FROM COUNCIL REPRESENTATIVES WITH OTHER ORGANISATIONS:

Cr Owen attended the Christmas function at the Tea Tree Hall. As he was the only councillor attending, he was specifically requested to convey to Council the Tea Tree Hall Committee's gratitude for assistance provided through Council grants to the Tea Tree Community. It was a very warm evening, made very comfortable by air conditioning that council grant monies contributed towards.



Image: Plaque recognising Brighton Council's recent contribution to the Tea Tree Community Hall.

Cr Geard attended an emergency management meeting. He also acknowledged the opening of the Evacuation Centre at the Brighton Civic Centre on 30th December 2019, and acknowledge the staff in attendance.

Cr Geard had a meeting with Dogs Tasmania re their relocation to Pontville Park.

Cr Owen was invited to the Vera James 101st birthday at St Ann's.

RECOMMENDATION:

That Cr Owen and Cr Geard's report be received.

DECISION:

Cr Jeffries moved, Cr Whelan seconded that the reports be received.

CARRIED

VOTING RECORD

In favour

Cr Garlick
Cr Geard
Cr Gray
Cr Jeffries
Cr Murtagh
Cr Owen
Cr Whelan

Against

6.3 CORRESPONDENCE FROM SOUTHERN TASMANIAN COUNCILS ASSOCIATION (STCA), LGAT, TASWATER AND JOINT AUTHORITIES:

Correspondence and reports from the STCA, LGAT, TasWater and Joint Authorities.

If any Councillor wishes to view documents received contact should either be made with the Governance Manager or General Manager.

7. NOTIFICATION OF COUNCIL WORKSHOPS:

In accordance with the requirements of Section 8(2)(c) of the Local Government (Meeting Procedures) Regulations 2015, it was reported that there were no workshops held since the last Council Meeting.

8. NOTICE OF MOTION:

In the interests of making informed and well-considered decisions, councillors should follow a process of seeking information and analysis followed by discussion, such as in a workshop, prior to putting motions that would effect significant changes to council's operations and activities. For example, a councillor could seek an internal (or external) review of a particular matter followed by a formal workshop of councillors and senior staff to discuss the findings and the options. Councillors need not agree with any findings or recommendations from a process and may pursue a contrary motion, but they would be better informed of the status quo and of the effects of change. This process is also a far more transparent process than motions being put without supporting analysis, options, or any review or workshop process.

8.1 NOTICE OF MOTION – CR WHELAN – FINANCE COMMITTEE:

Cr Whelan had requested the following Notice of Motions:

Motion 1

That the Council votes to allow Cr Whelan to be a member of the Finance Committee.

Motion 2

That the Council votes to allow any other Councillor to be a member of the Finance Committee if they wish to be.

Explanatory Notes

Following the election of this Council in 2018, Councillors were advised which committees they would form part of.

Cr Whelan requested to also be a member of the Finance Committee and the matter was discussed during the meeting. The minutes produced for that meeting didn't list Cr Whelan as a member of the Finance Committee.

Mayor Foster raised this issue via email on the 21/11/2018 and Cr Whelan has raised it several times since then, the most recent time being on the 17/11/2019.

It is hard to undertake the role of Councillor in its full capacity without being able to participate in the decisions made at the Finance Committee meetings.

I have been continually advised that I am more than welcome to attend the Finance Committee meetings and participate in the discussions that occur without holding any voting rights, and I do this, however, there have been a number of decisions made that I have questioned but have been unable to influence due to my lack of voting capacity.

As a Company Director and a previous small business owner, I am experienced in making sound finance decisions, this aside, I don't believe the Council has a right to refuse me as a member of the Finance Committee.

DECISION:

Cr Whelan moved, Cr Jeffries seconded that Cr Whelan be included on the Finance committee meeting.

CARRIED

VOTING RECORD

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

8.2 NOTICE OF MOTION – CR OWEN – ACKNOWLEDGEMENT OF COUNTRY

Cr Owen had requested the following Notice of Motion:

At Council's last Ordinary Council Meeting during my motion for Council to install sufficient flagpole infrastructure to enable the Australian and Aboriginal flags be flown at the Council Offices, I indicated I would be seeking support to include, onto the agenda of our Council Meetings and at Council conducted events, an Acknowledgement of Country. I have included below an extract from the Department of Premier and Cabinet to provide some information in this regard.

For too long this Council has failed to acknowledge Aboriginal people to the extent we should. The Annual General Meeting has been the only occasion this recognition has taken place.

Besides an Acknowledgement of Country, part 2 of my motion is seeking support for officers, as a matter of urgency, to develop an action plan and strategy to assist Brighton Council to engage with Aboriginal communities and promote reconciliation. I am thinking for example, that on special occasions a Welcome to Country should be part of proceedings.

What is a Welcome to Country?

A Welcome to Country is given by Aboriginal people, welcoming visitors to their Land. Only Tasmanian Aboriginal people can give a Welcome to Country in Tasmania. It is highly disrespectful for anyone else to do so.

A Welcome to Country might involve:

- A speech from a Tasmanian Aboriginal Elder or community representative
- Short history of the people and the area
- Story telling
- Singing and dancing
- Ceremony

This depends on who is giving the Welcome to Country, and to whom it will be given.

What is Country?

Tasmanian Aboriginal people have a distinctive and age-old connection with their ancestral lands and waters. They are custodians with particular responsibilities. When an Aboriginal person talks of 'Country'; this encompasses not only the land and water but also culture, knowledge, and the environment.

When should a Welcome to Country be given?

A Welcome to Country may be given at an event, conference, meeting or exhibition regardless of whether there is an Aboriginal focus or if there are Aboriginal people present.

How do I organise a Welcome to Country?

The Office of Aboriginal Affairs is able to assist with information and direction regarding a Welcome to Country or an Acknowledgment of Country.

What is an Acknowledgement of Country?

An Acknowledgement of Country is about how to respectfully acknowledge Aboriginal people during meetings, events, and forums.

An Acknowledgement:

- can be made by anybody, Aboriginal or non-Aboriginal;
- is about recognition of Tasmanian Aboriginal peoples' survival and continual connection with the land spanning more than 40,000 years;

- pays respect to Aboriginal people, both past and present; and
- highlights the unique position of Aboriginal people, their culture and history.

When should an Acknowledgement of Country be given?

- It may not always be necessary to perform an Acknowledgement of Country for all meetings and discretion should be applied. However, where possible, an Acknowledgment should be included on meetings for which an agenda is provided. An Acknowledgment of Country should be the first item on a meeting agenda.
- An Acknowledgment of Country can also be performed at the beginning of videoconference and teleconference meetings, noting that an acknowledgement could also be expanded to generically acknowledge the other traditional lands on which teleconference participants are located.
- It is common at some events or meetings that subsequent speakers may also make an Acknowledgment of Country as they speak for the first time (even though a Welcome to Country or Acknowledgement of Country may have already been given).

Types of Acknowledgement

There are no set protocols or wording for an Acknowledgement of Country. A statement may take the following form:

- *I'd like to begin by acknowledging the Traditional Owners of the land on which we meet today. I would also like to pay my respects to Elders past and present and acknowledge Aboriginal people present today; or*
- *I'd like to pay respect to the traditional and original owners of this land, the Tasmanian Aboriginal people, - to pay respect to those that have passed before us and to acknowledge today's Tasmanian Aboriginal people who are the custodians of this land; or*
- *[Example for Hobart only and with original name included] I pay respect to the traditional and original owners of this land the muwinina (mou wee nee nar) people, - to pay respect to those that have passed before us and to acknowledge today's Tasmanian Aboriginal people who are the custodians of this land.*

Motion

That :-

1. Brighton Council immediately prepare and adopt a policy where at all meetings an Acknowledgement of Country is included on the agenda.
2. Brighton Council staff as a matter of urgency develop an action plan/strategy for adoption by Council, to help Council to engage with Aboriginal communities and promote reconciliation.

Management Response:

A Reconciliation Action Plan (RAP) was already in train and staff are totally in support of this initiative. Council's Services Officer (Cathy Harper), Governance Manager (Janine Banks) and Chief Operations Officer (James Dryburgh) have consulted with Tracey Howard (tagari lia), Margie Nolan (Connected Beginnings) and Kellyanne Downham (Community Member) in relation to this plan; a draft of that report was previously sent to Cr Owen. This report and Action plan will be submitted to Council in the next couple of months.

DECISION:

Cr Owen moved, Cr Jeffries seconded that Brighton Council immediately prepare and adopt a policy where at all meetings an Acknowledgement of Country is included on the agenda; and Brighton Council staff as a matter of urgency develop an action plan/strategy for adoption by Council, to help Council to engage with Aboriginal communities and promote reconciliation

CARRIED

VOTING RECORD

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

8.3 NOTICE OF MOTION – CR WHELAN – BRIGHTON COMMUNITY NEWS:

Cr Whelan had requested the following Notice of Motions:

Motion 1

Brighton Council advertise the Brighton Community News for sale by Expression of Interest within 60 days of this Council meeting being held on 21st January 2020.

Motion 2

All Expressions of Interest received are to be presented to Councillors at the Council meeting being held on 21st April 2020 where all Councillors are to vote on which Expression of Interest to accept.

Explanatory Notes

The Brighton Council produce 11 issues of the Brighton Community News at a substantial cost to the ratepayers. The table below outlines the costs the ratepayers have incurred in just the last three financial years.

Financial Year	2016 - 2017	2017 - 2018	2018 - 2019
Gross Cost	\$120,159	\$129,206	\$128,097
Revenue	\$19,592	\$17,097	\$33,129
Nett Cost	\$100,567	\$112,109	\$94,968

Most local newspapers throughout Tasmania are privately owned. They operate with a focus on local news stories, the promotion of local well-being and the purpose of connecting the community with local businesses.

The owners of those local newspapers can efficiently generate local news stories with a pertinent connection to those communities and still generate an economic profit. They utilise systems that enable cost-effective editing and production that enables more time to be directed at attracting important stories from local community groups, businesses, schools, sports associations and the like. The local newspapers are effectively made by the community but without the cost to the community.

Based on an analysis of comparable newspapers, Council could advertise on a full page on a monthly basis for less than \$2,000 per month. This would save Council on average, \$80,000 per year whilst still keeping the community informed of Council activities.

As Councillors, it is our responsibility to represent the interest of electors and ratepayers across a number of areas which include budgeting and the provision of services.

As Councillors, we are failing to represent our electors and ratepayers if we don't vote in favour of these significant cost savings.

Management Comments:

Font Public Relations have recently acquired newspapers The Sorell Times and The Derwent Valley Gazette from private sector companies. The Brighton Community News (BCN) is not a newspaper but a council newsletter. Accordingly, it is not a similar product for sale; there is no newspaper to sell. Perhaps a company like Font might be interested in the BCN banner but there is little else that council could sell. Presumably council would want to continue using the BCN banner in any communication publication to residents.

Following are comments regarding council communication through a privately owned newspaper:

- It is assumed that the primary focus of a privately owned newspaper would be to make money and not "the promotion of local well-being and the purpose of connecting the community with local businesses".
- One of the main costs of the BCN is the distribution to every property in the municipality and interested parties such as other councils,

politicians, etc. The Sorell Times is not delivered to Sorell residents (according to four staff that work at council). Bundles of copies are placed in outlets around the municipality for people to pick up.

- Sorell Council produces 4-page colour newsletters called “Sorell Community News” to disseminate council information to its residents. Presumably Brighton Council would do the same if a private newspaper started in Brighton.
- There is no reason that a private firm couldn’t start a newspaper for the Brighton area (called Brighton News, Brighton Times, Brighton Gazette) without “purchasing” the BCN. Presumably, such a more efficient and professional publication would render the BCN unfeasible.
- Surveys from Myriad Research in 2004 and the Community Survey in 2018 indicate strong support of residents for the BCN. The public may not be keen to drop the BCN in favour of a private newspaper.
- Staff are undertaking a review of all aspects of the BCN as part of the budget review. Any potential “sale” of the BCN should wait until this review has been completed.

Following is a brief history of the BCN:

In the late 1990s a new community newspaper, The Glenorchy Star, covered the Hobart northern suburbs including the Brighton municipality. This was a success which prompted the Mercury to publish a competing paper, The Community Express. With the strength of the Mercury behind this newspaper, the Glenorchy Star lost its market share and folded. After a period of time, The Community Express ceased to be published.

At this time Brighton was getting a great deal of negative coverage, often front-page news about Gagebrook, Bridgewater and Brighton; stones thrown at buses for example. Positive stories were few and far between. Coupled with this situation, the community had been starved of information about local people and local issues. As a response, council determined that the only way to overcome this void was to produce its own community news outlet.

In conjunction with community workers and residents, council established the BCN in May 1999 with an annual cost of \$36,000. This replaced an ad hoc newsletter which cost \$13,000 annually. The first issue of the Brighton Community News was published in August 1999.

Five years later Council undertook a review of the BCN. The research comprised a telephone survey of households within the Brighton Municipality to assess distribution efficiency and readership levels of the *Brighton Community News* and to obtain pertinent feedback relating to the format and design of the publication, the articles therein, and its general relevance as a community newspaper and Council communication with residents and ratepayers.

Interviews were conducted during October 2004 with a random cross section of local householders – 201 respondents living in urban and rural areas of the Brighton Municipality.

Key research findings.

- ◆ Close to 90% of households surveyed reported receiving the October/November issue of the *Brighton Community News* – and ranging from 95% of Brighton households to 85% of Old Beach households.
- ◆ Almost all households surveyed (97.5% of total) usually receive a copy of the publication.
- ◆ The publication is ‘always’ read by close to two in three respondents, with an additional 30% reading it ‘sometimes’. Only 5.5% of respondents said they rarely or never read the *Brighton Community News*.

The survey asked residents about the publication itself – general presentation, content and its effectiveness as a means of informing residents about Council and community news.

- ◆ Most are happy with the general presentation – format, layout, etc – with just over 70% rating this aspect positively (4 or 5 on a 5 point scale).
- ◆ It was seen as pleasing to the eye, easy to read and generally well laid out, with some minor comment that it is perhaps a bit bland and could be ‘jazzed up’ with more graphics and brighter colours for example.
- ◆ People found the content – the range of articles and information – interesting and informative, with again 70% rating this aspect positively.
- ◆ The *Brighton Community News* is regarded by many as ‘good reading’, with a wide range of articles which keeps them in touch with what’s going on in the community. The advertising is also well received.
- ◆ A high proportion of respondents surveyed (above 80%) view the *Brighton Community News* as an effective communicator with local residents.

Residents were asked if there were other articles or information they would like to see included.

- ◆ The range of suggestions is included in the Report. A number felt that the publication could include more about Council activities, plans and decisions.

The Brighton Community News is currently published and delivered every second month, and was previously a monthly publication. Residents were asked their preferred publication frequency.

- ◆ 50% of survey respondents were in favour of a monthly publication (or more often), with 44% happy with the status quo. Just 5% felt that the publication should be on a quarterly basis.
- ◆ Finally, the majority of respondents are happy with the way Council keeps in touch with the local community, with some suggestions for improvement (in specific areas) detailed in the report.

DECISION:

Motion 1

Cr Whelan moved, Cr Owen seconded that Brighton Council advertise the Brighton Community News for sale by Expression of Interest within 60 days of this Council meeting being held on 21st January 2020.

MOTION LOST

VOTING RECORD

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

Cr Owen moved, Cr Geard seconded that all aspects of the Brighton Community News be reviewed and a report prepared for Council outlining current break-down of costs (editorial, production, print, distribution, other) options and practical if any alternatives to the current BCN.

CARRIED

VOTING RECORD

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

8.4 NOTICE OF MOTION – CR OWEN – TENDERING – BUDGET 2020/21:

Cr Owen had requested the following Notice of Motion:

As time slips by some aspects of our responsibilities can slip too? One can become a bit too complacent with the rollover from year to year of contractors that have been engaged to undertake work for or provide services to council, for in many cases exceeding decades.

How do we know we are getting the best bang for our ratepayer's buck if we do not test the market once in a while? My motion seeks to examine and put to the test hourly rates for all services purchased by Council.

The current policy requiring tenders for works exceeding \$250,000 might be appropriate for large councils but is not necessarily appropriate for smaller councils and wish that this matter be discussed.

Motion 1

That:-

As part of the 2020/21 Budget process, all and services required by Brighton Council for the budget period be advertised and go to tender.

Cr Owen withdrew his motion.

Motion 2

That:-

Council Policy referring to contracts exceeding \$250,000 be amended to amounts exceeding \$125,000.

Management Comments:

The requirement to tender for all goods and services required by Brighton Council for the budget period would effectively bring council operations to a halt.

The tender process is onerous and manpower hungry and tendering for all items would:

- Affect items such as
 - Cleaning products
 - Office supplies
 - Small plant such as chainsaws and whipper snippers
 - Safety work gear
 - Road signs
 - Computer software such as CAD, GIS, Office
 - General hardware supplies – consider local supplier, Brighton Hardware
 - And so on
- Require many more staff to undertake such a new administrative workload
- Make it virtually impossible to achieve in time for the next budget cycle
- Increase advertising costs – approximately \$500 - \$600 per advertisement
- Be in conflict with long term contracts such as waste collection

Following are some sections from Council's Code of Tendering that highlight the onerous requirements of "going to tender":

Council's Request for Tender (RFT) is a document inviting offers from businesses to provide specified goods or services. Council's Request for Tender documentation usually consists of four main parts as follows:

Conditions of Tender - The Conditions of Tender set out the terms under which Council will receive and evaluate tenders. The conditions will usually include:

- *evaluation criteria and a brief outline of the evaluation methodology to be used;*

- closing date, time and place of lodgement;
- Council contact details;
- pricing requirements (e.g. the price should exclude GST);
- details of the intended duration of the contract, including any extensions applicable to the contract;
- advice and details on the availability of any briefing sessions for prospective tenderers;
- details on how tenders are to be lodged to ensure that Tenders lodged through the post are brought to the attention of Council Officers and placed in the relevant Tender Box and not opened, for example, in an envelope marked "Confidential - Tender";
- advice on how and in what circumstances the purchasing documentation can be altered;
- advice on the treatment of late submissions;
- an indication if alternative bids will be considered;
- relevant Council policies and principles;
- entitlement of unsuccessful bidders to be debriefed; and
- information on the Council's complaints process.

Specification - The specification clearly and accurately describes the requirements of the goods or service being purchased. It is the basis of all offers and is the foundation for the contract.

The specification will usually include functional requirements, performance requirements and technical requirements.

Conditions of Contract - The Conditions of Contract contain the contractual terms defining the obligations and rights of the parties concerned. Generally, contracts are used for all purchases over \$250 000, or where there are material risks involved.

Tender Form - The Tender Form must be completed, signed and returned by the tenderer. It includes a declaration by the tenderer that: the tenderer agrees to the Conditions of Tender; the information provided in the tender is accurate and correct; and the person signing the form is duly authorised to do so.

When preparing tender documentation Council will ensure that specifications do not restrict competition, reflect bias to any brand, or act as a barrier to the consideration of any alternatives. Where applicable, documentation such as tenders will be cleared by Council's legal advisers and the General Manager before being issued.

Evaluating Tenders

Tenders will be evaluated in accordance with the evaluation criteria and methodology specified in the evaluation plan, which was developed prior to offers being invited. Council will not modify the evaluation criteria or methodology after the Request for Tender has been released unless all potential tenderers are advised of the change in writing.

Evaluation of Tenders is to be undertaken by an Evaluation Committee established by the General Manager. An Evaluation Committee is to consist of at least 2 members including the relevant Manager.

In evaluating tenders, the Evaluation Committee is to undertake the following steps:

- *Evaluate compliance - Screen all offers to ensure that they are complete and comply with all mandatory evaluation criteria. Offers which do not meet all mandatory criteria and are non-compliant may be excluded from further evaluation.*
- *Clarify offers - It may be necessary to seek clarification from a tenderer if an offer is unclear. Clarification does not mean that tenderers can revise their original offer. Any clarification sought should be documented.*
- *Evaluate qualitative / non-cost criteria - this stage involves an analysis of each offer against the non-cost or qualitative evaluation criteria and weightings specified*
- *Shortlist offers - This step is only used for complex purchases in order to eliminate offers that are clearly not competitive. However, during this process, eliminated offers are not yet totally rejected, and may be revisited later in the evaluation process.*
- *Requests for Tenderers to make a formal presentation - If appropriate, and tenderers have been forewarned in the Conditions of Tender, tenderers may be requested to make a formal presentation to the Evaluation Committee, clarifying their tender and providing the opportunity for the committee to ask questions. Under these circumstances, the tenderer will be directed to not introduce new or revised information. All information, questions and answers will be recorded by the Council.*
- *Calculate value for money and compare offers - The aim of Council's comparative evaluation process is to determine which offer best meets all the requirements of the specification and offers the best value for money. The major factors which the Council take into consideration when evaluating value for money are: - the quality of the proposed good or service (how well it meets the specified requirements); vs - risk, that is, the capacity of the tenderer to deliver the goods or services, as specified, on-time and on-budget.*
- *Select preferred tenderer – when selecting the offer that represents the best value for money for Council and where two or more firms are ranked equally following the value for money assessment, preference will be given to a local business over businesses outside the municipal area. In selecting a preferred tenderer for a high risk/high value or complex process, the Council may undertake a due diligence investigation to ensure that the tenderer has the capacity and stability to fulfil all of the requirements of the contract.*
- *Write the evaluation report - on completion of the evaluation process the Evaluation Committee will document the selection of a successful tenderer in an Evaluation Report to be submitted to the General Manager.*

An Evaluation Reports is to include a record of the evaluation method, the rationale used to select the preferred supplier, and whether it is recommended that negotiations should be undertaken, and on what basis.

The Local Government Act dictates that councils have a public tender for all items costing more than \$250,000. Council's Code of Tendering reflects this requirement. The code allows direct purchase with possible verbal quotations for items \$100,000 and below. For items between \$100,000 and \$249,999 at least three written quotation may be obtained.

Council conducts an annual expression of interest for plant and materials. To reduce the limit for tendering from \$250,000 to \$125,000 would require additional time and resources to prepare tender documents, allow tenderers additional time to submit tenders and time to assess tenders. This would result in longer lead times on projects and higher administration costs.

DECISION:

After some discussion Cr Owen withdrew his motion and the General Manager committed to have an item on the February Council meeting agenda.

9. CONSIDERATION OF SUPPLEMENTARY ITEMS TO THE AGENDA:

In accordance with the requirements of Part 2 Regulation 8(6) of the Local Government (Meeting Procedures) Regulations 2015, the Council, by absolute majority may approve the consideration of a matter not appearing on the agenda, where the General Manager has reported:

- (a) the reason it was not possible to include the matter on the agenda, and
- (b) that the matter is urgent, and
- (c) that advice has been provided under Section 65 of the *Local Government Act 1993*.

RECOMMENDATION:

That the Council resolve by absolute majority to deal with any supplementary items not appearing on the agenda, as reported by the General Manager in accordance with the provisions of the Local Government (Meeting Procedures) Regulations 2015.

DECISION:

The General Manager advised that there were no supplementary agenda items.

10. REPORTS FROM COMMITTEES:

There were no committee meetings held in January.

11. REPORTS FROM OFFICERS:

There were no reports from Council Officers for January.

Cr Jeffries moved, Cr Garlick seconded that council resolve into Closed Council.

CARRIED

VOTING RECORD

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

Cr Gray and Mr Davoren left the meeting 6.49pm

Councillors appointed Cr Owen as Chairperson for the purpose of the following item.

12. CLOSED MEETING:

Regulation 15 of the Local Government (Meeting Procedures) Regulations 2015 provides that Council may consider certain sensitive matters in Closed Meeting.

The following matters are listed in the Closed Meeting section of the Council Agenda in accordance with Regulation 15 of the Local Government (Meeting Procedures) Regulations 2015.

This item was to be considered in closed session in accordance with Meeting Procedures Regulation 15(2)(c).

In the interests of making informed and well-considered decisions, councillors should follow a process of seeking information and analysis followed by discussion, such as in a workshop, prior to putting motions that would effect significant changes to council's operations and activities.

For example, a councillor could seek an internal (or external) review of a particular matter followed by a formal workshop of councillors and senior staff to discuss the findings and the options. Councillors need not agree with any findings or recommendations from a process and may pursue a contrary motion, but they would be better informed of the status quo and of the effects of change. This process is also a far more transparent process than motions being put without supporting analysis, options, or any review or workshop process.

12.1 NOTICE OF MOTION – CR WHELAN – MICROWISE AUSTRALIA PTY LTD – COUNCILLOR DIRECTORS AND DIRECTOR FEES

DECISION:

That any Councillor elected as a Director of Microwise does not receive a fee for their position as director of Microwise Australia Pty Ltd.

Cr Owen vacated the Chair.

Cr Gray rejoined the meeting and resumed as Chairperson.

Cr Whelan moved, Cr Jeffries seconded that Council resolve out of Closed Council and the decision made while in Closed Council be ratified.

CARRIED

VOTING RECORD

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

13. QUESTION ON NOTICE:

There were no questions on notice.

The meeting closed at 7.00pm

Confirmed:

(Acting Mayor)

Date:

18th February 2020